

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

James C. Miller,

Petitioner-Appellant,

v.

Delaware County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 11-28-0177
Parcel No. 250-23-07-023-00**

On October 21, 2011, the above captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board under Iowa Code sections 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant James C. Miller was self-represented and requested a written consideration. The Delaware County Board of Review was represented by County Attorney John Bernau. Both parties submitted evidence in support of their positions. The Appeal Board having reviewed the entire record and being fully advised, finds:

Findings of Fact

James C. Miller, owner of a residentially classified property located at 20730 262nd Street, Delhi, Iowa, appeals from the Delaware County Board of Review regarding his 2011 property assessment. The January 1, 2011, assessment is allocated as follows: \$16,700 in land value and \$29,900 in improvement value for a total assessment of \$46,600.

The subject property is a one-story frame, single-family residence built in 1960. The improvements include 1080 square feet of above-grade finish. There is no basement. Additional improvements include a two-car detached garage built in 2005; a 56 square-foot open front porch; and

a 240 square-foot deck. The site is 0.275 acres. The improvements are noted as having “observed” condition and 75% physical depreciation. The site has 80% obsolescence applied.

We note the property is located on Lake Delhi. Lake Delhi was a man-made lake in Delaware County. In July 2010, the earthen dam burst due to flooding. The lake was drained and many properties were damaged.

Miller protested his assessment to the Delaware County Board of Review. On the protest he contended that there has been a change downward in value since the last assessment under section 441.37(1) and 441.35. On his petition he wrote “because of the flood – cabin has been contracted for demolition.” He also attached a type-written statement stating: “cabin has been gutted. There are no utilities – water, electric, or gas. Paneling and carpeting have been removed. We have contracted with Delhi Transfer for demolition.” 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 consider Miller’s claim as over-assessment under Iowa Code section 441.37(1)(b).

The Board of Review denied the protest.

Miller then appealed to this Board. He reasserted his claim of over assessment. Miller did not provide what he believes is the correct value to either the Board of Review or this Board. Based upon the petition and appeal, it appears Miller asserts the cabin has no value.

Miller requested a hearing with the Board of Review. The only evidence in the certified record from Miller is a bid proposal from Harbach Construction for the demolition and landfill of the improvements, as well as the removal of trees. The bid is dated April 11, 2011, and is for \$3200. However, Exhibit Two, provided by Miller to this Board, is a written copy of Miller’s statement to the Board of Review, along with pictures showing the interior of the cabin. Miller asserts he offered to leave this information (written statement and pictures) with the Board of the Review; however, they

declined to retain the information. We note that all information presented to the Board of Review should be included in the certified record to this Board. As such, we believe it would be prudent for the Board of Review to reconsider its policy of declining to retain evidence submitted by property owners protesting their assessment.

Miller's written and subsequent oral statement to the Board of Review included information regarding an engineer inspecting the subject improvements to determine if they qualified for a demolition assistance program. Miller ultimately received a letter from the East Central Intergovernmental Association (ECIA) on November 23, 2010, informing him that the subject property did not meet "the criteria to be demolished as an imminent danger of complete or partial collapse or as a threat to public health and safety." The letter further states that "FEMA Demolition Team Specialists were in the County...and concurred with the building inspector's findings." We note the letter does not determine the existing improvements have any value, but rather that the existing improvements are not an imminent threat to public health and safety;" and, therefore does not meet the criteria to receive public funds to demolish.

Miller contends the process to determine eligibility for funded demolition took more than ten weeks. He was not informed of the decision until late November, and the delay resulted in the inability to have the improvement razed prior to January 1, 2011. Miller requested the cabin be considered a total loss and noted he contracted with Harbach Construction to have the cabin razed.

The Board of Review, as well as Miller provided a copy of the 2011 property-record card for the subject property. Miller's copy highlights notes on the record card. Of specific importance, is an assessor note dated November 2, 2010, which states the subject "property is on the ECIA demolition list, it will be demolished as soon as the ECIA demo team comes to Delaware County." It appears to be Miller's contention the cabin should not be valued because the property-record card reports it was on a demolition list and cites a permit date of November 2, 2010 for demolition/removal. While we

note the latter part of this assertion is true; we also note the improvement (specifically the cabin) was not razed as of January 1, 2011. However, it is not unreasonable for Miller or this Board to interpret these notes as an indication the cabin had no value prior to the January 1, 2011, assessment date.

The Board of Review provided this Board with a letter (Exhibit A) from the County Assessor's Office dated September 27, 2011. The letter explains how valuations were determined in the Lake Delhi area for the January 1, 2011, assessment in light of the flood. In summation, "land valuations were reduced 80% if it was adjacent to where the lake had been; 50% if it was across the road and not next to the lake." The subject site had lake-frontage and was reduced 80% on the 2011 property-record card and assessment land valuation.

The letter further explains "flooded dwellings were adjusted based on what damage was sustained to the individual building structures. It was determined to value them in a reverse method that is used to value properties when they are under construction at the time of the mandatory assessment date of January 1 of each year. The Miller's property was reduced 52% on the building value..." Attached to the letter is a blank "partially completed residential property worksheet" apparently as an example of the process. It would have been helpful to have the actual work-sheet for the subject property which calculated what was valued and what was not valued as of January 1, 2010.

Based solely on undated photos provided by Miller, it would appear that prior to demolition at least, the subject property had a foundation, floor (joist and deck), exterior walls (studs, sheathing and building wrap) siding, windows and doors, roof (trusses, deck, and shingles), interior studding, and rough electrical and plumbing. Based upon the worksheet supplied, this would indicate the subject was 57% complete or conversely 43% incomplete. The assessor's reduction of value of 52% could be viewed as generous. However, it does not negate the water damage to the still existing structure or the fact that it was noted by the assessor's office as slated for total demolition which could be reasonably construed as an improvement with no value.

We find that while Miller's cabin was not physically razed by the January 1, 2011, assessment date, the preponderance of the evidence indicates it had nominal value for January 1, 2011. It was identified by the assessor's office as awaiting demolition; and subsequent demolition was dependent, to some extent, on governmental agencies (ECIA) actions which took longer than anticipated to determine if the cost of demolition would be covered by a public program. Because the ensuing decision from the ECIA was not made until late November, it was not possible for Miller to have the improvement contracted and razed prior to January 1, 2011.

We find sufficient evidence has been presented to demonstrate the improvement had nominal value, and the delay was associated only by waiting to see if public funds could be used to raze the building. Because the dwelling existed in some form on January 1, 2011, it is required to be valued. Given the condition as "observed," the depreciation at 75%, and the imminent demolition, we consider the value to be nominal. As a reflection of the condition, we assign a value of \$100 to the dwelling.

Based upon the foregoing, we find sufficient evidence has been presented to support a claim of over-assessment.

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).

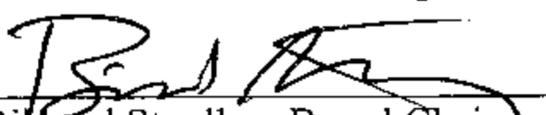
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Miller asserts the cabin had no value due to flooding. It was subsequently gutted and being prepared for demolition. Miller waited throughout the late summer and into early fall of 2010 to find out if his property was eligible for public funds to pay for the demolition. While the ECIA determined his property was not eligible for the program, the eligibility was not based on value, but rather on whether the existing structure posed imminent danger to the public. The assessor's office had already noted the subject property as being permitted for demolition which would indicate the structure had nominal market value. While the dwelling physically existed on January 1, 2011, the record is clear it was in very poor conditions and awaiting demolition. *See*, Iowa Code § 428.4 (requiring assessor to value real estate as of January 1 of the assessment year).

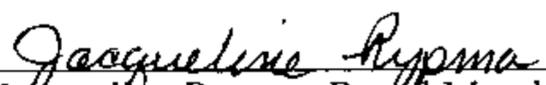
The evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the January 1, 2011, assessment of the property located at 20730 262nd Street, Delhi, Iowa, as determined by Delaware County Board of Review.

THE APPEAL BOARD ORDERS that James C. Miller's property located at 20730 262nd Street, Delhi, Iowa, is modified to a total value of \$28,618, allocated as \$16,700 in land value and \$11,818 in improvement value for the detached garage, and \$100 in improvement value for the dwelling as of January 1, 2011. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Delaware County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 30 day of November, 2011


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


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>11-30</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	