

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Robert J. Klein,
Petitioner,

v.

Black Hawk County Board of Review,
Respondent.

ORDER

Docket No. 11-07-1497
Parcel No. 8914-13-254-013

On December 5, 2012, 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. Petitioner, Robert Klein, was self-represented. Assistant County Attorney Dave Mason represented the Board of Review and participated by phone. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Robert Klein is the owner of property located at 117 E 18th Street, Cedar Falls, Iowa. The real estate was classified commercial on the January 1, 2011, assessment and valued at \$164,430, representing \$57,380 in land value and \$107,050 in improvement value. Klein protested the assessment to the Black Hawk County Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2) and that there was a downward change in value under section 441.37(1)(b) and its reference to section 441.35(2). We note 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). He asserted the correct value was \$125,610, representing \$17,100 in land value and \$108,610 in improvement value. The Board of Review denied the protest.

Klein then appealed to this Board re-asserting his claim. On his Notice of Appeal & Petition form Klein asserted the correct value of the subject property is \$130,610, allocated \$17,100 to the land and \$113,510 to the improvements.

According to the property record card, the subject property is a one-story warehouse built in 1988. It has 3840 square feet of building area. There is no basement. The site also has 3100 square-feet of concrete paving. It is a 0.18-acre site and does not have any street frontage. The site is accessible in two ways: by a permanent easement extending to East 18th Street or through an adjoining parcel also owned by Klein. Klein operates these two sites as a single business, BK Tile.

Klein's primary concern is with his property's assessed land value. He initially asserted the 2010 assessed value of \$17,100 was the correct value for the site, but now believes a more appropriate valuation is \$10,584. His petition indicates his belief that the market has remained stable since 2009. He further asserts the increase in his land value from \$17,100 to \$57,380 is excessive. This \$40,280 increase was 3.35¹ times more than what it was assessed at in 2010. Klein notes that the subject property is "land-locked" with no street exposure.

Klein provided the Board of Review with a spreadsheet, summarized below, listing the parcel numbers of twelve properties he considered comparable to his property. Klein asserts these twelve properties have current per-square-foot land value assessments ranging from \$0.23 to \$2.87, with an average per-square-foot land assessment of \$0.94. He compares this to his land's current assessment of \$57,380, or \$7.32 per square foot.

¹ Exhibit I indicates the increase was 3.38 times.

	Parcel	Total Current Land Value	Current value per square foot
1	891413186025	\$3,650	\$0.42
2	891413377017	\$45,010	\$0.24
3	891320427014	\$10,000	\$0.50
4	891413377018	\$42,320	\$1.84
5	891320427022	\$113,800	\$1.52
6	891320427015	\$10,000	\$0.50
7	891321451018	\$50,430	\$1.14
8	891321451022	\$12,530	\$0.57
9	891321476043	\$19,380	\$2.87
10	881303151026	\$13,650	\$0.23
11	891413255011	\$4,850	\$1.09
12	891413186003	\$2,900	\$0.33

Klein did not make any adjustments for differences in size or location of these properties.

Furthermore, Klein did not establish the market value of these sites using sales information. Rather, he only considered the assessed value of the sites. There is no indication in the record that any of these properties have sold. As a result, this information cannot be reliably used to determine the subject property's market value, and we give this analysis no consideration.

At hearing, Klein offered some additional properties he believes further demonstrate his land is over-assessed. Klein provided limited information about a site located "right next" to his property on Main Street (parcel number unknown). Klien asserts this site is 15,873 square feet and was purchased for \$195,000. He states it has a land assessment of \$150,790, or \$9.50 per square foot. He asserts this site is superior to his because of its street frontage and access on Main Street location.

His second comparable is a lot "just north" of the subject site (identified as parcel 8914-13-254-022), which is also land-locked. He considers it a "perfect comparison." It is 6260 square feet in size and has an assessed value of \$20,920, or \$3.25 per square foot. On cross-examination, Klein indicated this property is a vacant, paved lot.

Lastly, he considered four sites, as described below, on State Street in Cedar Falls. He considers all of the State Street properties as superior to his property because they have street frontage.

Parcel	Value	Square Feet	Value per square foot
891413254010	\$74,400	43,560	\$1.71
891413255023	\$29,220	19,404	\$1.50
891413255019	\$22,520	15,012	\$1.50
891413255021	\$8,780	12,750	\$0.69

Based on this analysis, Klein believes his site should be more in line with \$1.35 per square foot, which is the average assessed value of the State Street properties. This would result in a site value of \$10,584 for the subject property. Again, we note that Klein based his conclusions on assessments rather than sales. As such, we give this analysis no consideration for a market value claim.

When asked, Klein stated he does not have any appraisals of the subject property.

Tami McFarland, Black Hawk County Assessor, wrote a letter dated November 26, 2012, explaining her concerns with the twelve properties Klein submitted to the Board of Review. In her opinion, properties 1, 3, 5 through 10, and 12 are not comparable to the subject due either to their classification and/or location. She considers properties 2, 4, and 11 similar in classification and location to the subject. She explains that 11, although similarly classified and located, is an exempt property and was not part of the 2011 revaluation completed on all commercial properties in Black Hawk County.

Deputy Assessor TJ Koenigsfeld testified at hearing and reiterated McFarland's concerns with Klein's comparables. He testified that a complete revaluation was done in Black Hawk County on commercial property in 2011. Koenigsfeld acknowledged the subject site is land-locked. As a result, it received a 25% discount to reflect the impact this would have in the market. He also noted the assessor valued the subject property as part of the larger business. He does not believe the State Street properties are reasonable comparable properties because they are on a street with much lower traffic exposure. He further explained that the subject property, although landlocked, has access off Main Street through the dominant business site and an easement.

Even though they are two separately parceled properties, the assessor is essentially treating the subject site as “one parcel” in conjunction with the adjoining parcel and has valued it accordingly. Klein was frustrated that the assessor is valuing the parcel in this manner. He explained that he did not think it was fair because he could not sell his property as an independent site for the assessed value. Koenigsfeld explained that it is common practice to value businesses, regardless of the number of actual parcels, as a whole unit. He explained that if the sites were sold separately, they would be re-evaluated and re-assessed if necessary.

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).

Before examining the merits of Klein’s appeal, we first need to address the assessor’s authority to combine parcels for assessment purposes. At hearing, Klein questioned whether the assessor could legally combine, or consider together, the subject property with his adjoining parcel for assessment purposes. Under Iowa Code section 428.7, the assessor may combine descriptions of property in order to value the property as a unit. In *Sevde v. Board of Review of the City of Ames*, the Supreme Court of Iowa recognized that section 428.7 “grants the assessor some discretion to aggregate separately described tracts for valuation purposes.” 434 N.W.2d 878 (Iowa 1989). Here, the assessor could reasonably combine the subject property with Klein’s adjoining parcel to value the property as a whole because the properties were being operated as a unit. In this particular case, rather than create a single parcel number for the properties, the assessor has maintained two separate parcel numbers.

We now turn to the merits of Klein’s over-assessment claim. In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Klein did not provide sufficient evidence to support a claim for over-assessment. In attempting to show his property is over-assessed, Klein relied entirely on evidence of the assessed values of what he considered to be comparable properties. Although these properties differed in size and location, Klein made no adjustments to allow for reasonable comparison with the subject property. Additionally, he did not offer evidence of recent sales to indicate his property is over-assessed. In contrast, the only evidence of a recent sale Klein offered was of a neighboring Main Street property

with a per square-foot assessed value of approximately two dollars more than the subject property's assessed value per square-foot. This sale suggests the subject property is not over-assessed.

Further, Klein did not sustain his evidentiary burden to demonstrate the subject property's value as of the January 1, 2011, assessment date. Klein ultimately relied on four properties located on State Street to conclude the subject property's land value should be \$10,584. He contends that without direct street access, the subject property is not worth more than property located on State Street. Koenigsfeld testified, however, that properties located along State Street are considerably less valuable than Main Street properties because of reduced traffic exposure. Klein did not offer an appraisal or recent, adjusted sales of comparable properties to establish the property's value.

For the foregoing reasons, we determine the property's assessed value as of January 1, 2011, is \$164,430, representing \$57,380 in land value and \$107,050 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment as determined by the Black Hawk County Board of Review is affirmed.

Dated this 24 day of January 2013.



Karen Oberman, Presiding Officer



Jacqueline Rypma, 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>1-24</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	