

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**CM Holdings, LLC,**  
Petitioner-Appellant,

v.

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-77-1170**  
**Parcel No. 090/00314-000-000**

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On December 6, 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. Petitioner-Appellant, CM Holdings, LLC, was represented by Mark Critelli at hearing. Assistant County Attorney David Hibbard represented the Polk County Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

*Findings of Fact*

CM Holdings, LLC, is the owner of property located at 3002 Woodland Avenue, Des Moines, Iowa. The real estate was classified commercial on the January 1, 2011, assessment. It was valued at \$260,000, representing \$40,500 in land value and \$219,500 in improvement value. CM Holdings protested the assessment to the Polk County Board of Review on the grounds the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); and, the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2). It asserted the correct value is \$240,000. In the section of the petition reserved for a claim of change in value, CM Holdings wrote the following statement, "new owner assumed debt balance of \$240,000 for price." We assume this comment is reasserting a claim of over-

assessment. Additionally, this Board notes, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006).

The Board of Review denied the protest on the ground the subject property's assessment is equitable with that of similar property in the area.

CM Holdings then appealed to this Board reasserting its claims.

According to the property record card, the subject property is a two-story, multi-family apartment building built in 1930. It has eight units and 6484 square feet of total finished area. Each unit is 810.50 square feet. It also has a four-car garage in the basement. It sits on a 0.460-acre site.

CM Holdings provided the addresses of two properties in Des Moines that it considered similar to its property as follows:

<u>Address</u>	<u>Assessment</u>
3021 Woodland Avenue	\$395,000
651 31st Street	\$149,000

Although the record is scant, 3021 Woodland Avenue is a fifteen-unit apartment building with 10,884 total square feet of finished area; and, 651 31st Street is a five-unit apartment building with 3628 total square feet of finished area. CM Holdings asserts the average assessed value of these properties is \$27,200 per unit,<sup>1</sup> compared to the subject property's assessment of \$32,500 per unit. While similar in location, condition, and quality, we note the subject property's unit size is approximately eighty-five square feet larger than the unit sizes of CM Holdings' comparables. CM Holdings did not provide a market value for either of the properties, did not complete an equity analysis using these properties, and did not otherwise make any adjustments to these properties. Therefore, we give this data limited consideration.

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<sup>1</sup> We note that this is a weighted average.

Mark Critelli, the property's former owner and representative of CM Holdings, also offered two pages of a warranty deed as evidence at hearing. The deed details a 2007 transfer of the subject property "for the consideration of One Dollar (\$1.00) and other good and valuable consideration." There is a hand-written note on the deed that states, "personal property in the amount of \$8,000." The property record card notes the subject transferred from the Carlton D. Preston Trust to Critelli Properties, LLC on December 21, 2007, for \$237,000. Critelli testified at hearing that he believed the market declined after the purchase, but that \$240,000 is a reasonable value of the property based on his experience with other properties in the neighborhood and a review of the assessed values of properties he owns across the street. Ultimately, we find this evidence to be inadequate in determining the fair market value of the subject property as of January 1, 2011.

The Board of Review relied on an Appraiser Analysis that considered five properties and compared them to the subject property. The properties' median assessed value per unit was \$36,944; \$4444 per unit more than the subject property. Like the evidence presented by CM Holdings, this analysis fails to provide a market value for any of the properties and does not include an equity analysis using these properties. As such, we give it minimal consideration.

Based on the information in the record, we find that CM Holdings has not provided sufficient evidence demonstrating the subject is inequitably assessed; or, the subject property's fair market value as of January 1, 2011, to support a claim of over-assessment.

### *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 (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). However, 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 also 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 its actual value. *Id.* at 579-80. 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).

CM Holdings did not provide sufficient evidence to support an equity claim under either test. First, it did not argue or provide any evidence that the assessor applied an assessing method in a non-

uniform manner. Furthermore, CM Holdings did not produce evidence of the actual values of its comparable properties in order to conduct an equity analysis under *Maxwell*. Finally, the Appraiser Analysis indicates the subject property is assessed less than other comparable multi-family properties on a per unit basis.

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.

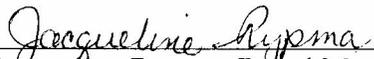
CM Holdings did not produce sufficient evidence showing the subject property's assessment is excessive or of the property's value as of January 1, 2011. CM Holdings offered a warranty deed from 2007, more than three years prior to the assessment date. It also provided two comparable properties with lower assessed values per unit than the subject property. The comparables' units, however, are roughly eighty-five square feet smaller than the subject property and Critelli made no adjustment for the size difference. Beyond Critelli's experience and knowledge, he offered no additional evidence, such as recent sales of comparable properties, to support his conclusion that \$240,000 is the property's correct value.

Therefore, we determine the property's assessed value as of January 1, 2011, is \$260,000, representing \$40,500 in land value and \$219,500 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment as determined by the Polk County Board of Review is affirmed.

Dated this 3 day of January, 2013.

  
Karen Oberman, Presiding Officer

  
Jacqueline Rypma, 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>1-3</u> , 2013	
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	