

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

William Brown,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-77-0553
Parcel No. 291/00554-132-000

On May 17, 2013, the above-captioned appeal came on for consideration 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 William Brown requested his appeal be considered without hearing and was self-represented. Assistant County Attorneys David Hibbard and Ralph Marasco, Jr. are counsel for the Board of Review. The Appeal Board now having examined the entire record and being fully advised finds:

Findings of Fact

William Brown, owner of property located at 8509 Alice Avenue, Clive, Iowa, appeals from the Polk County Board of Review decision reassessing his property. According to the property record card, the subject property is a 3440 square foot, one-story, building with 468 square feet of unfinished basement built in 1983 and in normal condition. The property is also improved by 2790 square feet of concrete paving built in 1975 and 3910 square feet of asphalt paving built in 2001. The building is used as a daycare center. The site is 0.722 acres.

The real estate was classified as commercial on the initial assessment of January 1, 2012, and valued at \$304,000, representing \$100,500 in land value and \$203,500 in improvement value. This is the same as the 2011 value.

Brown protested to the Board of Review on the ground that the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2).

The Board of Review granted the protest, in part, and reduced the assessment to \$240,000, representing \$100,500 in land value and \$139,500 in improvement value because it found there had been a change in value.

Brown then appealed to this Board on the ground of over assessment and sought an assessment of \$220,000. The property was not reassessed in 2012 making it an interim year in which the only ground available was change in value. §§ 441.35(2), 441.37(1)(a); *Montgomery Ward Development Corp., v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436 (Iowa 1992). However, based on its decision, we find the Board of Review acquiesced to the change in value ground.

Equity Trust Company, custodian of a rollover IRA for the benefit of William Brown, purchased the property in March 2012, for \$220,000. Brown provided documentation verifying the purchase price of the property. He also provided a copy of the premises lease and a projected operating statement. Under the 2012 terms stated, the tenant pays \$2079 monthly and pays for maintenance, utilities, insurance, and taxes for the building. Although Brown was not affiliated with the seller, we note the record indicates Equity Trust Company purchased the property from a lender (Bankers Trust Company) holding it as the result of a default. While the purchase price of a property in a normal arm's length transaction should be considered, as well as other comparable sales, Brown's purchase from a lender is considered abnormal. Without adjustment for any distorting effect of the default purchase, we cannot rely on the purchase price as a reliable indicator of fair market value.

The Board of Review Appraiser Analysis listed four sales comparables that occurred between 2009 and 2012. The commercial buildings ranged from 4400 square feet to 5900 square feet in gross area. Sale prices ranged from \$157,250 to \$575,000. Adjustments were made for land/building ratio, age, finished area, and other features. Adjusted sale prices ranged from \$192,296 to \$ 269,971, or

\$55.90 to \$78.48 per-square foot. The record also included an income approach to value completed by the assessor's office, which resulted in an estimated value of \$238,595. The Analysis concluded both the sales comparison approach and the income approach indicate the initial assessment was above the market value of the property and supported an assessment closer to the recent sale price.

Brown's purchase was not a normal arm's length transaction and, without adjustment, we cannot rely solely on it as an indication of the property's 2012 fair market value. Additionally, the comparable sales and income approach in the record support the 2012 assessment as determined by the Board of Review. Most importantly, Brown failed to provide any evidence of the 2011 fair market value to show his property's value changed from 2011 to 2012, which is required to succeed in a change in value claim during 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. 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.* Alternatively, a sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for. *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).

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 a taxpayer to be successful in its claim of change in value, the taxpayer 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 a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451. In order to succeed on his claim, Brown must establish the subject property's fair market value as of January 1, 2011, and 2012.

Viewing the record as a whole, Brown failed to prove a change in his property's value since the last reassessment. Brown did not offer evidence of the subject property's fair market value as of January 1, 2011. Additionally, Brown's purchase of the property from a lender holding the property as a result of default would be considered an abnormal transaction under Iowa law. § 441.21(1)(b). Brown made no adjustments to the sale price to account for any distorting effect of the sales transaction and thus it may not be a reliable indicator of the subject's 2012 fair market value.

Therefore, we affirm Brown's property assessment as determined by the Board of Review. The Appeal Board determines the property assessment value as of January 1, 2012, is \$240,000, representing \$100,500 in land value and \$139,500 in improvement value.

THE APPEAL BOARD ORDERS the January 1, 2012, assessment as determined by the Polk County Board of Review is affirmed.

Dated this 5th day of June, 2013.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


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>June 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	