

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Blue Marble Investments, LLC,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1107
Parcel No. 291/00810-007-001

Docket No. 11-77-1108
Parcel No. 291/00810-005-006

On January 7, 2013, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Blue Marble Investments, LLC, submitted evidence in support of its petitions and was represented by Thomas Knapp, of Ruhl Commercial, West Des Moines, Iowa. The Board of Review was represented by Assistant County Attorney Ralph Marasco, Jr. Both parties submitted 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

Blue Marble Investments, LLC appeals from the Polk County Board of Review decisions reassessing its properties in Clive, Iowa.

Docket 11-77-1107 - Parcel 291/00810-007-001

According to the property record card, Parcel 291/00810-007-001, located at 1975 NW 92nd Court, consists of a one-story, tilt-up concrete, office/warehouse building with 20,000 square feet of gross area, including 9000 square feet of finished office area built in 1978. The building has an average quality grade (4+00) and 40% physical depreciation. The warehouse section of the building is

in normal condition and the office portion is in below normal condition. The property is also improved by 28,900 square feet of asphalt paving and is situated on a 1.578-acre site.

The real estate was classified as commercial on the initial assessment of January 1, 2011, and valued at \$720,000, representing \$220,000 in land value and \$500,000 in improvement value.

Blue Marble protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2), and that there was a downward change in value under section 441.37(1) and 441.35. Blue Marble requested an assessed value of \$225,000. The Board of Review granted the petition, in part, and reduced the assessment to \$380,000, representing \$220,000 in land value and \$160,000 in improvement value.

Docket 11-77-1108 - Parcel 291/00810-005-006

Parcel 291/00810-005-006, located at 1955 NW 92nd Court, consists of a one-story, tilt-up concrete office/warehouse building with 15,000 square feet of gross area, including 3625 square feet of finished office area built in 1976. The building has an average quality grade (4+00) and 43% physical depreciation. The building's warehouse section is in normal condition, while the office portion is in below normal condition. The property is also improved by 19,240 square feet of asphalt paving and is situated on a 1.140-acre site.

The real estate was classified as commercial on the initial assessment of January 1, 2011, and valued at \$500,000, representing \$160,000 in land value and \$340,000 in improvement value.

Blue Marble protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2), and that there was a downward change in value under section 441.37(1) and 441.35. Blue Marble requested an assessed value of \$200,000. The Board of Review granted the petition, in part, and reduced the assessment to \$300,000, representing \$160,000 in land value and \$140,000 in improvement value.

Blue Marble appealed to this Board regarding both parcels, reasserting its claim of over-assessment,¹ and sought the same relief. This Board consolidated the hearings for both parcels.

Thomas Knapp testified on behalf of Blue Marble. Knapp reported the prior ownership by KC Holdings had been foreclosed. In August 2010, Ruhl Commercial was approached by the lender to list and market the properties for sale or lease, along with three similar properties on the same street. Knapp was the listing broker. In Knapp's opinion, the subject parcels were in worse condition than the other three. The properties were marketed for lease or sale separately or as a group. Knapp testified there were lots of showings and one offer for four of the units for a combined price of \$1 million, which fell through. Eventually, Knapp sold three of the units to different individuals.

After eight months on the market, the lender approached Knapp about purchasing the properties. In April 2011, Knapp purchased both subject properties for a combined sale price of \$425,000. At this time, only fifty-percent of the units in the subject property were leased. Knapp acknowledged the seller was motivated and he got them "cheap." Knapp believed they never would have gotten an offer at the listing price. In his opinion, his purchase price was \$50,000 to \$100,000 below market.

Knapp believes the January 1, 2011, assessment of the property does not fully account for the property's deteriorated condition. Knapp submitted photographs from June 2011, showing the properties were in distressed condition due to deferred maintenance and needed repairs and renovation. The subject properties were infested by pests, termites, and rodents. Four or five large dumpsters were filled with debris to clear out the properties.

Knapp cleaned and patched the interior drywall and replaced the interior lighting. The majority of the renovations were to the exterior, including removal of the deteriorated wood siding, removal of

¹ In its Notice of Appeal & Petition to this Board, Blue Marble did not explicitly indicate it was continuing to pursue its downward change in value claim. We note, however, that a downward change in value claim under sections 441.35 and 441.37(b) is not properly brought in a re-assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). Therefore, this ground was not considered by this Board.

the old asphalt paving and replacing it with new concrete. Knapp estimated renovation costs of roughly \$330,000, or approximately \$10 per square foot.

Knapp offered an appraisal completed by Gene F. Nelsen Appraisal Associates, in Urbandale, Iowa. He used Nelsen's \$830,000 combined value conclusion then subtracted approximately \$330,000 for the renovation and repair costs to arrive at his own estimate of combined fair market value of \$500,000. He then allocated this to each of the subject properties, \$225,000 to 1975 NW 92nd Court and \$200,000 to 1955 NW 92nd Court.²

We find Knapp's method of arriving at his market value estimate by adjusting the Nelsen appraisal is flawed. First, Nelsen valued the properties as one and did not allocate value to the subject properties separately. Secondly, he valued the properties in "as is" condition as of August 24, 2012. Nelsen's valuation date was twenty months after the assessment date and considered the extensive repairs and renovations completed after Knapp purchased the properties. We also note conflicting information in the record about the amount of renovations. Knapp reported \$330,000 costs, while both the Nelsen appraisal and Deputy County Assessor Bryon Tack, based on a questionnaire Knapp completed, indicate renovation costs of approximately \$100,000. For these reasons, we do not find Nelsen's value conclusions relevant to the January 1, 2011, assessment.

Deputy County Assessor Bryon Tack testified on behalf of the Board of Review. He completed sales and income approaches to value for each property.³ Tack used four sales, including the sale of the subject properties, in his analysis.

- Sale 1: Sale of the subject properties. Tack included it but did not consider it a normal arm's length transaction.

² We note that in allocating his estimated fair market value between the two parcels, Knapp did not allocate the full \$500,000.

³ A cost approach to value was also completed by the assessor's office and is included in the certified record. The cost approach determined the subject properties' value to be a combined \$1,328,100.

- Sale 2: Nearly identical to the subject and also sold by the bank holding company. This sale was adjusted downward for age.
- Sale 3: Also nearly identical to the subject, was sold by the owner of sales one and two prior to the foreclosure of the subjects. The buyer was the tenant. A 15% downward adjustment was made for age and condition and a 15% downward adjustment was made due to the sale of an unlisted property to a tenant.
- Sale 4: Sold by a lender to the listing broker. An appraisal was used to establish the sale price and the broker's commission was deducted to arrive at the negotiated sale price. The commission was added back in to arrive at the adjusted sale price. A downward adjustment of 15% was made for quality of construction, age and condition. A slight adjustment was made for amount of finished space and a 10% downward adjustment was made to recognize its superior location.

Tack Analysis for 1975 NW 92nd Court

Sale ⁴	Parcel Number	Sale Date	Sale Price	Gross Area	Sale Price/ GSF	Indicated Value	Indicated Value/GSF
2	291/00810-009-001	04/28/2011	\$360,000	18,128	\$19.86	\$390,800	\$21.56
3	291/00810-008-001	05/28/2010	\$487,000	12,954	\$37.59	\$568,200	\$43.86
4	291/00810-003-000	11/24/2010	\$433,400	14,400	\$30.10	\$449,799	\$31.24
	Median					\$449,799	\$31.24

Tack Analysis for 1955 NW 92nd Court

Sale ⁴	Parcel Number	Sale Date	Sale Price	Gross Area	Sale Price/ GSF	Indicated Value	Indicated Value/GSF
2	291/00810-009-001	04/28/2011	\$360,000	18,128	\$19.86	\$285,750	\$15.76
3	291/00810-008-001	05/28/2010	\$487,000	12,954	\$37.59	\$458,550	\$35.40
4	291/00810-003-000	11/24/2010	\$433,400	14,400	\$30.10	\$321,450	\$22.32
	Median					\$321,450	\$22.32

⁴ The certified record charts included the subject properties, however, the sale price was not allocated between the two properties, and the resulting figures are inaccurate. The charts above exclude the sale of the subject properties.

We note the adjustments in each chart vary for the same properties because they were tailored to the specific property being analyzed. This accounts for the variation in the Indicated Values between the charts.

Tack's analysis indicates the subject properties have a market value in excess of \$20 per-square-foot. Tack also pointed to the sale of what he considered an inferior building located across the street from the subject properties in support of his \$20 per-square-foot valuation. The sale occurred in September 2011 for a price of \$19 per-square-foot. In contrast, the subject properties were sold to Blue Marble for approximately \$12 per-square-foot. The subject properties are currently assessed at \$19.43 per-square-foot.

Tack also completed an income approach to value using actual rent rolls from the subject properties and income/expense statements from similar properties. The capitalization rate was derived from local and national surveys, as well as, similar properties sales and appraisals. By this method, Tack estimated a \$366,988 value for 1975 NW 92nd Court and \$275,338 for 1955 NW 92nd Court.

Reviewing the record as a whole, we find the preponderance of the evidence does not establish that the subject properties are assessed for more than authorized by law.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. 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, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). 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 the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

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 to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value 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 taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Blue Marble did not provide sufficient, relevant evidence to support its claim of over-assessment as of the January 1, 2011, assessment date. Because Nelsen valued both properties together in a different condition than existed on January 1, 2011, and valued the properties roughly twenty months after the assessment date, his appraisal is of minimal relevance to a showing that the properties were over-assessed on the assessment date. The record also contains conflicting evidence as to the amount of Blue Marble's renovation costs, which directly impacts Knapp's determination of the properties' value. Subsequently, the Board cannot conclude that the values included in Nelsen's

appraisal and then utilized by Knapp to assert what he believes is the properties' correct value are an accurate reflection of the properties' market value on January 1, 2011.

On the other hand, the sales used by Tack were of similar properties and he made reasonable adjustments to the sale prices to account for differences between the sale properties and the subject properties. Both his sales and income approach value conclusions support the assessment.

Under Iowa law, the properties' April 2011 sale price also cannot, by itself, be utilized to establish the properties' market value. Section 441.21(1)(b) makes it clear 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 Bd. of Review*, 549 N.W.2d 289 (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 properties were purchased in a multi-parcel sale from a lender, it was not a normal, arm's length transaction. Knapp made no adjustments to account for any distorting impact the nature of the sales transaction may have had on the sale price. For these reasons, we decline to consider the sale price as determinative of the properties' value.

Blue Marble has not shown that the 2011 assessment of its properties is excessive or provided sufficient evidence of the properties' value as of January 1, 2011. We find the preponderance of the evidence fails to support Blue Marble's claims that its properties were assessed for more than fair market value as of January 1, 2011.

Therefore, we affirm Blue Marble's property assessments as determined by the Board of Review.

THE APPEAL BOARD ORDERS the property assessment of 1975 NW 92nd Court is \$380,000, representing, \$220,000 in land value and \$160,000 in improvement value and the property assessment of 1955 NW 92nd Court is \$300,000, representing, \$160,000 in land value and \$140,000 in improvement value as of January 1, 2011.

Dated this 30 day of January 2013.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Stewart Iverson
Stewart Iverson, Board Chair

Karen Oberman
Karen Oberman, 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>1-30</u> , 201 <u>3</u>	
By:	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>