STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Paul Gerjevic, Petitioner-Appellant, v. **Pottawattamie County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 09E-78-1791** **Parcel No. 7544 28 490 001**

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 Paul Gerjevic, Jr. requested that the appeal be considered without hearing and designated Monte Bowman of AVIARAS, Ralston, Nebraska as his 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

Paul Gerjevic, Jr., owner of a commercial property located at 3343 West Broadway, Council Bluffs, Iowa, appeals from the Pottawattamie County Board of Review decision reassessing his property. The parcel consists of a one-story, 2400 square-foot building built in 1979. The parcel has 1500 square feet of concrete parking, a 308 square-foot shed, and chain fencing. The property is operated as a business known as Paul Motorcycle Service and is situated on a 0.12 acre site.

The real estate was classified as commercial on the assessment of January 1, 2009, and valued at $86,700, representing $31,700 in land value and $55,000 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 $99,705, representing $36,455 in land value and $36,455 in improvement value.

Gerjevic 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. He 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 Gerjevic's evidence was not sufficient to prove the assessment was excessive.

Gerjevic then appealed to this Board reasserting his claim. He disagrees with the increased assessment resulting from the application of the equalization order and seeks relief of $13,005 for a total valuation of $86,700, allocated $31,700 to land and $55,000 to improvement value.

On appeal, Gerjevic challenges the equalization order because it incorporated data from abnormal sales, which he claims should be excluded from the state assessment/sales ratio study under Iowa Department of Revenue guidelines. Gerjevic 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*. Gerjevic 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).

Gerjevic 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 Gerjevic. 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 Gerjevic 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 Gerjevic did not intend to produce evidence of the subject property's fair market value.

Gerjevic 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 Gerjevic'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 Gerjevic property, as determined by the November 2009 Pottawattamie County Board of Review decision.

THE APPEAL BOARD ORDERS the property assessment of $99,705, representing $36,455 in land value and $63,250 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 5-3, 2011
By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other
Signature