

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

T & C Knight, LLC,

Petitioner-Appellant,

v.

Warren County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 10-91-0048
Parcel No. 4861700015**

On May 9, 2011, 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 T & C Knight, LLC was represented by Attorney Ken Smith, of Updegraff & Smith, Newton, Iowa. The Warren County Board of Review designated County Attorney John Criswell as its legal representative. Assessor Brian Arnold represented the Board of Review at hearing. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

T & C Knight, LLC (Knight) is the owner of a commercially classified, strip mall located at 1709 N Jefferson Avenue, Indianola, Iowa. The property is a single-story building, built in 2004, and has 20,342 square feet of total building area area. The building is currently divided into seven units varying in size from 1167 square feet to 4602 square feet. The property has 50,800 square-feet of concrete parking. The site is 2.62 acres.

Knight protested to the Board of Review regarding the 2010 re-assessment allocated as follows: \$237,000 in land value and \$888,100 in improvement value for a total assessment of \$1,125,100. This was a change from the previous year's assessment.

Brian Arnold, Warren County Assessor, testified that the Board of Review had placed obsolescence on the subject property for the January 1, 2009 assessment to reflect some concrete and site work that needed to be done. The repairs were then made in 2009 (prior to the sale of the property in October 2009), and the obsolescence was removed, which resulted in the increase in the January 1, 2010, assessment.

Knight's claim was based on a single ground: that the property is assessed for more than the value authorized by law under section 441.21(1)(b). We note that Knight's claim was written in the area of the form reserved for an equity claim. However, the plain statement said "see attached appraisal of said property." Absent any other evidence to the contrary, it is clear the intent was to assert a market value claim.

The Board of Review denied the petition.

Knight then appealed to this Board reasserting its claim. Knight also added the claims that the assessment is not equitable with assessments of other like property in the taxing district under section 441.37(1)(a), and that there has been a change downward in the value since the last assessment under sections 441.37(1) and 441.35(3). The equity claim was not pled to the Board of Review, therefore we cannot consider it. 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 as a separate claim and consider only the claim of over-assessment. On its appeal form, Knight asserts the correct value of its property is \$960,000, allocated as \$237,000 the land value and \$723,000 to the improvement value.

Knight purchased the subject property on October 26, 2009, for \$990,000. This purchase included an adjoining 0.720 acre lot used for parking. The adjoining lot is not a part of this appeal.

Arnold testified the October purchase by Knight was from a bank which received the property as the result of a foreclosure.

Knight provided an appraisal to support its claim of over-assessment. The appraisal was completed by Richard Boggess of Birkenholz Appraisal Services, Newton, Iowa. The effective date of the report is August 26, 2009. Boggess develops all three approaches to value: cost, income, and sales comparison.

Boggess reports the subject was purchased by Bank of the West on March 5, 2008, for \$1,790,000 at Sheriff Sale. He further reports a pending contract price of \$990,000 from Bank of the West to Knight. Additionally Boggess writes "see attached offer." However there was no offer attached to the appraisal submitted. While we recognize the sale of the subject property may be considered to determine market value; in this instance the subject property sold from a bank which received it either as the result of a foreclosure or a sheriff sale, and based upon this evidence it is considered a distressed property. Therefore, the sales price may not be a reliable indicator of market value. Iowa Code section 441.21(1)(b).

Boggess indicates a gross building area (GBA) of 20,090 square feet, whereas the property record cards reports a GBA of 20,342 square feet. Boggess states on page 2 of his report that he relied on "measurements of the engineer on the plans for the building." These plans were not included in the appraisal report submitted to this Board.

On page 3 of his report Boggess indicates an opinion of value by the cost approach of \$993,200. In his cost analysis Boggess notes 6,498 square feet of finish and 13,592 square feet of unfinished space; however during its testimony, Troy Knight indicated closer to 12,000 square feet of finish at the time of purchase. Using Boggess' calculation, and correcting this apparent error, would increase the cost new of improvements by nearly \$200,000, if the nothing else changed in the appraisal. Additionally, Boggess applies an external obsolescence discount in the cost analysis of 30%. This discount reflects the "distress on the value caused by the bank ownership."

We note that by discounting the cost new of the subject improvements to reflect the “distress on value,” Boggess’ cost analysis reflects a distressed value of the subject property, rather than a fair market value.

In developing the income approach, Boggess indicates four tenants in the subject property with current (2009) rents between \$11.00 and \$13.00 per square foot. The lower end of this range (\$11.00) is a gross lease. The remaining three rents are triple-net leases and range from \$12.00 to \$13.00 per-square-foot. Boggess uses an \$8.50 per-square-foot triple-net lease-rate, which Arnold asserts is “wholly inappropriate considering the leases in place were \$4-5 per-square-foot higher on triple-net lease basis.”

Additionally, Arnold notes that Boggess reports the Comparable Lease 2 as an estimated gross lease for \$18 per-square-foot. However the listing (exhibit H) notes this property was listed at \$15 per-square-foot NNN. Comparable Lease 2 is located five blocks from the subject however has a negative \$2 per-square-foot adjustment for location which indicates it is superior to the subject. There is no explanation provided on what makes its location superior to the subject property. The comment addendum in Boggesses report states:

The lease listing noted as lease comp #2 is in a strip mall a few blocks south of the subject near the Wal-Mart. The estimated future income and expense for the strip mall are outlined on the attached spreadsheet.

It is unclear if Boggess is implying that Comparable Lease 2 is superior due to being near the Wal-Mart; or if Boggess is simply stating where the comparable is located in relation to the subject. Additionally, we note there was no spreadsheet attached to the appraisal submitted as evidence.

Boggess includes five comparable sales for his sales comparison analysis. His three primary sales sold between April 2008 to June 2009. He includes two additional sales as supporting evidence although they sold in 2006 and 2007. His adjustments do not appear to be consistent, or they are unexplained. For instance, Comparable 1 was built in 1977 and is rated as “average” condition

compared to the subject's year built of 2004 and "good" condition rating, yet no condition adjustment is made. Comparable 2 was built in 1983 and is also rated in "average" condition; however it received an \$7 per-square-foot (or 20%) upward adjustment.

Comparables 1, 2, and 3 all have "effective" age adjustments; however, Boggess provides only the actual ages of the properties, and there is no way to understand the effective age adjustments.

Similar to the cost analysis, Boggess applies a negative 30% across the board adjustment to the adjusted price-per-unit value of the comparables to reflect the subject's "distressed" status. By making downward adjustments to the arm's length comparables we do not find that Boggess is concluding the fair market value, but rather the value of a distressed property.

It does not appear that this Board was provided with a full copy of the appraisal, as noted by several referenced addendums or attachments that were missing. We also note inconsistent or unexplained adjustments. Furthermore, and most notable, Boggess clearly identifies that he opined a "distressed value" of the subject property rather than the fair market value. As such, we give this appraisal no consideration.

The only evidence offered by the Board of Review was definitions of market value, some photos, a building permit and a listing of one of the leases used in the appraisal submitted by Knight. This evidence was used to dispute the validity of the appraisal submitted by Knight. It did not offer any evidence pertaining to the value of the subject property.

Based on the foregoing, we find insufficient evidence has been presented to demonstrate the subject property is 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 (2011). 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).

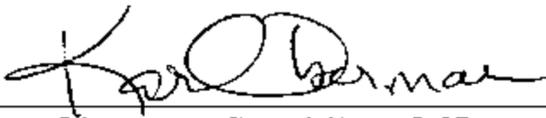
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Knight submitted an appraisal with an effective date of September 2009. However, we have concerns regarding the completeness of the appraisal (missing documents referenced), the methodology (inconsistent or unexplained adjustments) and that the opinion of value is based upon a

“distressed value” rather than the “fair market value” of the subject property. 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.

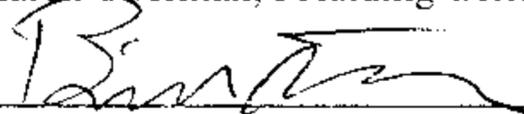
We therefore affirm the assessment of the property owned by T & C Knight, LLC as determined by the Warren County Board of Review as of January 1, 2010.

THE APPEAL BOARD ORDERS the assessment of the property owned by T& C Knight, LLC, located at 1709 N Jefferson Avenue, Indianola, Iowa, of \$1,125,100 as of January 1, 2010, set by the Warren County Board of Review, is affirmed.

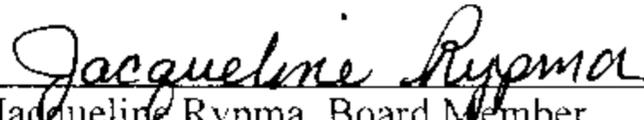
Dated this 8 day of July, 2011



Karen Oberman, Presiding Officer



Richard Stradley, Board Chair



Jacqueline Rypma, Board Member

Cc:

Ken J. Smith, Updegraff & Smith
101 1st Avenue West
Newton, Iowa 50208
APPELLANT

John Criswell
301 N Buxton, Suite 301
Indianola, Iowa 50125
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>6-8</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	