

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

<p>POLK COUNTY BOARD OF REVIEW,</p> <p>Petitioner,</p> <p>vs.</p> <p>PROPERTY ASSESSMENT APPEAL BOARD,</p> <p>Respondent.</p>	<p>Case No. CVCV053275</p> <p>RULING ON JUDICIAL REVIEW</p>
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On May 12, 2017, the Court held a hearing on the above-captioned Petition for Judicial Review. Petitioner Polk County Board of Review (“BOR”) was represented by attorney Mark Taylor. Respondent Property Assessment Appeal Board (“PAAB”) was represented by attorney Bradley Hopkins. After considering the certified record and exhibits, as well as the parties’ oral and written arguments, the Court makes the following ruling.

BACKGROUND FACTS AND PROCEDURAL HISTORY

This dispute arises from Polk County Board of Review’s (“BOR”) 2015 tax assessment of Scott Brustkern’s home, located at 1605 NW Wagner Boulevard in Ankeny, Iowa. The initial assessment of the property was \$260,200. On April 22, 2015, Brustkern submitted his Petition to the Board of Review alleging that the assessment was not equitable with other assessments of like property in the Taxing District as required by Iowa law. In his petition, he listed five properties he considered comparable to his own but that were assessed at a lower value. In response to the petition, BOR reduced the assessed value to \$250,400.

On June 23, 2015, Brustkern appealed BOR’s reduced assessment to the Property Assessment Appeal Board (“PAAB”). On August 12, 2016, PAAB held a hearing on the appeal. During his appeal, Brustkern relied upon the same five properties he listed in his initial petition

to BOR.¹ Of the five suggested comparable properties, PAAB found two were substantially similar to Brustkern's property—1609 NW Wagner and 1513 NW Campus. The properties were built in the same year as the subject property and had similar, though not identical, features. However, 1609 NW Wagner was subject to a negative 10% market adjustment (despite PAAB determining it was a slightly superior property) and 1513 NW Campus was subject to a negative 6% adjustment. No such adjustments were applied to Brustkern's property, resulting in an assessed value higher than either of the two substantially similar properties. The negative assessments on the similar properties were put in place following sales below market value in 2010 and 2011; Brustkern's property did not receive a similar adjustment when he purchased it below assessed value in 2013. According to testimony in the record, the market adjustments will continue to be applied to the two similar properties until the properties sell or the BOR has some other reason to remove them.

In its Findings of Fact, Conclusions of Law, and Order issued on September 9, 2016, PAAB ordered BOR to apply a negative 10% market adjustment to Brustkern's property, reducing the assessed value to \$229,460. Considering the dissimilarities between the assessment of Brustkern's property and substantially similar properties, PAAB determined the assessment of Brustkern's property inequitable and in violation of Iowa Code section 441.37(1)(a)(1)(a) because it was based upon "a non-uniform application of an assessing method to substantially similar properties" (R. at 68) (citing *Eagle Food Centers, Inc. v. Board of Review of the City of Davenport, Scott County*, 497 N.W.2d 860, 862 (Iowa 1993)). Specifically, PAAB was concerned that the sale of Brustkern's property in 2013 did not prompt the BOR to review or modify the market adjustment on 1609 NW Wagner, the home across the street.

¹ The properties, which were all located in Ankeny, were: 1602 NW Wagner Blvd, assessed at \$216,500; 1529 NW Wagner Blvd, assessed for \$203,800; 1609 NW Wagner Blvd, assessed for \$236,600; 1513 NW Campus Dr, assessed for \$245,500; and 1601 NW Wagner Blvd, assessed at \$237,500.

BOR applied for Rehearing/Reconsideration, arguing PAAB's interpretation of *Eagle Foods* and its resulting legal conclusions were improper. PAAB granted the Application to Reconsider, but denied Rehearing. On December 13, 2016, PAAB issued its Amending Findings of Fact, Conclusions of Law, and Order. In its new Order, PAAB applied only a negative 6% market adjustment rather than the original negative 10%, resulting in a new assessed value of \$237,900. However, despite altering the amount of the negative market adjustment, PAAB reaffirmed its interpretation and application of *Eagle Foods*, determining the assessment on Brustkern's property was inequitable. Indeed, PAAB further found that the potential continued inequity based on the indefinite nature of the market adjustments amounted to an abrogation of the Assessor's duty to ensure properties are assessed equitably and a potential violation of equal protection.

The BOR filed its Petition for Judicial Review December 28, 2016, arguing that PAAB's interpretation and application of *Eagle Foods* was improper and that a different test should have been applied to determine if the assessment was inequitable. BOR and PAAB agree Brustkern had not and could not satisfy this alternative test. Thus, BOR now seeks a reversal of PAAB's determination that the assessment was inequitable and its order to apply a negative market adjustment.

STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency (here, PAAB). *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). Where an agency has been "clearly vested" with a fact-finding function, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of the petition for judicial

review”—that is, whether it involves an issue of 1) findings of fact, 2) interpretation of law, or 3) application of law to fact. *Id.* at 256. The role of the Court in judicial review is not to relitigate every fact and issue, but rather to ensure that the agency’s decision was legally valid.

Agencies are accorded no deference in interpretation of law unless they have been specifically vested with that authority. Iowa Code § 17A.19(10)(c) (2016). PAAB has not been vested with any interpretive authority, so if the Court determines the agency’s interpretation is erroneous, the Court may substitute its own judgment for the agency’s. *Tremel v. Iowa Dep’t of Revenue*, 785 N.W.2d 690, 692–93 (Iowa 2010).

When a petition alleges error as to an agency’s factual determinations, the task of the Court is to determine “whether substantial evidence supports those findings of fact.” *Meyer*, 710 N.W.2d at 219. The Court may only upset such a finding of fact if it is “not supported by substantial evidence in the record before the court when that record is viewed as a whole.” Iowa Code § 17A.19(10)(f). A district court’s review “is limited to the findings that were actually made by the agency and not other findings that the agency could have made.” *Burton*, 813 N.W.2d at 256. However, “[i]n reviewing an agency’s finding of fact for substantial evidence, courts must engage in a ‘fairly intensive review of the record to ensure that the fact finding is itself reasonable.’” *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

The Court is bound by the agency’s findings of fact, so long as they are supported by substantial evidence. *City of Des Moines v. Employment Appeal Bd.*, 722 N.W.2d 183, 195 (Iowa 2006). Substantial evidence has been defined as “the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious

and of great importance.” Iowa Code §17A.19(10)(f)(1) (2016). On questions of substantial evidence, the Court is bound by the agency’s judgments as to reliability of witnesses and evidence. *Arndt v. City of Le Claire*, 728 N.W. 2d 389, 395 (Iowa 2007) (“[The agency] as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. The reviewing court only determines whether substantial evidence supports a finding according to those ‘witnesses whom the [commissioner] believed,’” quoting *Tim O’Neil Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996)). Evidence may be substantial even if it would support a different conclusion. *Mike Brooks, Inc. v. House*, 843 N.W.2d 885, 889 (Iowa 2014). Thus, the Court’s task is not to ask whether it would have reached the same conclusion as the agency did, but whether there is substantial evidence to support the agency’s findings. *Id.*

If, on the other hand, the alleged error is with “the *ultimate conclusion* reached, then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” *Meyer*, 710 N.W.2d at 219. On such a question, the Court will only reverse the application of law to facts if “it is ‘irrational, illogical, or wholly unjustifiable.’” *Neal*, 814 N.W.2d at 518 (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007)).

In this instance, BOR alleges error in interpretation of law and application of law to facts. Though somewhat confusingly broken down into ten different “issues” in BOR’s brief, the alleged errors all center around one main question—whether PAAB applied the proper test in determining the assessment was inequitable. On this question, PAAB is entitled to no deference

and the Court may substitute its own judgment for PAAB's. After making this determination, the Court must decide whether, based on the application of law to the undisputed underlying findings of fact, PAAB's ultimate conclusion that the assessment was inequitable and in violation of the law is "irrational, illogical, or wholly unjustifiable." *Neal*, 814 N.W.2d at 815.

APPLICABLE LAW & ANALYSIS

Central to this dispute is Iowa Code section 441.37(1)(a)(1)(a) (2016),² which provides that a property owner may protest a property assessment on the ground "[t]hat said assessment is not equitable as compared with assessments of other like property in the taxing district." Parties agree that typically protesting property owners show inequitable assessment but meeting a six-part test laid out in *Maxwell v. Shivers*, 133 N.W.2d 709 (1965), and affirmed in *Riso v. Pottawattamie Board of Review*, 362 N.W.2d 513, 517 (Iowa 1985). These so-called *Maxwell* factors require:

the complainant must prove (1) that there are several other properties within the assessment district similar and comparable to the one at issue, (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the property at issue, (5) the assessment complained of, and (6) that by a comparison the property at issue is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating a discrimination. *Riso*, 362 N.W.2d at 517.

Applying these factors allow a property owner to get at the "gist of this ground [for protest] . . . that the property at issue is assessed higher proportionately than similar property in the area." *Id.*

The parties disagree with how the *Maxwell* factors interact with the Iowa Supreme Court's 1993 holding in *Eagle Food*. In *Eagle Food*, the Supreme Court affirmed a determination by the district court that the Board of Review in that case had assessed the

² The Court notes that this section has been modified in the 2017 code, but these changes do not substantively affect the basis for Brustkern's appeal. Because the enacted legislation does not include language suggesting it should be applied retroactively, and because this assessment was performed and subsequently modified under the prior language, the Court will apply the language in the 2016 code.

property at issue inequitably. *Eagle Food Centers, Inc. v. Board of Review of City of Davenport, Scott County*, 497 N.W.2d 860, 865 (Iowa 1993). However, rather than applying the *Maxwell* factors, the Court focused on the inconsistent and unequal methods applied in assessing the property when compared to similar properties—using different valuation methods, applying different vacancy rates, etc. *Id.* at 863–65. The Court cited *Riso* only for the premise that the gist of the equity ground “is that the property is assessed higher proportionally than other like property.” *Id.* at 863.

I. Whether PAAB Erred in Interpreting Applicable Law

This tension between *Maxwell/Riso* and *Eagle Food* is the crux of the dispute between PAAB and BOR. Both parties seem to agree that *Eagle Food* outlines some kind of alternative path a property-owner can use to establish their property has been assessed inequitably. They disagree, however, about the framing of that test. PAAB claims *Eagle Food* found that “the property at issue was inequitably assessed because the Assessor Applied different methodologies that resulted in an inequitable variation” Resp’t’s Br. 12. Put another way, PAAB argues *Eagle Food* stands for the proposition that “where the facts demonstrate the assessor is using different methods or adjustments on similarly situated properties, inequity can be found without engaging in a *Maxwell* analysis.” *Id.* at 13.

The BOR argues for a much stricter articulation of the test that emerges from *Eagle Food*.³ If *Eagle Food* and other cases cited by PAAB represent an alternative to *Maxwell*, BOR argues, they do so only in cases in which the protesting property owner can establish “that the assessment was arbitrary, inaccurate and the methodology used in the application of the

³ BOR’s initial position was that *Eagle Foods* did not provide an alternative test. The Reply Brief, however, seems to have abandoned this argument. Counsel at hearing also conceded that *Eagle Foods* provides an alternative route to a finding of inequity. The Court agrees *Eagle Foods* creates an alternative to *Maxwell*, and given the abandonment of the argument opposing this position, the Court will not delve into the issue further.

assessing approach [is] improper,” Pet’r’s Reply Br. 5. This test that seems to be an amalgamation of the findings the district court in *Eagle Food* made about the Assessor’s work in that case. *See Eagle Food*, 497 N.W.2d at 862. In application, BOR’s version of this test would only find inequality in the cases of clear and obvious incompetence or malfeasance on the part of an Assessor.

Both parties rely on two other cases to bolster their interpretations of *Eagle Food*, both of which predate *Eagle Food* by several decades. In *Chicago & North Western Railway Co. v. State of Iowa Tax Commission*, 137 N.W.2d 246 (Iowa 1965), the Supreme Court found inequitable valuation of a railroad when the four other major railroads in the state had substantially similar assessments and had all enjoyed greater reductions in their assessment than the protesting railroad. *Id.* at 254. Though the same formula was used in each railroad’s initial valuation, all the railroads except Chicago & North Western were, year after year, consistently decreased by substantial percentages. *Id.* Though the assessor legally had the discretion to adjust valuations based on judgment factors, the Court in *Chicago* found the assessor’s consistent disparate treatment of one railroad constituted “wide departures [that] exceeded the discretion” granted by law. *Id.*

PAAB notes the *Chicago* court did not apply the *Maxwell* factors, despite the fact that *Chicago* was decided only six months after *Maxwell*, arguing the Court did not need to rely upon the factors to find inequity because it was clear to the *Chicago* court that the disparate treatment of similar properties made the assessment inequitable and in violation of section 441.37. Indeed, the court in *Chicago* explains that “Thus, if in fixing the actual value of the other four railroads, as a practice the officials systematically under-valued them while valuing plaintiff at full actual

value, the *discrimination is as illegal and evident* as if the rate of assessment applied to each property were not the same.” *Id.* at 253.

BOR focuses, instead, on the fact that the disparate treatment was so egregious that the Court found it was evidence of intentional discrimination. *Chicago* did not apply the *Maxwell* factors only because the case reached the level of such obvious and intentional discrimination against one property as to rise to the level of an abrogation of duty. In its analysis, the *Chicago* court explains, “[u]nless the assessment is so out of line with other actual values as to give rise to the inference the authority has not properly discharged its duty, the assessment should not be disturbed,” *Chicago*, 137 N.W.2d 252–53, citing *Maxwell*, 137 N.W.2d at 709, and further concludes, “Continual and substantial departure from the formula value in fixing actual value in the case of all major railroads operating in Iowa except the North Western, shown as a practice, compels a conclusion that the commission willfully failed to fairly assess plaintiff’s property.” *Id.* at 254.

Two years later in *Dull v. County Board of Review, Plymouth County*, the Iowa Supreme Court again chose not to directly apply the *Maxwell* factors. 150 N.W.2d 91 (Iowa 1967). In that case, the Court found a blanket rule for depreciation based on the use of the land rather than the similarities in two properties was per se inequitable. *Id.* at 94. Again, PAAB focuses on the fact that the Court chose not to apply the *Maxwell* factors, determining inequitable assessment based solely on the fact that a non-uniform method of valuation was being applied to substantially similar properties based on a factor that did not directly affect the value of the property. *Dull*, 150 N.W.2d, at 93. BOR, instead, focuses on the use of the improper factor in the assessment.

Unfortunately, *Mawell*, *Riso*, *Eagle Food*, *Chicago*, and *Dull* provide a murky articulation of how a property owner can prove an assessment is inequitable under Iowa Code

section 441.37. However, the Court is convinced based on its reading of the cases that BOR's proposed test is far too narrow and PAAB's ruling was based on an accurate interpretation of the law. *Maxwell* explicitly states that a finding of inequity requires a clear showing that the difference in assessment could not simply have been mistake or valid difference of opinion. *See Maxwell*, 133 N.W.2d at 711 (“[T]he court is not free to substitute its judgment and opinion for that of the proper officials unless it finds the action of the assessor is ‘arbitrary or capricious or so wholly out of line with the actual values as to give rise to the inference that for some reason he has not properly discharged his duty.’”) (quoting *Butler v. City of Des Moines*, 258 N.W. 755, 758 (Iowa 1935)). The Court additionally clarifies that part of the duty of the assessor is “to fix such values equitably in comparison with other like property.” *Maxwell*, 133 N.W.2d at 711. This duty is violated, according to the *Maxwell* court: when property is assessed at more than its actual value; when property is assessed inequitably compared to other property; and (most importantly for the case at bar) when property is assessed higher proportionately to similar property, even if it is assessed below its true value. *Id.*

BOR's suggested arbitrary, inaccurate and improper methodology test does not appear in *Maxwell*, *Eagle Food*, or any of the other cited cases, nor does it find support there. Rather, the Court finds PAAB's reading of the cases is proper: a protesting property owner can show inequity through the *Maxwell* factors *or* by showing that an inequitable assessment was the result of intentionally inconsistent, arbitrary, or unequal application of valuations and adjustments, as shown in *Eagle Food*, *Chicago*, and *Dull*. It is also clear from these cases that the inequity must be the result of a specific and intentional act or practice, rather than mere fluctuations or differences of opinions, such that the ultimate disparity amounts to a failure of the Assessor's

duty to equitably fix assessment values. Whether a particular instance of disparate valuations meets this threshold is a fact-specific inquiry.

Ultimately, this Court concludes PAAB correctly applied the law, and that its interpretation of the interplay between *Maxwell/Riso* and *Eagle Foods* is correct. The Court now turns to whether PAAB's findings of fact and application of law to those facts support their ultimate conclusion of inequitable assessment.

II. Whether PAAB's application of law to fact is irrational, illogical, or wholly unjustifiable.

Most of BOR's argument restates various concerns over PAAB's interpretation and application of the *Eagle Food* path for showing inequitable assessment. However, BOR does briefly raise the argument that PAAB also erred in their ultimate conclusions—that is, their application of law to fact. Petr's Br. at 32–35. They specifically raise concerns regarding PAAB's finding that the inconsistent application of valuation adjustments (i.e. market adjustments) led to an abrogation of the Assessor's duty to equitably assess properties and a potential equal protection issue.

PAAB's legal conclusions can be summarized as follows. The assessor (and BOR) has the legal duty to fairly and equitably assess valuations of substantially similar property to ensure a roughly equal distribution of tax burden. If an assessor fails to ensure roughly equitable valuations on substantially similar properties through practice or intentional discrimination, the assessor has failed in that duty. A property owner may prove their property has been assessed inequitably by showing the assessor intentionally—by policy or in practice—applied an assessment method in a way that was non-uniform or arbitrary in its application to substantially similar properties.

Looking at their findings of fact, then, PAAB concluded that BOR had been arbitrary and non-uniform in how it chose to apply or remove negative market adjustments. After all, the two substantially similar homes had negative market adjustments applied in 2011 after they sold for below market value, but, although Brustkern purchased his home for below market value in 2013, he did not receive such an adjustment. More importantly, when BOR determined the market conditions in 2013 did not warrant a market adjustment for Brustkern's property, they nevertheless failed to remove the 2011 negative market adjustments. They therefore concluded the difference in valuation methods was arbitrary and inconsistent enough to qualify as inequitable under Iowa Code section 441.37(1)(a)(1)(a).

The Court cannot find that these ultimate conclusions are illogical, irrational, or wholly unjustifiable. It does not appear the agency ignored evidence in the record or employed clearly irrational reasoning to reach their conclusion. That BOR argues a different conclusion could be reached from the same facts does not invalidate the findings. There is nothing in the briefing or the record from which the Court can conclude PAAB's decision is not legally valid.

IT IS THEREFORE THE ORDER OF THE COURT that the decision of PAAB is hereby **AFFIRMED**.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV053275
Case Title POLK CO BOARD OF REVIEW VS PROPERTY ASSESSMENT
APPEAL BOARD

So Ordered

A handwritten signature in cursive script that reads "Mary Pat Gunderson".

Mary Pat Gunderson, District Court Judge,
Fifth Judicial District of Iowa