

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Brian Mamich, VP,**  
Petitioner-Appellant,

v.

**City of Davenport Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 12-103-0577**  
**Parcel No. X0201-03C**

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On October 8, 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. Petitioner-Appellant Brian Mamich, Vice President of Earnest Machine Products Company, was represented by Charles Young of CBIZ HMH, LLC in Leawood, Kansas. City Attorney Tom Warner 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***

Earnest Machine Products Company is the owner of property located at 7310 Vine Street Court, Davenport, Iowa. Brian Mamich, Vice President of Earnest Machine Products Company, appeals from the City of Davenport Board of Review decision reassessing the property. According to the property record card, the subject property consists of a 61,286 square-foot, warehouse built in 1993 with a 5500 square foot addition to the warehouse built in 1999. The building has 3946 square feet of office finish, overhead doors, cranes, and a dock level floor. The property is also improved by 62,800 square feet of concrete paving built in 1994 and 1999. The site is 6.08 acres.

The real estate was classified as commercial on the initial assessment of January 1, 2012, and valued at \$2,246,600, representing \$305,600 in land value and \$1,941,000 in improvement value. This is the same as the 2011 value.

Mamich protested to the Board of Review on the grounds that the property assessment is not equitable compared to like properties in the taxing jurisdiction under Iowa Code section 441.37(1)(a)(1); that the property was assessed for more than authorized by law under section 441.37(1)(a)(2); and that there has been a downward change in value since the last reassessment under Iowa Code sections 441.37(1) and 441.35(2). He claimed \$1,900,000 was the value of the property. The Board of Review denied the protest.

Mamich then appealed to this Board and sought an assessment of \$1,300,000, allocated \$305,600 in land value and \$994,400 in improvement value. The property was not reassessed in 2012 making it an interim year in which the only ground available was change in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). Therefore, this is the only ground this Board will consider. We disregard evidence on the equity issue and only consider evidence of the property's fair market value as it relates to Mamich's change in value claim.

Tax representative Charles Young testified the property appraised for \$2,200,000 in September 2009. Due to declining market values and a lack of interested purchasers or tenants, however, the property was vacant and in 2010 Earnest Machine listed the property for sale or lease. The property was listed for lease for \$3.95 per-square-foot with the owner paying the real estate taxes and property insurance. There were no tenants under that lease price. It was for sale at an asking price of roughly \$2,300,000. During that time, Mamich received only one offer to lease a portion of the property for \$1,700,000. But Earnest Machine could not separate the property into two spaces without significant tenant improvements, so it decided not to accept the offer. The property was eventually rented in September 2013, in a \$3.50 per-square-foot, triple-net lease with a \$2,000,000 purchase option. Under the terms of the lease, a portion of the lease would be credited to the purchase price. We do not find a 2013 lease or purchase option indicative of the subject property's 2011 or 2012 market value.

Young testified a comparable property on Schmitt Road is leased for \$2.50 full service, one is leased on River Road for \$3.25 per-square-foot, triple net, and one is leased on Kimmel Drive for \$1.25 per-square-foot. Therefore, he believes \$3.50 per-square-foot is indicative of market rent. He estimated a 10% vacancy rate and \$0.50 per-square-foot for expenses to arrive at a net operation income of \$161,249. Applying a 9% capitalization rate, Young calculated a property value of \$1,803,000. Young's testimony related to evidence which was not timely exchanged with the Board of Review pursuant to PAAB's administrative rules and this Board ruled the evidence was inadmissible. Therefore, we give this testimony no consideration.

The certified record contains a list of eleven leased properties located in Rock Island and Davenport with an average lease per-square-foot of \$2.84. Using 9.5% and 10% capitalization rates, Young estimates a fair market value of the subject between roughly \$1,740,000 and \$1,830,000. Because the record contains no further information about these properties or leases, we are unable to determine if the properties are comparable and if the leases are reflective of market rents. Therefore, we give this evidence only limited consideration.

Young testified the property is insured for a \$3,000,000 replacement cost. Young also provided three 2011 comparable property sales to the Board of Review. The sale prices ranged from \$850,000 to \$2,300,000, or \$27.07 per-square-foot to \$31.06 per-square-foot. The subject property is assessed at \$33.64 per-square-foot. Based on this data, Young contends the assessment overstates the subject's fair market value by 15% and the subject's correct value should be approximately \$1,900,000. The sales prices were unadjusted to account for differences between the subject property and the compared properties. Young did not provide any comparable sales data to support an estimate of 2011 fair market value.

The Board of Review did not call any witnesses and relied on the certified record.

Mamich's burden requires him to show a change in value from one year to the next; the beginning and final valuation. The assessed value cannot be used for this purpose. Most importantly, Mamich failed to provide any evidence of the 2011 fair market value to show his property's value has changed from 2011 to 2012, which is required to be successful in an interim year.

### ***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). 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). 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. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.*

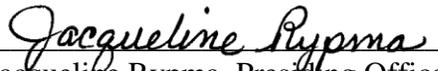
If sales are not available, “other factors” may be considered in arriving at market value. § 441.21(2). The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

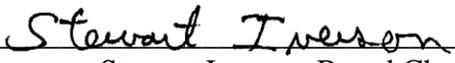
In a non-reassessment or “interim” year, when the property’s assessment has not changed, a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). For Mamich to be successful in his claim of change in value, he must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for Mamich to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

Viewing the record as a whole, Mamich failed to prove by a preponderance of the evidence that the subject property suffered a downward change in value since the last reassessment. Although Mamich supplied 2011 sales, they were unadjusted and therefore are of only minimal value in determining the subject’s fair market value as of January 1, 2012. Nor did Mamich provide sufficient evidence of the leased properties to allow this Board to determine the reliability of his value opinion by the income approach. Regardless, Mamich did not submit any evidence of the subject’s fair market value as of January 1, 2011. He cannot rely on the 2011 assessed value to establish the 2011 market value. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. Ultimately, Mamich’s evidence was insufficient to prove the property’s value declined from 2011 to 2012.

THE APPEAL BOARD ORDERS that the January 1, 2012, assessment as determined by the City of Davenport Board of Review is affirmed. The Appeal Board determines the property assessment value as of January 1, 2012, is \$2,246,600, representing \$305,600 in land value and \$1,941,000 in improvement value.

Dated this 5th day of November, 2013.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

Copies to:

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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>November 5, 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	