

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

<b>ORDER</b>	
<b>Anne M. Sweeney &amp; Mary Clare Sweeney,</b> Petitioners-Appellants,	<b>Docket No. 11-31-0326</b> <b>Parcel No. 2011200005</b>
v.	<b>Docket No. 11-31-0327</b> <b>Parcel No. 2011401001</b>
<b>Dubuque County Board of Review,</b> Respondent-Appellee.	<b>Docket No. 11-31-0328</b> <b>Parcel No. 2011476001</b>
	<b>Docket No. 11-31-0329</b> <b>Parcel No. 2011451001</b>
	<b>Docket No. 11-31-0330</b> <b>Parcel No. 2011426001</b>

On November 13, 2012, 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) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Anne M. Sweeney & Mary Clare Sweeney, were self-represented. Assistant Dubuque County Attorney Lyle Gallart represented the Dubuque County Board of Review. Both parties participated by telephone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Anne M. Sweeney and Mary Clare Sweeney (Sweeneys), owners of property at 16281 Twelve Mile Road, Bernard, Iowa and adjacent thereto, appeals from the Dubuque County Board of Review regarding the 2011 property assessments. The subject properties include five parcels of agricultural realty, a dwelling, and agricultural improvements. The total site consists of 81.80 acres. The real

estate was classified as agricultural realty for the January 1, 2011, assessment. Docket No. 11-31-0326 (Docket 0326) consists of 12.67 acres and is valued at \$28,913. Docket No. 11-31-0327 (Docket 0327) consists of 33.80 acres and is valued at \$68,552. Docket No. 11-31-0328 (Docket 0328) consists of 0.45 acres and is valued at \$918.72. Docket No. 11-31-0329 (Docket 0329) consists of 21.28 acres and is valued at \$46,060. Finally, Docket No. 11-31-0330 (Docket 0330) consists of 13.60 acres and had a land value of \$29,124, agricultural building value of \$6070, and a dwelling value of \$51,670, with a total value of \$86,864. The total value for all docket is \$231,307.

Sweeney protested to the Board of Review that the property was not equitably assessed with other like property under Iowa Code section 441.37(1)(a)(1), and the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2). The Sweeneys also asserted that they should receive the Disabled and Senior Citizens Property Tax credit.

Sweeney appealed to this Board on the same grounds. Sweeney requests this Board to value the property at the January 1, 2008, values.

This Board notes that the Board of Review claimed the Sweeneys only protested on the issue of equity. The Sweeneys' protest letter to the Board of Review clearly indicated an equity claim but also stated that they were protesting the "exorbitant" and "unconscionable" increase in their assessment. Although these statements do not explicitly constitute an overassessment claim, they strongly imply a claim that the property is over-assessed. Further, the Board of Review's Notice to Property Owner indicates as a reason for denying the protest that, "[t]he property is assessed at productivity value . . . ." This suggests the Board of Review considered an overassessment claim. For these reasons, this Board will consider both grounds.<sup>1</sup>

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<sup>1</sup> Exhibit 37 (Appellant's Brief, Oct. 29, 2012) also indicates a claim of errors in the assessment. The Sweeneys' protest to the Board of Review does not explicitly or implicitly indicate a claim of error in the assessment. Therefore, under Iowa Code section 44.37A, this Board is precluded from considering an error claim.

Regarding the Sweeneys' assertion concerning the Disabled and Senior Citizens Property Tax credit, the Sweeneys may consult with the Dubuque County Treasurer to determine their eligibility for the credit and obtain necessary paperwork. Under Iowa Code section 425.20, a property owner must file a claim with the county treasurer between January 1 and June 1 immediately preceding the fiscal year during which the property taxes are due.

Mary Clare Sweeney testified at hearing that the large increase in assessed value is outrageous and totally unacceptable. Sweeney testified that they are fourth-generation Dubuque County farmers with a long history of good land stewardship. Sweeney stated that although they have five parcels, not one is a single 40-acre parcel. Under eminent domain, the State of Iowa cut diagonally through the entire family farm in the 1970s to construct Highway 151. All the land is classified as highly erodible land by the United States Department of Agriculture. She stated the assessed value has increased more than 100% in the last two to three years. Sweeney submitted evidence (Exhibits 13-24) that shows the disparity in land assessments in Dubuque County.

We note Sweeney did not make any adjustments to her equity comparables or show what the correct values would be for January 1, 2011. Beyond asking that the property be returned to its January 1, 2008, assessment, Sweeney provides no evidence of the subject property's correct value as of January 1, 2011. Sweeney questions the method used by the county assessor, not only for the land values, but also the agricultural structures. She testified that several of the outbuildings on the subject property were old and have not been used for many years.

Sweeney testified that the cash rent they receive from the tenant does not keep pace with the increase in assessments. She testified that estimated cropland rental rates in Iowa only grew from \$170/acre to \$196/acre between 2008 and 2011. We note that over the same period average cash rents for corn and soybean acres in District 3, where Dubuque County is located, grew from \$176/acre to \$214/acre. (Exhibit 5).

Sweeney concludes that the new method used by the county assessor has over valued her property. Sweeney also testified that she met with the assessor in July 2011, and explained her concerns regarding the condition of her agricultural structures and that the land was highly erodible and some was used as pasture. She subsequently filed the 2012 Agricultural Change Registry Form to document her concerns with the assessor. This Board notes that these events occurred after the January 1, 2011, assessment date.

Mark McCullough testified that he cash rents all five parcels from the Sweeneys to farm. McCullough stated that it is difficult to farm these parcels because of their relative small size and property's triangle shape due to Highway 151 running through the middle of the property. He stated he purchased a GIS system for his combine because of the subject property's shape and terrain. He also stated since he cash rents, the Sweeneys do not receive the benefit of today's high corn prices.

At the end of the Sweeneys' case-in-chief, the Board of Review moved for summary judgment. The Board of Review argued the Sweeneys previously failed to raise the grounds of over assessment or error in the assessment and, in the alternative, did not prove their equity claim with regard to the land value. This Board denied the Board of Review's motion.

Dave Kubik, Dubuque County Assessor, testified on behalf of the Board of Review. Kubik testified that for the January 1, 2011, agricultural assessment the assessor's office used a new method which he developed. He testified that he received initial approval for the new method from Dale Hyman, Administrator of the Property Tax Division for the Iowa Department of Revenue. When Kubik received the Department of Revenue Agricultural worksheet, he sought and received final approval from Hyman to utilize this new method.

In summary, Kubik testified that his new method uses Iowa State University corn suitability ratings (CSRs) as indicators of land productivity and applies them to Farm Service Agency (FSA) crop layer data. This crop layer data indicates historically which acres have and have not been used for crop

farming. The CSR data is then applied to the crop layer data for the subject parcel. Essentially, the cropland, as determined by the crop layer data, is valued according to its productive value as indicated by the CSR. Non-crop land acres are given a significant downward adjustment, regardless of their CSR ratings.

Kubik's new method adjusted tillable and non-tillable land downward and increased assessments on row cropland. Kubik testified that the average per acre assessment increase was about twenty-five percent for Dubuque County. However, under his new method, the average increase for productivity land (row crop) was approximately fifty percent. The Sweeneys' increase was about eighty percent because of their above-average quality land. Kubik could not recall at hearing what income and expenses were considered for tillable pasture acres. Kubik also did not make correct adjustments for actual acres as compared to the acres in his adjustment relating to the five-year average formula acres. He stated that his method was not adopted by rule before the January 1, 2011, assessment and, in fact, it has not been otherwise adopted for use in other jurisdictions. He testified that other counties, particularly counties in southern Iowa, attempted to apply his method but found that it did not work for them.

When Sweeney questioned Kubik, he stated he did not make any adjustments for irregular shaped parcels. He also stated that although the Sweeneys' land had not been used for row crop farming for at least sixty years, the FSA still considered the Sweeney's pastureland as cropland and it was also considered cropland for assessment purposes. Kubik indicated that in order to assess the property according to its productivity and net earning *capacity*, it was appropriate to apply the cropland CSR ratings even to land not used for row crop farming.

This Board finds many flaws with the new method used by Kubik. We are primarily concerned that the Director of the Department of Revenue did not approve the method or adopt administrative rules for this new method. The use of different equalization methods for one jurisdiction and not the

same method for all jurisdictions effectively defeats the purpose of equalization. However, the burden is on the Sweeneys to prove the subject property's correct value as of January 1, 2011. Although the Sweeneys did show the method was new and pointed out some of its flaws, they did not prove what the subject property's correct value was as January 1, 2011. Therefore, we affirm the assessment as determined by the Dubuque County Board of Review.

### ***Conclusions of Law***

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board 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). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But 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 that the assessed value is correct. § 441.37A(3)(a).

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. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). However, if property is classified agricultural, it is to be assessed and valued on its productivity and net earning capacity. § 441.21(1)(e).

Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the

productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Manual*, and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. The Sweeneys' parcel carries an agricultural classification, which requires that it be valued using the prescribed productivity formula. See Iowa Admin. Code r. 701-71.3, 701-71.12.

To prove equity, 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*, 257 Iowa 575, 133 N.W.2d 709 (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.”

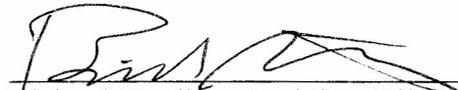
*Id.* at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* at 579-80. The *Maxwell* test may have limited applicability now that 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. The Sweeneys did not prove that the assessor applied his new assessing method in a non-uniform manner or that the assessment was otherwise inequitable. The Sweeneys did not establish inequity in the assessment under *Eagle Foods* or *Maxwell*.

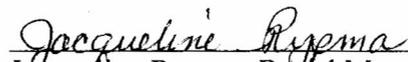
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence 1) that the assessment is excessive and 2)

of the property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Sweeneys did not establish the correct value of the subject property. Aside from asking that the subject property's assessment be returned to the January 1, 2008, value, the Sweeneys provided no evidence that the 2008 value is also the correct value of the property as of January 1, 2011.

THE APPEAL BOARD ORDERS the assessment of the Anne M. Sweeney and Mary Clare Sweeney property located at 16281 Twelve Mile Road, Bernard, Iowa, as of January 1, 2011, set by the Dubuque County Board of Review, is affirmed.

Dated this 29 day of November, 2012.

  
Richard Stradley, Presiding Officer

  
Jacqueline Rypma, Board Member

  
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>11-29</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	