

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Denis Marchand,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1060
Parcel No. 030/01434-000-000

On November 9, 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, Denis Marchand, was self-represented. Assistant County Attorney David Hibbard represented the Board of Review. 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

Community Assets, LLC, was the owner of property located at 1109 26th Street. The real estate was classified commercial on the January 1, 2011, assessment. It was valued at \$71,000, representing \$9500 in land value and \$61,500 in improvement value. Community Assets protested the assessment to the Polk County Board of Review. Additionally, Denis Marchand, an investor interested in purchasing the property, also protested the assessment.

Community Assets protested on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.41(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). Its claim of downward change referenced an attached appraisal report and was essentially a market value claim.

Denis Marchand, who had a pending contract on the property, also protested to the Board of Review asserting the property was over-assessed. He asserted the correct value was \$21,000, which was the price he offered to pay for the property.

The Board of Review granted the protest, in part, and reduced the total value to \$58,500, allocated \$9500 to land value and \$49,000 to improvement value.

Marchand then appealed to this Board reasserting his claims; Community Assets did not.

According to the property record card, the subject property is a four-unit apartment conversion. It is two stories with a finished attic and was built in 1900. The property has 2617 square feet of above-grade living area and 599 square feet of unfinished basement and a 336 square-foot open porch. The property condition is below normal with a 4+00 quality grade. It sits on a 0.141-acre site.

Marchand testified he purchased the subject property in the Summer of 2011. He stated he purchased it and a neighboring property at 1113 26th Street at the same time from the same holding company. He paid \$21,000 for each of the properties.

Marchand provided pictures of the subject property demonstrating its below normal condition. While the photos were after the January 1, 2011, effective date of the assessment, Marchand asserted the property was in the same condition at that time. Marchand, as well as several witnesses including real estate agent Brandon Patterson; framing carpenter Casey Petersen; City of Des Moines Senior City Planner Mary Neiderbach; and Eric Moore, a neighborhood inspector for the City of Des Moines community development neighborhood inspection division; testified regarding the condition of the subject property. All of these witnesses confirmed the improvements were in well below normal condition and were essentially uninhabitable. None of the witnesses, including Marchand, had been in the subject property as of the assessment date. However, based on their testimony and the photographs, we find it highly unlikely the subject property deteriorated significantly from January 1, 2011, to the Spring/Summer of 2011 when Marchand acquired the property. There is no evidence in

the record to dispute the condition of the subject property, and we find that it was in below normal condition as of January 1, 2011.

Further, we find the witnesses to be honest and credible in their testimony regarding the condition of the property. Some of the witnesses, however, opined that the assessed value should be the purchase price, or the value of the vacant land. No one offered any evidence to support these assertions. As such, we do not find their testimony to be relevant to the issue before us, which is the fair market value of the subject property on January 1, 2011.

Appraiser Wendy Wysong also testified on Marchand's behalf. In addition to testifying about the condition of the subject property, Wysong claimed to have reviewed an appraisal in the record that was submitted to the Board of Review by Community Assets. However, the appraisal, prepared by Brookshire Appraisal,¹ was incomplete; and, it valued both the subject property and the neighboring property at 1113 26th Street. The effective date of the appraisal is November 24, 2010, and the "as is" market value of the two properties was \$67,000. In Wysong's opinion, the comparable properties used in the appraisal were in better condition than the subject property. For this, and other reasons, Wysong does not find the appraisal credible.

We also do not find the appraisal to be reliable or credible; however, we base our finding on the fact the appraisal is incomplete. For instance, the report includes a location map with four comparable properties but only two comparable properties' summaries are in the appraisal. Additionally, there is no comparison of the subject to the comparable properties. Lastly, the report indicates a single value of two properties, under a hypothetical condition of stabilized occupancy then discounted for repairs and profit to conclude an "as is" value opinion. It then appears Community Assets simply allocated a value to each of the two subject properties in the appraisal. It is for these reasons that we give the appraisal no consideration.

¹ The appraiser is unknown.

Wysong also asserted that she valued the subject property. She indicated data was not available to conduct an income analysis, and there were no sales in similar condition. Therefore, she did not develop any of the traditional methods of value. In her opinion, because of the lack of data, the only indicator of value is the sales price of the subject property. She believes the correct market value of the subject is \$21,000. She did not prepare a written report; she offered no evidence to support her opinion; and she did not indicate what her effective date of value was.

Marchand asserts that when he purchased the property, he based his offer on his opinion that the lot had a value of \$10,000 and the improvements had minimal value. He also explained that after the purchase of the property, he gutted the subject to its joists. Like Wysong, he believes the purchase price is the value of the property.

Neither Wysong nor Marchand analyzed the actual sale of the subject property and that it appears to have been a distressed sale resulting from default of loans or foreclosure; or, that the transfer was part of a larger offer that also included a neighboring property. Their opinions did not address if these factors may have had an impact on the sales prices. We find both Wysong and Marchand's opinion to lack support, research, and reasonableness. Therefore, we give them no consideration.

The Board of Review relied on the record.

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. § 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 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)(a)(2), 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). Marchand failed to prove the subject property was over assessed or what its fair market value was as of January 1, 2011. The wording of section 441.21(1)(b) state that a sales price for the subject property in a normal transaction just as a sales price of comparable property is a matter to be considered in arriving at market value but does not conclusively establish that value. *Riley v. Iowa City Board of Review*, 549 N.W.2d 289, 290 (Iowa 1996). A sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for. § 441.21(1)(b). Because the subject property had been a foreclosure (owned by a bank or asset holder), and because Marchand testified that he purchased this property and a neighboring property at

the same time from the same seller, we find it the sales price an unreliable indicator of its fair market value for assessment purposes.

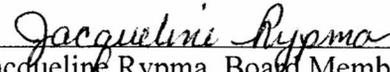
Therefore, we determine the property's assessed value as of January 1, 2011, is \$58,500, representing \$9500 in land value and \$49,000 in dwelling value.

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

Dated this 11 day of November 2012.



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>11-11</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	