

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Dennis M. Winter,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 13-77-0745
Parcel No. 320/04116-218-000

On August 29, 2014, the above-captioned appeal came on for hearing 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. Appellant Dennis M. Winter was self-represented. Assistant County Attorney Ralph Marasco, Jr., represented the Board of Review. The Appeal Board, having reviewed the record, heard the testimony and being fully advised, finds:

Findings of Fact

David M. Winter is the owner of a residentially classified property located at 3401 Valley Ridge Court, West Des Moines, Iowa. As of the January 1, 2013 assessment, the subject property was a 1.524-acre site improved with a single-family residence. The property record card describes the improvement as a one-story home with a finished attic, built in 1982, with 3855 square feet of gross living area; a full basement with 2000 square feet of finish; a three-car attached garage; a 1753 square-foot deck; an open porch; and a swimming pool.

Winter purchased the improved subject property in December 2012 for \$358,000, along with a separately parceled, unimproved, adjoining site. The two parcels, although purchased together in 2012, were separately assessed. Winter appealed the assessments of both parcels to the Board of Review. The 2013 assessment of the subject parcel was \$381,200, allocated as \$74,300 in land value and \$306,900 in improvement value. Winter claimed there was an error in the assessment under Iowa

Code section 441.37(1)(a)(4); however, his claim essentially asserted his belief the property was over-assessed under section 441.37(1)(a)(2). The Board of Review denied both protests. However, the Board of Review advised Winter that he might benefit from a consolidation of the two parcels.

Winter then appealed to this Board. He believes the correct value is \$358,000, which was the purchase price for the subject property and the adjoining vacant parcel. Winter, however, only appealed the improved parcel to this Board and therefore, we may only consider the valuation of this parcel. We note that after Winter's appeal to this Board, the two parcels were consolidated and will be valued together in future assessments.

Winter testified he purchased the property from a bank-foreclosure in December 2012. At that time, it had sat empty for over a year and was in need of much repair. He stated the landscaping needed attention, the septic system was in disrepair, and throughout the house there was significant deferred maintenance. For these reasons, he does not believe the property was in normal condition, which was the rating on the property record card.

Winter offered the sale of a property he considered comparable located at 1525 S 60th Street, West Des Moines. According to the multiple listing sheet (MLS) (Exhibit 6), this property is significantly smaller than Winter's, but has a larger site. Further, the MLS indicates this sale "was updated recently with total kitchen, baths, and flooring," while Winter indicated his property was in below normal condition. Finally, this sale took place in October 2013, well after the assessment date. For these reasons, and because it was not adjusted for differences, we do not rely on it as evidence of the subject property's value.

Deputy Assessor Michelle Richards testified about the history and condition of the subject property, reiterating the protest history and the consolidation of the two parcels to a single parcel. She explained the subject was flagged for a condition check in 2012. The Assessor's office made a telephone inquiry in March 2012 and an exterior inspection was completed in February 2013. Because

of these inquiries and inspection, there was a change in the subject parcel's condition rating, which resulted in an \$88,600 decrease in assessed value from the 2012 to 2013 assessment year for the subject parcel. In Richards opinion, Winter's purchase was not a good sale and the purchase price was not a good representation of the market.

The Board of Review also submitted a spreadsheet of sales from 2012 to 2013 in the subject's neighborhood. (Exhibit B). It highlighted five sales it asserts bracket the subject's features such as year built and gross living area. Ultimately, similar to Winter's evidence, some of these sales occurred after the assessment date and were not adjusted for differences; therefore, we give them no consideration.

Conclusion of 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 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 taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275,

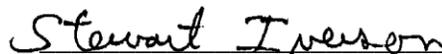
277 (Iowa 1995). Winter contends the assessment should be set at the December 2012 foreclosure purchase price of \$358,000. Under section 441.21(1)(b), foreclosure sales are abnormal transactions and are not to be taken into account in determining a property's fair market value unless the sale has been adjusted to account for the effect of the foreclosure on the sales price. Because Winter did not adjust the sale to account for its foreclosure status, we give the sale no consideration. Winter also submitted a sale of a property he considered comparable, but did not adjust it for differences and did not offer any other evidence of the fair market value of the subject property. He therefore failed to show the subject property is over assessed.

THE APPEAL BOARD ORDERS the 2013 assessment of the property located at 3401 Valley Ridge Court, West Des Moines, Iowa, as set by the Polk County Board of Review is affirmed.

Dated this 9th day of September, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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