

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Inie Clement,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1105
Parcel No. 030/00905-000-000

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 1168 22nd Street, Des Moines, Iowa. The subject property is a two-story dwelling with a finished attic design built in 1902. The property has 2169 square feet of living area an 828 square-foot, unfinished basement. The improvements are of average quality (4+10) grade in below-normal condition. The site is 0.103 acres.

Clement protested to the Polk County Board of Review regarding the 2011 assessment of \$99,700, allocated as \$7300 in land value and \$92,400 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 \$73,800, allocated \$7300 to land value and \$66,500 to improvements. The analysis was prepared by an appraiser, Henderson, who viewed the exterior of the property in May 2011. Henderson recommended a change in condition from "normal to below-normal" and also "adding a 20% utility to the property to reduce the assessment based on market." Henderson noted that Clement asserts the property had no plumbing or heating, but that Clement did not provide a phone number for Henderson to verify this information. Henderson completed an exterior inspection of the property and observed that some windows were boarded up but was of the opinion the property was likely occupied. He remarked that a bike was chained to the front railing and a current photo from May 2011 showed a car parked in the driveway.

Clement then appealed to this Board reasserting the claim of over-assessment. On the appeal form, Clement states that the subject property has been "stripped;" has no plumbing or heating; has been "trashed and damaged;" and, would require significant money to fix it up. Clement did not, however, indicate what she believes is the property's correct assessed value.

Clement presented multiple pictures of the subject property. The photos clearly depict the subject as having significant deferred maintenance, but the date of the photos are unknown. Some of the photos show personal property, including furniture, electronics, and household items, which would appear to indicate the property may be occupied, at least as of the date of the photos. Based on these pictures, we recommend Clement make arrangements with the Assessor's Office to schedule an interior inspection. This would allow the assessor to correct any errors that may exist based on condition and ensure that, moving forward, the property is properly assessed given the condition and physical depreciation that is asserted to exist.

Clement also presented housing inspection reports from the City of Des Moines noting several violations. However, this report was dated October 1995, and we give it no consideration. Additionally, a one-page application for a "Minor Owner-Occupied Rehabilitation Loan Program" was included. It indicates the furnace was not working and the roof was leaking. It is dated November 2011. Based on this application, it appears that Clement was occupying the subject property as of that date.

Lastly, Clement provided a copy of a purchase agreement for the subject property, dated May 30, 2012, for \$20,000. However, it was signed only by the buyer. As such, it is not a binding contractual agreement and we give it limited consideration.

Overall, we find the evidence clearly illustrates that the assessor's recommendation to change the property condition to "below-normal" was proper; however, we do not find this evidence sufficient to establish the subject property's actual value. However, the evidence raises questions about the overall condition and subsequent valuation of the subject property. We recommend again that Clement request an interior inspection of the improvements by the

assessor to ensure all factors of condition have been considered in establishing the assessed 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 \$21,795.01. 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. Additionally, the Board of Review provided a copy of a real estate contract for \$100,000, dated December 2004. We do not consider the purchase from 2004 to be relevant in establishing the value of the subject property as of January 1, 2011.

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 to meet her burden of proof in this appeal.

Therefore, we determine the property's assessed value as of January 1, 2011, is \$73,800.

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:

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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>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	