

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Craig and Julie Berenstein,**  
Petitioners-Appellants,

v.

**Sioux City Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-107-1400**  
**Parcel No. 8947-04-201-002**

On February 4, 2013, the above-captioned appeal came on for telephone hearing 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. Petitioners-Appellants Craig and Julie Berenstein were represented by attorney Angie Schneiderman of Berenstein, Moore, Heffernan, Moeller & Johnson, L.L.P. Attorney Jack A. Faith is counsel for the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Craig and Julie Berenstein, owners of a residential, single-family property located at 721 Deerfield Drive in Sioux City, Iowa, appeal from the Sioux City Board of Review decision reassessing their property. The subject property is a two-story, frame dwelling built in 1996. The property has 2558 square feet of total living area, a 140 square-foot open porch, a 423 square-foot patio, and a 866 square-foot, attached garage. The improvements are of good quality (3+10 grade) and in normal condition. The site is 1.38 acres.

The real estate was classified as residential on the initial assessment of January 1, 2011, and valued at \$296,200, representing \$45,300 in land value and \$250,900 in improvement value.

The Berensteins protested to the Board of Review on the grounds that the subject property was inequitably assessed under Iowa Code section 441.37(1)(a)(1); the property was assessed for more than authorized by law under section 441.37(1)(a)(2); there was an error in the assessment under section 441.37(1)(a)(4), essentially asserting the property was over-assessed; and that there was a change in value since the last assessment under sections 441.37(1) and 441.35(2). In a reassessment year a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006).

On May 13, 2011, prior to their hearing before the Board of Review, the Berensteins entered into a Stipulation of Market Value (Exhibit 4) with the Sioux City Assessor Alan Jordan. The Berensteins and Jordan agreed the subject property's stipulated 2011 market value should be \$253,100, allocated \$45,300 to land value and \$207,800 to dwelling value. The Stipulation stated the reason for changing the value was an adjustment to the subject property's grade from 3+10 to 3-10. According to the Berensteins, Jordan then advised them that they would not need to appear before the Board of Review to protest their assessment.

Subsequently, the Board of Review issued its decision and denied the Berensteins's claims, it stated there was "insufficient evidence presented to prove assessment is excessive."

The Berensteins then appealed to this Board re-asserting their over-assessment claim. They contend the subject property's correct value is \$250,000, allocated \$35,000 in land value and \$215,000 in improvement value.

The Berensteins submitted property record cards containing information on sales of what they believe are five comparable properties. Joe Craig, a Sioux City realtor, provided the Berensteins with these comparable sales for use in their appeal. We summarize information regarding these sales below.

Sale	Address	Sale Date	Sale Price	SF	Price per SF	Assessment	Assessed Value per SF
Subject				2558		\$296,200	\$115.79
1	741 Deerfield <sup>1</sup>	5/13/2010	\$365,000	3055	\$119.48	\$373,800	\$122.36
2	1206 46th St	2/26/2011	\$231,000	2384	\$96.90	\$209,300	\$87.79
3	515 Pelletier Dr	4/27/2009	\$255,000	2411	\$105.77	\$253,200	\$105.02
4	4611 Saddle Ln	11/2/2009	\$257,000	2407	\$106.77	\$283,800	\$117.91
5	21 Red Bridge Dr	5/17/2010	\$239,950	1879	\$127.70	\$246,800	\$131.35
6	330 Maplewood Pl	5/29/2009	\$259,000	2726	\$95.01	\$265,400	\$97.36

The median sale price per-square-foot of these sale properties is \$105.77, while the average sale price per-square-foot is \$106.43. At \$115.79 per-square-foot, the subject property's assessed value is higher than both the median and average sale price per-square-foot of these comparables, but is still within the range of values. No adjustments were made to the sales prices, however, to allow for accurate comparison with the subject property.

Craig Berenstein testified at the hearing before this Board. He recognized differences between the subject property and these comparables. Berenstein testified to differences in neighborhoods, sizes, and views. The property record cards also indicate that the comparable properties differ from the subject property in terms of architectural style, age, quality grade, and other amenities. The Berensteins did not offer an appraisal or any other evidence of the subject property's value.

Alan Jordan testified at hearing regarding the Stipulation he signed with the Berensteins. Jordan indicated he agreed to enter into the Stipulation after a discussion with Craig. This discussion convinced Jordan that property owners were having difficulty selling larger properties in the area. Jordan then stated he now believes the amount he agreed to in the Stipulation was likely an error on his part. He says a subsequent analysis of comparable sales data supports the current assessment. Jordan indicated he told Berenstein the Stipulation was not binding on the Board of Review and that it would

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<sup>1</sup> At hearing, Berenstein testified that he did not believe this property was comparable to the subject property and therefore we list it only for informational purposes. We did not use this property in making any calculations. We also note this sale was from a trust, which may or may not reflect market value.

have to be affirmed by the Board of Review for the assessment to be reduced. On cross-examination, Jordan indicated the Board of Review was adamant in its desire to deny the Berensteins' protest and agreed upon Stipulation because it was aware the Berensteins purchased the property in 1999 for \$285,000.

Appraiser Nan Rasmussen-Owings completed an analysis on the subject property and submitted an Assessment Report Summary detailing her findings. The analysis employs the comparable sales approach and, after making adjustments for differences between the comparable sales and the subject property, indicates the subject property's market value is \$296,200. The sales data Rasmussen-Owings used is summarized below.

Sale	Address	Sale Date	Sale Price	Adjusted Sale Price	SF	Adjusted Price per SF
Subject					2588	
A	1321 Fox Ridge Trl	6/18/2010	\$295,000	\$290,600	2829	\$102.72
B	1392 Fox Ridge Trl	8/15/2009	\$278,000	\$292,700	2198	\$133.17
C	1385 Fox Ridge Trl	7/30/2009	\$375,000	\$306,200	3352	\$91.35

The analysis indicates the median and average adjusted sale price per-square-foot of these properties is \$102.72 and \$109.08 respectively. Rasmussen-Owings also completed the cost approach to value using the Iowa Real Property Assessment Manual and calculated the subject property's value to be \$296,200.

Rasmussen-Owings testified at hearing but had difficulty explaining her methodology for the adjustments she made to the comparables, when questioned. We note some inconsistencies in the analysis. Rasmussen-Owings made a \$21,100 basement finish adjustment to Comparable A. Based upon the analysis, however, it appears the basement finish adjustment should have actually been closer to \$28,000. Additionally, Rasmussen-Owings applied a different per-square-foot living area

adjustment to each comparable but was unable to articulate the need for differing adjustments. Given these inconsistencies, this Board gives the analysis limited consideration.

Ultimately, the non-binding Stipulation is a piece of evidence, like all other evidence, to be considered by this Board in a determination of whether the Berensteins have proved their over-assessment claim. The Stipulation by itself, however, does not establish the property's fair market value. Rather, it just indicates a value the Berensteins and the assessor agreed to prior to the Board of Review hearing. The Stipulation does not show how that value was determined. To succeed in their claim, the Berensteins must provide sufficient evidence to prove by a preponderance of the evidence that the assessment is excessive and to support a finding that the amount agreed to in the Stipulation is the subject property's market value.

We find the progression of events in this case unfortunate. Particularly troubling is the fact that the Berensteins were led to believe that attendance at their Board of Review protest hearing was unnecessary. Subsequently, they were denied relief without the opportunity to present evidence to the Board of Review. We, however, are limited to an examination of the evidence before this Board and a determination if the Berensteins have proved their over-assessment claim. Based on the testimony and evidence presented to this Board, we find the Berensteins have not established the subject property is over-assessed as of January 1, 2011.

### ***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 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). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

The plain language of Iowa Code section 441.37(1)(a)(1) indicates that an aggrieved taxpayer must list more than one comparable property on the protest form. *Montgomery Ward Dev. Corp. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992), *overruled on other grounds by Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614 (Iowa 1996). This "statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board." *Id.* The Berensteins listed only one comparable on their Board of Review protest form, and the entirety of their evidence to this Board related to a claim of over-assessment. As such, we do not consider their equity claim.

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). The Berensteins introduced a 2011 Stipulation of Market Value dated May 13, 2011,

which detailed an agreement between themselves and Jordan regarding the subject property's 2011 assessment. Jordan now contends the Stipulation does not fairly represent the property's fair market value as of January 1, 2011. Under Iowa Code section 441.28, the assessor has no authority to change the assessed value of a property after April 15th. Rather, only by an order of the Board of Review or this Board may an assessment be changed. § 441.28. Therefore, the Stipulation alone cannot be relied upon to show the property is overassessed. But it is evidence to be considered, along with all other evidence, in determining whether or not the Berensteins' are able to prove by a preponderance of the evidence the subject property is over-assessed.

The evidence presented by the Berensteins consisted of property record cards for five properties sold between April 2009 and February 2011 they believe to be comparable to the subject property. However, the Berensteins did not make any adjustments to these properties to account for differences in size, location, grade, or other amenities. Adjustments to the sales prices of these properties are necessary in order to accurately determine the subject property's market value. This information is, therefore, insufficient to show the subject property is over assessed.

THE APPEAL BOARD ORDERS the assessment of the Berenstein's property located at 721 Deerfield Drive in Sioux City, Iowa, is affirmed.

Dated this 5 day of March 2013.

Stewart Iverson  
Stewart Iverson, Presiding Officer

Jacqueline Rypma  
Jacqueline Rypma, Board Member

Karen Oberman  
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>3-5</u> , 2013	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>Jack Faith</u>