

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

---

**TLSCO Inc.,**  
Petitioner-Appellant,

v.

**Black Hawk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-07-1480**  
**Parcel No. 8813-02-326-014**

---

On February 5, 2013, 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) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. TLSCO Inc., was represented by Terry Smith, President of TLSCO Investments Inc. Assistant County Attorney Dave Mason represented the Board of Review. Both parties participated by phone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

*Findings of Fact*

TLSCO is the owner of property located at 1903-1913 Schukei Road, Waterloo, Iowa. The real estate was classified commercial on the January 1, 2011, assessment. It was valued at \$1,018,200, representing \$260,380 in land value and \$757,820 in improvement value. TLSCO protested the assessment to the Black Hawk County Board of Review on the grounds that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1), and that the property was assessed for more than authorized by law under section 441.37(1)(a)(2). It believed the correct value was \$675,000.

The Board of Review denied the protest.

TLSCO then appealed to this Board. It only presented evidence regarding its inequity claim.

According to the property record card, the subject property is a one-story shopping center with space for four tenants. It has a concrete block and steel exterior and was built in 2000. It has 10,730 square feet of gross building area; 20,400 square feet of concrete paving; one pole with two lights; a 436 square foot canopy; and 168 linear feet of chain fencing. The subject site is 1.083-acres.

TLSCO listed five properties on its Board of Review petition. The property record cards for these properties were included in the Certified Record from the Board of Review. Additionally, it listed six new properties on an Exhibit List for its hearing before this Board. For nine of the properties, it provided the address, assessed value, and building size for the properties. Additionally, it calculated the assessed value per square foot for nine of them based on this information. All of this information appeared on the Exhibit List, but no property record cards were submitted for those properties that were not previously listed on the Board of Review petition. The Board of Review provided a similar analysis; however, it included both the properties listed on TLSCO's Board of Review petition as well as the properties listed on its Exhibit List. There were some minor discrepancies between the two lists, but overall, the information was similar.

In an effort to show the subject property was inequitably assessed, TLSCO compared the assessed value per square foot of the properties it believed were comparable properties to the subject property's value per square foot

As previously noted, the subject property structure is a four-unit shopping center. Comparatively, six of the properties TLSCO listed are metal retail stores or warehouse structures. These properties appear to have different uses and the cost to build them would be different. For this reason, they are not good comparables for equity purposes. TLSCO also listed three other properties are all shopping center structures similar to the subject (900-918 LaPorte Road, 3620-3628 Kimball Avenue, 3005-3035 Kimball Avenue, and 2002-2034 E Ridgeway Avenue). According to the Black Hawk County Assessor, the first three properties are located in areas of Waterloo that are inferior to

the subject property's location. The Assessor also noted the Ridgeway property had significant issues with mold and water damage after it sat vacant for a period. Additionally, all three properties are older (built in 1958, 1979, and 1976) than the subject property that was built in 2000. For these reasons, we do not consider these properties listed by TLSCO to be sufficiently similar to the subject property for an equity analysis.

One property TLSCO submitted that is comparable to the subject is 1503-1527 San Marnan Drive. It is a shopping center structure similar to the subject and located in the same Crossroads neighborhood. It has an assessed value of \$1,414,660 or \$105.89 per square foot compared to the subject's assessed value of \$1,018,200 or \$94.89 per square foot. Although this property does not have a sale price, and a market value was not established to determine a sale-ratio analysis, its assessed value per square foot is slightly higher than the subject's and thus fails to support TLSCO's claim of inequity.

Additionally, the analysis, overall, is insufficient for an equity claim. An equity analysis typically compares *prior year sale prices* (2010 sales in this case) to the *current year's assessment* (2011 assessment) to determine the sales ratio. Only one property TLSCO provided sold recently. The property located at 900-928 La Porte Road sold in mid-2010 for \$1,575,000. This sale was designated an exchange for other property, or a trade. Not enough facts about this sale exist to determine if it was a normal transaction; additionally, this property is not comparable to the subject property due to its age, among other factors. Because there were no recent sales, no ratio analysis could be developed.

The Board of Review provided two sales for comparison to the subject property. These properties, located at 1501-1517 Flammang Drive and 201-207 E Tower Park Drive, sold in 2009 and 2010 with sale prices per square foot of \$226.17 and \$120.59, respectively. Without adjustments, the Board of Review believes these sales support the subject property's assessment of \$94.89 per square foot.

Terry Smith, President, testified on behalf of TLSCO. It was clear by the end of the hearing that Smith was frustrated with the appeal process and felt that a decision had already been made regarding this appeal. We assure Smith that this Board fully and thoughtfully considered of all the evidence and testimony, and that no prior determination of TLSCO's appeal took place. Smith stated he believes the assessor just sets the assessment at the sale price of property when it occurs. He also believes factors such as age, location, or style/utility should not be considered in an equity claim. Essentially, it appears Smith thinks that equity requires all properties to be valued with the same dollar per square foot calculation. This is untrue. In actuality, property assessment it is based on a biennial system of valuation and Iowa assessors are required to value property using the IOWA DEPARTMENT OF REVENUE REAL PROPERTY APPRAISAL MANUAL, as well as analysis of recent sales in a jurisdiction or market area.

### ***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. This Board is an agency and the provisions of the Administrative Procedure Act apply. 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, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). 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 the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

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. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* 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 to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(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. Shivers*, 133 N.W.2d 709 (Iowa 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 *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied. TLSCO submitted insufficient evidence to support an equity claim under either test. While TLSCO provided a list of properties it considered comparable to the subject property, we found there were enough differences between them to render them incomparable for inequity purposes.

THE APPEAL BOARD ORDERS the assessment of the TLSCO Inc. property located at 1903-1913 Schukei Road, Waterloo, Iowa, is affirmed with a total value of \$1,018,200, allocated as \$260,380 in land value and \$757,820 in improvement value as of January 1, 2011.

Dated this 4 day of March, 2013.

Karen Oberman  
Karen Oberman, Presiding Officer

Jacqueline Rypma  
Jacqueline Rypma, Board Member

Stewart Iverson  
Stewart Iverson, Board Chair

Copies to:  
Terry L. Smith  
PO Box 10375  
Cedar Rapids, Iowa 52410  
APPELLANT

David J. Mason  
3265 W 4th Street  
Waterloo, Iowa 50701  
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>2-4</u> , 2013	
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>[Handwritten Signature]</u>