

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 2015-007-00009C & 00010C

Parcel Nos. 8913-28-201-003 & 8913-21-457-002

D & J Investments, Inc.,

Appellant,

vs.

Black Hawk County Board of Review,

Appellee.

Introduction

This appeal came on for telephone hearing before the Property Assessment Appeal Board (PAAB) on May 6, 2016. Attorney Mark Mershon of Mershon Law Firm, Cedar Falls, represented the D & J Investments, Inc. Attorney Dave Mason represented the Board of Review.

D & J Investments is the owner of a commercial office building located at 3017 University Avenue, Waterloo. The property is situated on two contiguous parcels and operates as a single unit. The following chart summarizes the sites, improvements, and 2015 assessments.

Parcel #	Site Size	Improvements	Assessed Land Value	Assessed Improvement Value	Total Assessed Value
8913-28-201-003	14,854	1175 Office Bldg (Blt 1962) and 5300 SF Asphalt Paving	\$55,700	\$80,520	\$136,220
8913-21-457-002	11,150	2100 SF Asphalt Paving	\$41,810	\$1,680	\$43,490

On its protests to the Board of Review, D & J Investments asserted the properties were assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petitions.

D & J Investments then appealed to PAAB, asserting the correct fair market values are \$25,442 for parcel 8913-21-457-002; and \$79,689 for parcel 8913-28-201-003.

Findings of Fact

D & J Investments purchased the properties in April 2015. The sales history of the subject properties is summarized in the following chart. (Ex. A, B, C).

Sale Date	Sale Price	Conditions
Dec-12	\$215,000	Normal
Aug-14	\$199,249	Bank Foreclosure
Apr-15	\$105,000	Sale from Lending Institution

Chris Fischels, a broker and commercial realtor with Sulentic Fischels Commercial Group, Waterloo, testified for D & J Investments. Fischels listed the subject property for sale on behalf of Farmers State Bank. He explained the listing had been systematically reduced from \$175,000 to \$135,000 prior to D & J Investment's offer of \$105,000 being accepted in April 2015.

Fischels testified that three days after D & J Investments purchased the property it re-listed the property for lease at \$1650 per month or for sale for \$139,900. However, to date, there have been no offers to purchase the property. After a year of vacancy, the rent levels were reduced to \$1250 gross and the property was leased for a one-year period. Considering the actual current lease, and applying a 10% capitalization rate, Fischels asserts the correct market value of the subject properties is approximately \$100,000.

D & J Investments also submitted an appraisal completed by James Herink and Dextar Klostermann of Rally Appraisal, Cedar Falls. (Ex. 2). The appraisal was prepared for Farmers State Bank for asset valuation purposes. Herink/Klostermann determined a fair market value of the subject properties as of August 2014, of \$175,000; and a liquidation value of \$148,750.

Fischels is critical of the appraisal. He asserts the length of time the property sat on the market indicates the \$175,000 appraised value is not supported. He also points to the current listing of the subject property at \$139,900, with no offers, to confirm his opinion.

The Board of Review asserts the recent sales history of the subject properties were the result of foreclosure and then sold as bank owned properties. As such, the sale prices alone do not represent the fair market value of the subject properties. (Ex. A). Further, the Board of Review asserts the Herink/Klostermann Appraisal supports the subject properties' current assessments.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB 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). PAAB considers only those grounds presented to or considered by the Board of Review, but 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(1)(a-b). New or additional evidence may be introduced, and PAAB 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. § 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).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), 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).

D & J Investments purchased the subject properties in April 2015, from a bank which obtained the properties as the result of foreclosure. This purchase is an abnormal transaction under Iowa law and the sales price alone is insufficient to demonstrate market value. § 441.21(1)(b). After purchasing the property for \$105,000, D & J Investments listed the property for sale for \$139,900; however to date it has not sold.

Additionally, D & J Investments has since rented the property for \$1250 per month rent and assert this indicates a value of roughly \$100,000 by the income approach. However, before D & J Investment can turn to the income approach for valuing property, it must first show that sales are unavailable for a comparable sales analysis. § 441.21(2). It has not done so. Moreover, only considering the subject properties’ actual rents is not proper methodology for an income approach to show the fair market value. Based on the foregoing, D & J Investments has failed to demonstrate its properties are over assessed.

Order

IT IS THEREFORE ORDERED that the Black Hawk County Board of Review’s actions are affirmed.

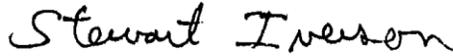
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court

where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 3rd day of June, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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