

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Shmacks, LLC,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1130
Parcel No. 090/06660-047-000

On September 19, 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. William Brosnahan represented the petitioner, Shmacks, LLC. Assistant County Attorney Ralph Marasco, Jr. represented the Polk County Board of Review. The Appeal Board having reviewed the entire record, heard testimony, and being fully advised, finds:

Findings of Fact

Shmacks, LLC (Shmacks), owner of property located at 3031 Grand Avenue, Unit 311, Des Moines, Iowa, appeals from the Polk County Board of Review decision regarding the 2011 property assessment. The January 1, 2011, assessment is allocated as follows: \$11,500 land value and \$161,000 in improvement value, for a total of \$172,500. Shmacks protested to the Board of Review on the grounds that the property was not equitably assessed as compared to other like properties under Iowa Code section 441.37(1)(a)(1); and that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2).

On protest to the Board of Review, the Board of Review appraiser analysis indicated three of the comparable properties listed by Shmacks on its petition (Units 107, 108, and 109)

were on the first floor, unlike the subject property (Unit 311). The remaining unit (Unit 314) was not for sale.

Appraiser Colgrove reported there were four sales in the building since January 1, 2009. He compared three of those sales (Units 213, 302, and 317) that had a similar view as the subject property. The median sales price per square-foot of these comparable properties was \$128.40 and the average was \$121.63 per square-foot. Colgrove indicated Unit 312 is on the market with an asking price of \$125.86 per square-foot. Shmacks' property was assessed at \$139.11 per square-foot. Based on this analysis, Colgrove recommended Shmacks' January 1, 2011, assessment be reduced to \$159,200 by using the median sales price.

In response, the Board of Review reduced the assessment in part. It valued the property at \$159,200; allocating \$11,500 in land value and \$147,700 in improvement value.

Shmacks filed an appeal with this Board on the same grounds. Shmacks claims \$135,000 is the actual value.¹ It seeks \$24,200 in relief.

The subject property is a 1240 square-foot condominium unit built in 2004. The property has two bedrooms and two baths. The unit is located on the third floor and is in normal condition, with an above normal quality grade of 3+0. This unit also includes one garage parking spot.

William Brosnahan, part-owner of Shmacks, represented Shmacks at hearing and presented data of what he believed were comparable sales in the subject property's building. The majority of these sales, however, occurred after the January 1, 2011, assessment date. Also, Brosnahan failed to adjust the sales data to the subject property. We note that some of the comparable properties offered by Brosnahan were foreclosure sales (Units 308 and 110). The

¹ At hearing, Shmacks indicated the assessed value should be even lower than \$135,000 due to recent sales in the building.

sales used by Brosnahan would be considered abnormal sales and not useful in accurately determining the subject property's market value.

The Board of Review did not provide any witnesses or evidence regarding the assessment.

Reviewing the evidence in the record, we find Shmacks failed to prove that the property is inequitably assessed or assessed for more than authorized by law. We, therefore, affirm the Polk County assessment for January 1, 2011. Although the evidence may indicate the value in these units is declining, the evidence failed to prove the actual value of the subject property. As such, we recommend Polk County consider a revaluation of the unit at 3031 Grand Avenue, for the 2013 assessment year.

Conclusions of Law

The Appeal Board based its decision on 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 determined 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).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (1965). The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* at 579-580. The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied. Shmacks failed to provide the necessary proof under either the *Eagle Food Centers* or the *Maxwell* test.

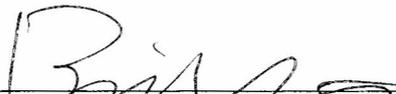
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence 1) that the assessment is excessive and 2) the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In support of its claims, Shmacks primarily relies on foreclosure sales and sales which occurred after the January 1, 2011, assessment date. These sales cannot

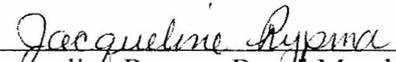
reliably be used to determine the subject property's value as of January 1, 2011. Further, Shmacks did not adjust its comparable properties to the subject property. Shmacks failed to satisfy its burden to establish that the property is over-assessed and did not provide sufficient, reliable evidence to determine the subject property's correct value.

The evidence in the record does not support the claim brought before this Board. We, therefore, affirm the assessment of the subject property located at 3031 Grand Avenue, Unit 311, Des Moines, Iowa, as determined by the Polk County Board of Review as of January 1, 2011.

THE APPEAL BOARD ORDERS the assessment of Shmacks' property located in Des Moines, Iowa, as determined by the Polk County Board of Review is affirmed.

Dated this 8 day of November, 2012.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


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>11-8</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	