

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Denis Marchand,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1061
Parcel No. 090/04642-000-000

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

Leslie J. Barnett, was the owner of property located at 3132 Kingman Boulevard, Des Moines, Iowa as of the January 1, 2011 assessment date.¹ The real estate was classified as residential and valued at \$57,900, representing \$35,000 in land value and \$22,900 in improvement value. Denis Marchand, an investor interested in purchasing the property, protested the assessment to the Polk County Board of Review. Marchand's protest was based on the grounds that the property is assessed for more than authorized by law under Iowa Code section 441.41(1)(a)(2). He asserted the correct market value for the property \$25,000, the property's assessed value in 2009. The Board of Review granted the protest, in part, and reduced the total assessment to \$45,800, allocated \$35,000 in land value and \$10,800 in improvement value.

¹ At some point subsequent, the property was acquired by the City of Des Moines through tax sale.

Marchand then appealed to this Board reasserting his claims. On appeal he asserts the correct assessment is \$5000; he arrived at this value by taking what he believes is the land value of \$25,000 and subtracted \$20,000 for the cost of demolishing the improvements.

According to the property record card, the subject property is a four-unit apartment conversion. It is a two-story property and was built in 1893. The property has 3500 square feet of above grade living area and 1060 square feet of unfinished basement. Additional features include two open porches and two, two-car, detached garages both built in 1960. The garages are both listed in poor condition. The property is listed in very poor condition with a 4+00 quality grade. It sits on a 0.459-acre site.

Marchand testified that he purchased the subject property from the City of Des Moines (City). The City of Des Moines assisted in the acquisition through Iowa Code section 446.19(a). The City purchased the property from tax sale then transferred the property to Marchand in exchange for its acquisition fees being paid. Neither the City of Des Moines nor Marchand were permitted to enter or inspect the property prior to the City acquisition at tax sale.

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; Senior City Planner Mary Neiderbach; and Eric Moore, a neighborhood inspector for the City 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 very poor condition as of January 1, 2011.

Further, we find the witnesses to be honest and credible in their testimony regarding the condition. Some of the witnesses, however, opined that the assessed value should be the value of the vacant land only. 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 indicated she believed the value of the property was, essentially, the site value only. 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. 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. We find Wysong's opinion to lack support, research, and reasonableness. Therefore, we give it 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)(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).

Marchand purchased the subject property for substantially less than its current assessment. However, the wording of section 441.21(1)(b) states 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. Iowa Code § 441.21(1)(b). The subject property was sold as a result of a specialized tax sale to the City of Des Moines then transferred to Marchand in return for its costs to be paid. This transaction occurred to provide a more expedient path to rehabilitation of the property and neighborhood, and as such, we find it an unreliable indicator of its fair market value for assessment purposes.

Also, although Marchand believes the property's value should be only \$5000, he provides no evidence to support this assertion. Viewing the record as a whole, Marchand failed to prove by a preponderance of the evidence that his property is assessed for more than authorized by law.

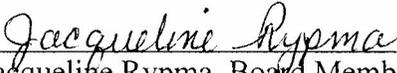
Therefore, we determine the property's assessed value as of January 1, 2011, is \$45,800, representing \$35,000 in land value and \$10,800 in dwelling value.

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 December 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>10-11</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature:	