

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Blake Simon,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 14-77-0373

Parcel No. 090/05585-000-000

On April 16, 2015, 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) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Blake Simon was represented by attorney Colleen R. MacRae of Dickinson, Mackaman, Tyler & Hagen, PC, Des Moines. Assistant County Attorney David Hibbard 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

The subject property is located at 2928 Ingersoll Avenue, Des Moines. It is a one-story office building built in 1958 with 4246 square feet of gross building area, which includes 2132 square feet of finished basement. It also has 5930 square feet of asphalt pavement on a 0.25-acre site. The real estate was classified commercial on the January 1, 2014, assessment and valued at \$280,000, representing \$88,000 in land value and \$192,000 in improvement value. This was a change in value from the previous assessment, thus making all grounds under Iowa Code section 441.37(1)(a) available for protest.

Blake Simon, on behalf of the property's owner S & S Building Fund, LLC, 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; and it was assessed for more than authorized by

law under Iowa Code sections 441.37(1)(a)(1-2). He asserted the correct fair market value was \$195,500. The Board of Review denied the protest.

Simon then appealed to this Board reasserting only his equity claim.

The subject property was sold in a sheriff's sale in October 2011 to Bankers Trust Company for \$465,000. (Exhibit B). S & S subsequently purchased the subject property in June 2013 for \$300,000. (Exhibits A & C). At the time of purchase, its appraised value was \$350,000. (Exhibit D). A notation on the property record card indicates 2717 square-feet on the south side of office building was demolished after the purchase and prior to the January 1, 2014, assessment. (Exhibit 2). By removing this portion of the improvements, the 2014 assessment was reduced \$106,500.

Between his Board of Review petition and evidence submitted to this Board, Simon identified three commercial properties on Ingersoll Avenue in the same neighborhood/pocket of Des Moines (DM49/Z) that he deemed comparable to the subject. The following chart is a summary of the subject and comparable properties.

Address	Year Built	Grade	Cond	Site-Acres	Above Grade SF	Base SF	GBA	AV Land	AV Improve	Total	AV \$PSF Above Grade
Subject	1958	4+00	AN	0.250	2132	2132	4264	\$ 8,000	\$ 192,000	\$280,000	\$131.33
2920 Ingersoll	1965	4+00	NM	0.505	4092	0	4092	\$177,000	\$103,000	\$280,000	\$68.43
3124 Ingersoll	1975	4+00	NM	0.519	4968	0	4968	\$182,000	\$182,000	\$364,000	\$73.27
3011 Ingersoll	1907	4+00	AN	0.172	1728	788	2516	N/A	N/A	\$113,000	\$65.39

The total assessed value of the 3011 Ingersoll property was \$113,000, however, the breakdown of land and improvement values was not provided. Simon used the main floor square-footage, not the gross building area, to calculate the assessed value per-square-foot of the improvements only (AV Improve/Main SF). This value is not depicted in the chart. It is insufficient to merely compare assessed values of properties to prove inequity. Additionally, the subject property is in above-normal condition as compared to two properties in normal condition. The remaining property, while above-

normal condition like the subject, is significantly older. These differences can result in value differences. Land values were provided for the subject property and two of the compared properties suggesting a uniform assessment of roughly \$350,000 per-acre for the sites. Further, even though superficially it would appear the subject property is priced higher on a per-square-foot basis, the properties Simon selected bear little similarity to the subject property, one is a converted two-story home, they are operated as restaurants or multi-use tenants and the subject property's finished basement office space is not included in his calculations. Moreover, we note none of the properties recently sold and thus there is inadequate evidence for an assessment/sales ratio analysis.

The record also includes a spreadsheet of four properties, which are comparable sales the Polk County Assessor's Office provided to the Board of Review. The adjusted sale price per-square-foot and the subject's indicated values were calculated based on above-grade floor square footage and exclude basement finish. The following chart summarizes the sales data for these properties.

Location	Year Built	Main Floor SF	Sale Date	Sale Price	Indicated Value	Indicated Value PSF
Subject	1958	2132	N/A	N/A	N/A	AV/\$131.33
535 40th	1976	3913	Sept-12	\$ 525,000	\$ 308,074	\$144.50
600 42nd	1966	5213	Aug-12	\$ 459,360	\$ 186,741	\$ 87.59
2932 Ingersoll	1994	6489	July-12	\$ 625,000	\$ 251,149	\$117.80
2411 Grand	1959	4002	Feb-12	\$ 625,000	\$ 422,178	\$198.02
Indicated Subject Value					\$ 279,611	\$131.15

Pat Harmeyer, a commercial appraiser with the Assessor's Office testified on behalf of the Board of Review. He reported the south side of the subject improvement was demolished in September 2013 and resulted in a reduction in the 2014 assessment. According to Harmeyer, that portion of the property was a dirt parking area, as of the assessment date.

Harmeyer explained that the properties identified by Simon for equity comparisons had different uses than the subject property and were not comparable. Two of them were restaurants and

the other had multi-use tenants. Harmeyer understood that the restaurants were owner-operated, as well. Harmeyer reported that in both the sales and income approaches to value property, these properties would not be comparable to the subject property. In the sales approach, the market of potential buyers would be different. In the income approach, potential tenants, rental rates, and expenses would be different based on the property type and use.

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.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

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*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

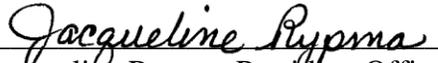
Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

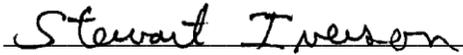
Simon listed three properties for equity comparison. He provided the address, assessed value, and property information for each. Importantly, none of the compared properties appeared to be recent sales. It is necessary to have recent sales or established market value and assessment data for comparable properties to develop an assessment/sales ratio and to complete the equity analysis contemplated by *Maxwell*. Neither did Simon show the assessor failed to apply an assessing method uniformly as required by the *Eagle Food* test.

THE APPEAL BOARD ORDERS the 2014 assessment of the property located at 2928

Ingersoll Avenue, Des Moines, Iowa, is affirmed.

Dated this 29th day of April, 2015.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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