

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Inie Clement,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1103
Parcel No. 270/01784-000-000

On November 21, 2012, the above captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Inie Clement was self-represented and requested a written consideration. The Polk County Board of Review was represented by Assistant County Attorneys Ralph Marasco, Jr., David Hibbard, and Anastasia Hurn. Both parties submitted evidence. The Appeal Board having reviewed the record and being fully advised, finds:

Findings of Fact

Inie Clement is the owner of a residential, single-family property located at 475 NE 43rd Place, Des Moines, Iowa. The subject property is a one-story, bungalow design built in 1930. The property has 600 square feet of living area and no basement area. The improvements are of low quality (5-10) grade in very-poor condition. There is also a 308 square-foot detached garage. The site is 0.289 acres.

Clement protested to the Polk County Board of Review regarding the 2011 assessment of \$24,000, allocated as \$22,500 in land value and \$1500 in improvement value. The claim was based on the grounds that there is an error in the assessment under Iowa Code section

441.37(1)(a)(4), essentially asserting the property is over-assessed; and that there has been a change in the value since the last assessment under sections 441.37(1) and 441.35(2). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). The Board of Review determined that Clement's claims amounted to a claim that the subject property was assessed for more than its market value, or a claim for over-assessment. Similarly, we consider only the claim of over-assessment.

On the recommendation of an appraiser analysis, the Board of Review reduced the assessment to a total value of \$19,500, allocated \$18,000 to land value and \$1500 to improvements. The analysis was prepared by an appraiser, Tierney, who reported that a "listing change has been made as if the lot is vacant."

Clement then appealed to this Board reasserting the claim of over-assessment. On the appeal form, Clement states simply that the subject property is in "very poor condition [and] not liv[e]able." Clement also asserts the lot value is over-assessed and that "lots in Des Moines are selling for \$3000 [to] \$10,000." The Notice of Appeal & Petition suggests that reducing the tax burden may encourage someone to purchase the property. Clement did not, however, indicate what she believes is the property's correct assessed value.

Clement presented evidence establishing the property's condition and its current vacant state, including multiple photos of the subject property. This evidence clearly illustrates that the assessor's property condition rating of "very-poor" and the nominal improvement value of \$1500 is proper. Clement also provided an Abatement Order from the Polk County Public Works Department issued in May 2011. The Order puts Clement on notice that corrections are required to abate noted public health nuisances associated with the subject property. Clement also

supplied evidence the subject property has delinquent taxes. We do not find this evidence relevant or sufficient to establish the subject property's actual value.

The Board of Review submitted a copy of the Polk County Treasurer's Office real estate tax information showing a current tax sale of the subject property for 2011. The amount of taxes, interest, fees, and costs due on the property is \$8304.94.

Like Clement's exhibits, we do not find this information useful in determining the subject property's fair market value as of January 1, 2011. A tax sale due to delinquent taxes is not indicative of the property's market value.

Based on the limited information in the record, we find that Clement has not provided sufficient evidence demonstrating the fair market value of the subject property as of January 1, 2011, and 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. § 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 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 alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the appellant has a two-fold burden. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). First, the appellant must show that the assessment is excessive. Iowa Code § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. Second, the appellant must provide evidence of the property's correct value. *Boekeloo*, 529 N.W.2d at 276-77. Clement did not provide any evidence regarding the subject property's correct market value as of January 1, 2011. Although the evidence submitted by Clement was indicative of the subject property's condition, the evidence did not establish the subject property's actual value. Evidence of the property's actual value, such as an appraisal or adjusted sales of comparable properties, is a necessary evidentiary requirement for Clement for Clement to meet her burden of proof in this appeal.

Therefore, we determine the property's assessed value as of January 1, 2011, is \$19,500.

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

Dated this 28th day of December, 2012.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member

Cc:

Inie Clement
1168 22nd Street
Des Moines, Iowa 50311
APPELLANT

Ralph Marasco, Jr./David Hibbard/Anastasia Hurn
111 Court Avenue
Room 340
Des Moines, Iowa 50309
ATTORNEYS FOR APPELLEE

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>12/28</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	