

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Fazwat, LLC,**  
Petitioner-Appellant,

v.

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

**ORDER**

**Docket No. 11-07-1543**  
**Parcel No. 8813-10-127-003**

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On September 28, 2012, 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. Fred B. Mieke, Jr., represented the Appellant, Fazwat, LLC. The Black Hawk County Board of Review designated County Attorney David J. Mason as its representative. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Fazwat, LLC (Fazwat) is the owner of a commercially classified property located at 441 E Tower Park Drive, Waterloo, Iowa. The property is a fast food restaurant currently operated as a Fazoli's. The improvements were built in 2002 and include 3407 square feet of gross building area (GBA) and 21,400 square feet of asphalt paving. The subject property also includes other yard items typically associated with these facilities, such as curbing, fencing, yard lights and sign poles. The site is 0.960 acres.

Fazwat protested to the Black Hawk County Board of Review regarding the 2011 assessment of \$818,870, which was allocated as follows: \$288,000 in land value and \$530,870 in improvement value. Fazwat based its claim on the ground that the property was assessed for

more than the value authorized by law under section 441.37(1)(a)(2) and asserted the correct total value was \$485,327. The Board of Review granted the protest in part, reducing the total assessment to \$770,870, allocated \$240,000 in land value and \$530,870 in improvement value. Fazwat then appealed to this Board reasserting its claim.

Fred B. Mieke, Jr., a commercial broker, testified at the hearing and provided a market analysis. The written document consisted of a limited description of six properties, summarized in the following chart, that Mieke believes are comparable to the subject.

Address	GBA	Year Built	Site size	2011 AV	Sale Price	Sale Date	Price/SF
<b>Subject</b>	3407	2002	0.960	\$770,870	N/A	N/A	
1410 Flammang Dr., Waterloo	3510	1998	0.594	\$849,990	\$500,000	July 2009	\$142.45
2908 5th Avenue, Fort Dodge	3912	Unknown	0.700	Unknown	\$378,964	June 2009	\$96.87
3505 29th Avenue, Cedar Rapids	3825	2000	0.920	\$795,000	\$580,200	July 2009	\$151.69
2822 University Avenue, Waterloo	3882	1969	0.903	\$405,470	\$480,000	May 2007	\$123.65
5907 University Avenue, Cedar Falls	5892	1989	0.562	\$603,930	\$600,000	April 2009	\$101.83
6306 University Avenue, Cedar Falls	3864	1969	0.376	\$289,770	\$310,000	January 2008	\$80.23

Mieke also testified about each comparable property and verbally identified them as either superior or inferior to the subject property. He removed 2822 University Avenue and 5907 University Avenue from the analysis because they were sit-down restaurant-style facilities, whereas the subject property is a fast-food style facility.

Mieke then applied negative 10% location adjustments to 1410 Flammang and 3505 29th Avenue, and an upward 10% location adjustment to 2908 5th Avenue. He adjusted 6306 University Avenue upward 30%; making positive 10% adjustments for site size, condition, and age. After adjustments, he stated the indicated values ranged from roughly \$400,000 to \$520,000. He believes the Flammang Drive property is the best indicator of value and adjusted it to roughly \$520,000. It is his opinion, based on this analysis, the subject would have a market value of \$485,000, not including fixtures, furniture, and equipment (FFE) or business value.

Miehe explained that he based the adjustments only on his experience. Ultimately, however, he did not provide any support for his conclusions.

Black Hawk County Assessor Tami McFarland testified that in 2011 there was a commercial revaluation by Vanguard Appraisals using the new manual pricing.

McFarland also took issue with the use of the comparable properties considered by Fazwat. She testified that the Flammang Drive and 29th Avenue properties were both “Steak and Shakes” and sold as a package. Both were immediately converted to a “Hardees.” Therefore, she did not believe they reflected the market value of each individual property. She did not believe the Fort Dodge sale in Webster County is reliable due to a lack of information about the property and the transaction. Lastly, she did not consider any of the University Avenue sales as reasonable comparable properties because they were all sit-down restaurants and not fast-food restaurants like the subject. She explained that there is a difference in pricing in the cost manual for these different style facilities in that fast-food restaurants have a higher pricing than sit-down restaurants. We agree with McFarland’s conclusions.

Miehe also testified that he listed the subject property in June 2012 for \$795,000, and at the time of this hearing, the listing was reduced to \$725,000 with no offers. The list price includes the real estate, FFE, as well as, the business value. Miehe believes the value of the FFE is \$150,000, and the value of the business is \$100,000. Therefore, he believes this also supports a lower assessed value of \$475,000. While this may be an indicator of value for the January 1, 2013, assessment, we find that it has little bearing on the January 1, 2011, assessment. In the end, Fazwat failed to provide sufficient evidence in regards to a market value claim.

The Board of Review did not offer any evidence.

Based on the foregoing, we find the preponderance of evidence does not 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).

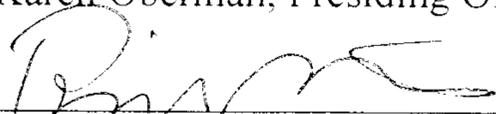
In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "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).

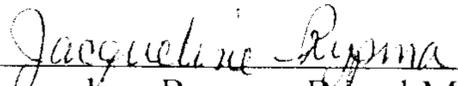
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence that: 1) the assessment is excessive and 2) the property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Fazwat provided six properties it considered as comparable. Mieke addressed the comparability of each sale at the hearing and made adjustments after verbally acknowledging differences. The Board of Review questioned the actual comparability of the properties and the reliability of the transactions themselves as market value indicators. Ultimately, we do not find sufficient persuasive evidence to support a market value claim.

THE APPEAL BOARD ORDERS the assessment of Fazwat, LLC's property located at 441 E Tower Park Drive, Waterloo, Iowa, of \$770,870, as of January 1, 2011, set by the Black Hawk County Board of Review, is affirmed.

Dated this 24 day of October, 2012.

  
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Karen Oberman, Presiding Officer

  
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Richard Stradley, Board Chair

  
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Jacqueline Rypma, Board Member

Cc:

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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>10-24</u> , 2012	
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	