

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Mid-America Investment Co.,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1120
Parcel No. 312/02103-480-002

On June 10, 2013, 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. Thomas Knapp of Ruhl Commercial, West Des Moines, Iowa represented the petitioner, Mid-America Investment Company. Assistant County Attorney David Hibbard represented the Board of Review. The Appeal Board, now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Mid-America Investment Company is the owner of an unimproved site located at 8901 Northpark Drive, Johnston,¹ Iowa. According to the property record card, the subject site has a total site size of 12.407 acres. The real estate is classified commercial and valued at \$2,654,000, for the January 1, 2011, assessment.

Mid-America appealed this assessment to the Polk County Board of Review on the grounds that the property is not assessable, is exempt from taxes or is misclassified under section 441.37(1)(a)(4) and that there was a change downward in the value since the last assessment under

¹ The property record card indicates the subject site has a Johnston address. Other documentation in the record indicates an Urbandale address. The area is where Urbandale and Johnston meet. Both are located in Polk County. We will rely on the property record card.

sections 441.37(1)(b) 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 granted the protest, in part, by reducing the assessment to \$2,365,000.

Mid-America then appealed to this Board re-asserting its misclassification and over assessment claims. It asserts the property's correct value is \$17,500. The gist of Mid-America's claim is that the property was misclassified and should be properly classified agricultural. Agricultural value is based on a net productivity and earning capacity formula and is not based on market value. For this reason, both claims cannot be considered. The testimony and evidence are clear that Mid-America's position is the property is misclassified and this is the only claim we will consider.

Thomas Knapp of Ruhl Commercial, West Des Moines, Iowa testified on behalf of Mid-America. Knapp provided a copy of a Cash Rent Farm Lease to the Board of Review and relied on this lease at hearing. The lease is between Mid-America and operator Jerry Cobb. The terms of the lease began on January 1, 2011 and ended February 28, 2012, and it was executed on January 1, 2011. Cobb agrees to pay Mid-America \$1200 for the year with all crop production expenses being the responsibility of the operator.

Knapp testified that Cobb planted soybeans and harvested a crop in 2011, which yielded roughly 30-40 bushels per acre. While Knapp was unable to identify exactly when the crop was planted, he estimated it was late May. When questioned, he explained crops "aren't planted in January." While we recognize crops are not planted year-round, the assessment is based on the use of the property as of January 1, 2011. Knapp testified there was no agricultural activity prior to or as of that date. He believes that because the lease agreement was in place on January 1, 2011, this should be sufficient to demonstrate intent to farm the property.

Knapp also provided an aerial photo (Exhibit 1) and a site photo (Exhibit 2) of the subject sites. The aerial photograph demonstrates where the property is located in comparison to a nearby site Knapp believes is a comparable property. The undated² site photo clearly shows a crop growing on the subject site. Knapp asserts he obtained the undated photo from the Assessor's website; however, he did not know when it was taken. Without knowing the date of the photo, we cannot rely on it to demonstrate a crop existed as of January 1, 2011, or any other time in 2011.

Assistant Polk County Attorney, David Hibbard questioned Knapp regarding the current (January 1, 2013) use and classification of the subject site. Hibbard asked if Knapp was aware what the current classification was, and if its classification changed to agricultural on January 1, 2012. Knapp did not know if the classification was changed; or what the subject property is currently classified. There is no evidence in the record of the current classification of the subject site. Because this appeal is only for the January 1, 2011, appeal, the property's use and classification in 2012 and 2013 are irrelevant.

Knapp asserts a property located on the same street as the subject, at 9301 Northpark Drive, has an alfalfa crop and is currently classified agricultural. It is his position that because this site is very similar to the subject site in terms of location and size, it is inequitable for the subject site to have a different classification. We note that Mid-America did not make an equity claim to the Board of Review, and therefore we are without jurisdiction to hear this claim. However, Knapp asserts that in his opinion, the subject site and this neighboring site are very similar. Therefore, in his opinion, in order to maintain equity among similar sites the correct classification of the subject site must be agricultural. Essentially, he simply reasserts the claim of misclassification. While we understand Knapp's assertions, ultimately, it is a misinterpretation of the statutory claim.

The Board of Review did not offer any evidence.

² The print-out of the photo is dated June 2013. However, it is unknown when the photo was taken.

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. 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).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See IOWA ADMIN. CODE r. 701-71.1 et al.* (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and

exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [some other classification] is to be decided on the bases of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

shall include all tracts of land and the improvements and structures located on them, which are in *good faith used primarily for agricultural purposes* except buildings, which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for *intended profit*.

...

r. 701-71.1(3).

Conversely, commercial property

shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures, consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture.

r. 701-71.1(5).

To determine if the property’s correct classification, we must begin with the overarching principle that property is to be classified based on its *present use* and not its highest and best use. r. 701-71.1(3).

In this case, it is clear that the subject property was not being used for agricultural purposes prior to or as of the January 1, 2011, assessment date. While it is clear there was a future intent to use the site for agricultural purposes, there was no action taken until very near or after the Board of

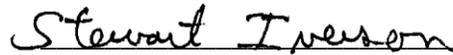
Review hearing, which took place in late May 2011. While we understand that crops are typically planted in the Spring, we do not find that a site, which has not had any recent agricultural activity, should be reclassified simply because a lease for future planting was put into place. This appeal is for the January 1, 2011, assessment date and there is insufficient evidence to support a claim of misclassification as of that date.

THE APPEAL BOARD ORDERS the commercial classification and assessment of Mid-America Investment Company's property located at 8901 Northpark, Johnston, Iowa, of \$2,365,000, as of January 1, 2011, set by the Polk County Board of Review, is affirmed.

Dated this 9th day of July, 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:
Thomas Knapp
Ruhl Commercial
1701 48th Street, Suite 111
West Des Moines, Iowa 50266
REPRESENTATIVE FOR APPELLANT

David Hibbard
111 Court Avenue, Room 340
Des Moines, Iowa 50309
ATTORNEY 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>July 9, 2013</u> .	
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	