

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Dmitry Yarushkin & Yang Yang,
Petitioners-Appellants,

v.

Dallas County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-25-0489
Parcel No. 16-11-316-008

On October 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. Petitioners-Appellants, Dmitry Yarushkin and Yang Yang, were self-represented. County Attorney Wayne M. Reisetter is counsel for the Board of Review and Assessor Steve Helm represented it at hearing. Both parties submitted documentary evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Dmitry Yarushkin and Yang Yang, owners of property located at 8610 EP True Parkway, Unit 2008, West Des Moines, Iowa, appeal from the Dallas County Board of Review decision reassessing their property. According to the property record card, the subject property is a two-story townhouse, built in 2007, with 1301 total square feet of living area and an attached, 275 square-foot garage. There is no basement. The property also has a 124 square-foot patio. The subject is a condominium and situated on a common lot.

The real estate was classified as residential on the initial assessment of January 1, 2011, and valued at \$112,810, representing \$23,000 in land value and \$89,810 in dwelling value.

Yarushkin and Yang protested to the Board of Review on the grounds that the property is assessed for more than authorized by law under Iowa Code section 441.41(1)(a)(2) and that there has been a downward change in value under section 441.37(1) and its reference to section 441.35(3). There downward change claim is essentially a claim of over-assessment. This Board notes 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).* Therefore, we only consider the ground of over-assessment.

The Board of Review denied the protest.

They reasserted their claims to this Board.

Yarushkin testified that they had purchased the property in April 2011, on the open market, for \$81,500. A multiple listing sheet (MLS) of the subject property, offered by Yarushkin, indicates the subject was a real estate owned (REO) property when it was purchased in April 2011. The property was a Housing and Urban Development (HUD) sale, which means it had been acquired through foreclosure. The subject property was sold "as is."

Yarushkin provided an appraisal of the subject property, prepared by Patrick McFarland of Frahm Appraisal Company, Des Moines, Iowa. McFarland's appraisal had an effective date of March 14, 2011, and determined an "as is" opinion of value of \$85,000.

McFarland developed the sales comparison approach to value and considered four sales and two active listings in his analysis. One of his four sales was an REO sale like the subject property. McFarland made an across the board adjustment for "ownership." The adjustments ranged from \$22,000 to \$23,700 for the three sales and two active listings that were not REO sales, but rather were normal transactions. By adjusting the normal sales and listings downward to make them similar to the subject's REO transaction, McFarland in essence determined the REO value of the subject property and not the fair market value of the subject property. As such, we give his appraisal no consideration.

Yarushkin also noted that because he purchased the property from HUD, he was not able to inspect the property prior to making an offer and essentially purchased the property “as is” and sight-unseen. He contends after the purchase was complete, he determined the air conditioner was “not good” and needed replacement. There was no evidence presented to indicate how much, if at all, this impacted the fair market value of the subject property.

The Board of Review provided a list of twelve sales, including the subject property, within the subject’s Prairie Creek Villas subdivision. The sales occurred between April 2010 and March 2011. County Assessor, Steve Helm identified that four of the sales (including the subject property) sold as either and REO, HUD, or short sale¹. These four sales sold from \$81,500 to \$105,000, with a median of \$94,000. The subject sale set the low end of this range. Of these four sales, we noted the two HUD sales sold for \$81,500 and \$88,000; whereas the REO and short sale property sold for \$100,000 and \$105,000. It would appear that HUD homes have even a greater discount for an unknown reason. It was speculated that this may be due to the “as is” condition of the properties and no opportunity to inspect, as well as, having to deal with a government entity rather than a bank.

The remaining eight sales in the subject’s subdivision had sales ranging from \$110,000 to \$118,000, with a median of roughly \$113,000. Although they appear on paper to be identical units to the subject, they remain unadjusted for differences that may exist in condition and amenities. As such, we given limited consideration to the raw data; however, it does appear to support that the subject property is not over-assessed.

Viewing the record as a whole, we determine Yarushkin and Yang failed to prove by the preponderance of the evidence that their property is over-assessed.

¹ A short sale is when the bank is willing to take less than owed on the property in lieu of foreclosure.

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 (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 also 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).

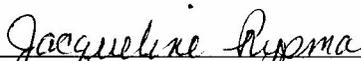
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Yarushkin and Yang provided an appraisal in support of their position, asserting it indicates a value of \$85,000. However, the appraisal incorrectly makes adjustments for ownership, in

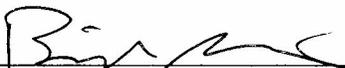
effect resulting in a value indication for an REO property, rather than an indication of the fair market value. They failed to provide evidence to support their assertion that their property is over-assessed.

Therefore, we affirm the Yarushkin and Yang property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2011, is \$112,810.

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

Dated this 29 day of November 2012.


Jacqueline Rypma, Presiding Officer


Richard Stradley, Board Chair


Karen Oberman, 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>11-29</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:	