

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Michael Forret and Jane Kelly-Forret,
Petitioners-Appellants,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1157
Parcel No. 270-00993-002-000

On October 16, 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 Appellants, Michael Forret and Jane Kelly-Forret, were self-represented and requested a written consideration. The Polk County Board of Review designated Assistant County Attorneys Ralph Marasco, Jr., David Hibbard, and Anastasia Hurn as its legal representatives. The Appeal Board having reviewed the record and being fully advised, finds:

Findings of Fact

Michael Forret and Jane Kelly-Forret (Forret) are the owners of commercial property located at 4270 NW 6th Drive, Des Moines, Iowa. The property is a one- and two-story frame and brick building with 8028 square feet of gross building area (GBA), built in 1963 and remodeled in 2008. There is 13,000 square-feet of concrete paving. The site is 0.78 acres and is zoned as Medium Density Residential. The property's improvements are currently used as an office and veterinary clinic. This use is considered legal non-conforming.

Forret appealed to the Polk County Board of Review regarding the 2011 assessment of \$501,000, allocated as follows: \$39,000 in land value and \$462,000 in improvement value. Forret's

claim was based on two grounds: 1) that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); and 2) that the subject property is assessed for more than the value authorized by law under section 441.37(1)(a)(2). Forret listed only his property as an equity comparable on petition to the Board of Review. It is clear from the petition, which references an attached appraisal report, that the only ground claimed by Forret is that the subject property is over-assessed.

The Board of Review granted the protest, in part, and reduced the total assessment to \$463,000, allocated \$39,000 in land value and \$424,000 in improvement value.

Forret then appealed to this Board reasserting its claim of over-assessment and stating the property's correct market value is \$420,000. Forret based his opinion on an appraisal completed by Michael Olson of The Olson Group, with an effective date of March 1, 2011. The report was signed on March 15, 2011, and the intended use was for "internal purposes."

Olson developed only the sales comparison approach to value. He explained the improvements' age diminishes the reliability of the cost approach and therefore it was not developed. He also explained that, in his opinion, the income approach was not applicable because zoning limits the subject improvements rental income potential. If the existing improvements were to become vacant or not utilized for a one-year period, the existing Medium Density Residential zoning classification becomes effective. As a result, the improvements would need extensive renovation or would need removed to make way for a legally conforming use. Because of this, he believes the subject property would not be marketed towards investors, but rather only to owner-operators. In his opinion, this limits the pool of potential buyers.

Olson reports the subject improvements were built in 1963 and remodeled in 2005 and 2008. The majority of the building consists of the main customer service areas, workspaces, lab, and upper level office space. Olson identifies the condition of this area as "average with some water damage at

the front.” He explains that the improvements’ “south wing” has exposed concrete floors and exposed ductwork. He further noted that its previous use was retail and that it is “more comparable with shop or warehouse space.” Olson states there are signs of water damage throughout this space and overall, the condition is poor. Olson further reports that the landscaping is minimal and the condition of the paved parking area is “below average.”

Olson considers the subject property’s overall condition to be below average to average. He valued the property in its “as is” condition. Forret also provided several color photographs, which confirm Olson’s opinion that the property’s overall condition is below average to average. The photographs show water damage to the improvements ceiling and floor. The photographs also demonstrate the recurrence of flooding on the subject property.

Olson relied on two sales of veterinary clinics and two sales of retail/warehouse properties for his sales comparison analysis. The following chart summarizes the sales in comparison to the subject property.

Address	Date of Sale	Sale Price	Size ¹	Age	Sale Price/SF
Subject			8028	1963	
3009 Ingersoll, DM	December-09	\$344,000	4300	1951	\$80.00
1215 Prospect, WDM	September-08	\$286,150	3305	1965	\$86.58
6505 NW 6th Dr, DM	March-08	\$125,000	3006	1950	\$41.58
330 NW 49th Pl, DM	April-08	\$335,000	4214	1963	\$79.50

Olson provides information about each property, including the condition, quality, and any financing or other factors, which may have influenced the sales prices. In his summary of each sale, Olson notes that 3009 Ingersoll sold for a premium, as “business was included.” He does not adjust for this fact, however, or explain within his analysis how this may have impacted his conclusions.

In his analysis of the sales, Olson determined there was no need for a time adjustment. He provides detailed explanations for the adjustments he made such as location, size, age/condition, and

¹ We note there are some discrepancies in the size noted by Olson and the Polk County property record cards. Olson reports the gross finished area, including the basement finish. This is typical methodology for commercial properties.

quality. After he applied adjustments, he concludes a price per square foot from \$48.64 to \$59.82. In his opinion, the most probable price for the subject property, from within this range, is \$52.00 per square foot.

8028 square feet x \$52.00 per square foot = \$417,456 (rounded to \$420,000)

We find Olson's overall analysis to be straightforward, well-explained, and reasonable.

The Board of Review provided an appraisal completed by Randal Meiners of Valuation Resources, Inc. Meiners completed the report for Terry Vorbrich with the Corporation for Economic Development in Des Moines. The effective date of the report is June 8, 2011, and the report was signed on June 9, 2011. The intended use was for the client's "internal use." In August 2011, Glory Parks with the Corporation for Economic Development in Des Moines forwarded the report to Randy Ripperger with the Polk County Assessor's office. Additionally, we find the striking similarities between Meiners' report and Olson's report, including some verbatim descriptions and analysis, very curious. It appears that Meiners heavily relied on Olson's report when developing his own report or used a nearly identical template. Either way, we find this rather unusual.

Meiners developed only the sales comparison approach to value. He explained the cost approach had minimal relevance due to significant depreciation and therefore it was not developed. While Meiners ultimately did not develop the income approach, on page 4 of his report he explains the subject property has income potential and therefore he will develop the income approach. On page 24 of his report, however, he states insufficient information was available to develop the income approach.

Meiners' descriptions of the improvements are similar to those of Olson. The two disagree, however, about the subject property's condition. While Olson describes the subject as below average to average, Meiners asserts the subject is average to above average "with the exception of the water

leakage issue” in the waiting room. Given the photographs supplied by Forret, we believe Olson’s description of the condition is more accurate.

Meiners conducted a search of veterinary clinic buildings in Polk County and found six sales since January 1, 2005. One of the sales was a re-sale of the same building. Meiners relied on four sales for his sales comparison analysis. The following chart summarizes the sales in comparison to the subject property.

Address	Date of Sale	Sale Price	Size ²	Age	Sale Price/SF
Subject			8028	1963	
7507 Dennis Dr, URB	October-06	\$230,000	2518	1973	\$91.34
3009 Ingersoll, DM	December-09	\$344,000	4300	1951	\$80.00
3709 E University Ave, DM	July-09	\$250,000	2631 ³	1914	\$95.02
1215 Prospect, WDM	September-08	\$286,150	3305	1965	\$86.58

We note the comparable properties 3009 Ingersoll and 1215 Prospect were also considered by Olson. Meiners provides basic information about each property. The remarks and information supplied by Meiners on the two sales in common (Ingersoll and Prospect) are nearly identical to that prepared by Olson.

Meiners believes that property prices reached a peak in late 2007 to the mid-2008 period and then declined in 2009, at which time prices stabilized. As a result, Meiners determined there was no need for a time adjustment to his oldest comparable sale, 7507 Dennis Drive. He believed this sale had “offsetting upward and downward adjustments.” He does, however, make a slight downward adjustment to 1215 Prospect.

We note that Meiners made upward age and condition adjustments to each comparable sale. Meiners asserts that “all sales were considered inferior for condition . . .” In light of the pictures

² We note there are some discrepancies in the size noted by Meiners and the Polk County property record cards. Olson reports the gross finished area, including the basement finish. This is typical methodology for commercial properties.

³Above grade finished area only. This property also has 1071 square feet of unfinished basement area.

supplied by Forret, this Board disagrees with Meiners' conclusion. We note that for the two properties both Olson and Meiners utilized as comparable, Olson made downward age and condition adjustments.

Meiners also made adjustments for location, size, and site. After he applied adjustments, he concludes a price per square foot from \$53.20 to \$77.99. In his opinion, the most probable price for the subject property, from within this range, is \$62.00 per square foot.

8028 square feet x \$62.00 per square foot = \$497,736 (rounded to \$500,000)

As previously noted, Meiners descriptions and analysis throughout his report are nearly word-for-word to what Olson opined. We again note that, other than selecting two different comparable properties and making different adjustments, it seems clear Meiners either relied heavily on Olson's report in the development of his own or used a nearly identical template.

One primary difference between Meiners' report and Olson's report is their opinion on the subject property's condition. Due to the photographs supplied by Forret, we find Olson's conclusions regarding the subject's condition to be more credible.

Based on the foregoing, we find sufficient evidence has been provided to demonstrate the subject property is over-assessed.

Conclusions of 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)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We find Olson's conclusions to be reasonable and his opinion of the property's condition consistent with the photographs supplied by Forret.

In contrast, we find Meiners' report to be, essentially, a copy of Olson's report with only slight variation. One notable and consequential variation is Meiners' assertion that the subject property is in average to above average condition. Based on Forret's photographs, we do not believe this to be a credible opinion. The photographs clearly show water damage to the subject property's ceiling and floor and demonstrate the property's susceptibility to flooding. Therefore, we give Meiners' appraisal limited consideration.

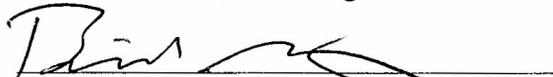
We find the preponderance of the evidence supports Forret's claim of over-assessment.

THE APPEAL BOARD ORDERS the assessment of Michael Forret and Jane Kelly-Forret's property located at 4270 NW 6th Drive, Des Moines, Iowa, of \$463,000, as of January 1, 2011, is modified to a total value of \$420,000. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books, and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

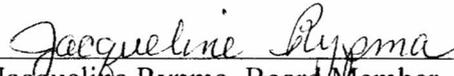
Dated this 2 day of November, 2012.



Karen Oberman, Presiding Officer



Richard Stradley, Board Chair



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>11-2</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:	