

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Donald William Busby,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-0958
Parcel No. 110/03287-000-000

On May 21, 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-Appellant, Donald William Busby, was self-represented and submitted evidence in support of his petition. The Polk County Board of Review was represented by Assistant County Attorney Ralph Marasco, Jr. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Donald William Busby, owner of property located at 2327 East 11th Street, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2011, assessment and valued at \$83,800; representing \$16,100 in land value and \$67,700 in dwelling value.

Busby protested to the Board of Review on the ground that there was an error in the assessment under Iowa Code section 441.37(1)(d). However, the error he claimed was that he “purchased [the] home for \$64,000.” Essentially his claim was that the property is assessed for more than authorized by law under section 441.37(1)(b). The Board of Review denied the protest.

Busby then filed an appeal with this Board. Busby now claims \$68,000 is the property’s correct value and fair assessment.

The subject property is a one-story, bungalow style, frame dwelling having 1157¹ total square feet of living area with a full basement. The property was built in 1917, is in above-normal² condition, and has a 4+00 quality grade. It also has a 216 square-foot detached garage. The site consists of 0.148 acres.

Busby testified that he purchased the subject property for \$64,000 in August of 2010. The property record card indicates Busby purchased the property from Nationwide Advantage Mortgage Company, which was likely the result of a foreclosure. The appraisal was completed Bonnie M. Gusland of Gusland-Castek Appraisal Company, and it values the property at \$68,000 as of July 2010.

Gusland's appraisal included three sales of properties all under a half-mile from the subject property. The sales occurred between October 2009³ and May 2010. It appears one or two of these sales may have had issues in the transaction that affected their market value. The property at 2334 York Street had two recent transactions. The first, in November 2009 was from HUD to Dynamic Enterprises Corp. Dynamic then sold the property to its current owner. The initial HUD transaction would likely be abnormal, but nothing on the property record card indicates the transaction between Dynamic and the current owner render it an abnormal sale or that the sales price does not reflect market value. The property located at 816 Grandview Avenue sold from a land trust and the property at 815 Grandview sold from a revocable trust; however, like the York Street property, nothing indicates these transactions do not represent market value. Gusland's appraisal noted the sales she chose were the most current and best represent the current market conditions. She stated foreclosures have become a factor in all neighborhoods and price ranges, and there were some noted in the subject area and should be relevant and considered the "market." However, she also noted the subject's

¹ An appraisal provided by Busby reports the total living area (TLA) as 1187 square feet, however a sketch was not included in the appraisal. Because this is an insignificant discrepancy we assume the public records to be correct.

² The appraisal reports the property as Average condition.

³ Gusland reports that Comparable 3 (816 Grandview) sold in October 2010, however the property record card indicates this property sold in October 2009. We assume this is a typographical error.

market area was “stable” and that there were thirty-one sales in the last twelve months ranging from \$19,000 to \$132,000, with a median sale price of roughly \$72,000. She does not identify how many or what percentage of these sales may be foreclosures. If foreclosures were the “market” it would be reasonable to assume this information was readily available.

Gusland observed that the subject property had “upgrades through the years which include all newer mechanicals, wiring, roof, shingles in good condition” and what appeared to be newer carpeting on the main level. She also noted “some original components and less than current interior items.” Overall, Gusland considered the subject property to be in average condition compared to the property record card, which identified the subject as above-normal condition. Because Gusland physically inspected the subject property we give more weight to her condition rating. She made downward condition adjustments to all three comparables.

We also note that Gusland reports 2334 York (Comparable 1) as having 1036 square feet of above grade living area; whereas, the property record card for this comparable indicates the living area is 768 square feet. Gusland comments in her report that this sale was a one-story home with a new bedroom in the attic, which explains the discrepancy. We find the appraisal to be the best evidence in the record regarding the market value of the subject property.

Busby believes he submitted the appraisal to the Board of Review, but it was not part of the certified record. The record was left open for the Board of Review to evaluate the appraisal but it did not provide any comment.

Busby also submitted sales of properties in the area that had sold. We note some of the sales are abnormal sales. More importantly, none of the sales are adjusted to account for differences between them and the subject property.

Eva Horstmann, Realtor, of Horstmann Realty, also testified on Busby’s behalf. Horstmann was Busby’s realtor. She is of the opinion that the property’s sales price represents its fair market

value. She also provided sales and listings of other properties in support of Busby's claim. However, Horstmann did not adjust the sales to the subject property. While Horstmann did not provide an independent opinion of value, we give her testimony that the sales price represents the fair market value of the property some consideration given her expertise.

The Board of Review did not submit any new evidence or call any witnesses. It relied on an Appraiser Analysis that compared the subject to five properties that sold between October 2009 and June 2010. However, the analysis is based on the subject being in above-normal condition rather than average or "normal" condition. This difference would result in a higher value opinion. Because there may be some question regarding the overall condition of the subject property the Board of Review may want to request the assessor's office do an interior inspection to confirm.

After reviewing all the evidence, we find Gusland's appraisal is the best evidence in the record of the fair market value of the subject property. We find Busby has met his burden of proof and modify the assessment to reflect the appraised value of \$68,000.

Conclusions of Law

The Appeal Board based its decision on 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 determined 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." *Heritage Cablevision v. Board of Review of Mason City*, 495, 597 (Iowa 1990) Iowa Code § 441.21(2).

In an appeal that alleges the property is assessed for more than 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). Findings are "based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs." Iowa Code § 17A.12.

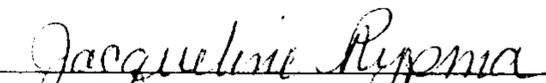
Busby submitted an appraisal that analyzed sales to conclude a market value several months prior to the assessment date. It was the best evidence in the record. We find the preponderance of the evidence supports the claim that the property is over-assessed.

THE APPEAL BOARD ORDERS the assessment of the property located at 2327 East 11th Street, Des Moines, Iowa, be modified to a total of \$68,000 as of January 1, 2011.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be correct accordingly

Dated this 24 day of July 2012.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

Copies to:

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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>7-24</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	