

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Elmer Weber,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-0915
Parcel No. 241/00993-820-094

On December 4, 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. Petitioner-Appellant Elmer Weber was self-represented. Assistant County Attorney Ralph Marasco, Jr., 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

Elmer Weber, is the owner of property located at 8812 Daybreak Road, Johnston, Iowa. The real estate was classified residential on the January 1, 2011, assessment and valued at \$241,900, representing \$62,500 in land value and \$179,400 in improvement value. Weber protested the assessment to the Polk County Board of Review on the grounds that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); that the property was assessed for more than authorized by law under section 441.37(1)(a)(2); and that there was an error in the assessment under section 441.37(1)(a)(4). Weber asserted the correct value was \$223,200. He also asserted the error in the assessment included a miscalculation of veneer measurements and as well as the land being over-assessed. He claimed the land was over-assessed

because his lot has a lower elevation than most lots in the area and runoff water affects his site.

Further, an easement on the back thirty feet of the property prevents changing the grade to alleviate runoff or to landscape.

The Board of Review granted the protest in part. It lowered the assessment to \$231,400, representing \$53,200 in land value and \$178,200 in improvement value. The record indicates the assessment was lowered by adjusting for an error on the veneer to reflect 296 square-feet of brick veneer and adjusting the land downward 15% to reflect drainage and easement issues across the rear portion of the property.

Weber then appealed to this Board reasserting his claims of inequity and over-assessment.

According to the property record card, the subject property is a one-story home built in 2009. It has 1633 square feet of above grade living area; a 1731 square-foot, unfinished basement; a 196 square-foot enclosed porch; a 122 square-foot open porch; and a 338 square-foot deck. It also has a 750 square-foot attached garage. It sits on a 0.344-acre site.

On his petition to the Board of Review, Weber stated he does not believe the grade¹ of his house is superior to the properties he listed as equity comparables, and asserts that his grade should be reduced to a 3-10. The subject property has a 3+00 grade (Good quality) compared to the three properties he considered comparable, which all have a 3-10 grade (Above Average to Good quality).

The properties Weber considered similar to his property were :

<u>Tax District/Parcel</u>	<u>Address</u>	<u>Assessment</u>	<u>Grade</u>
241/00993-820-055	7328 Dawn Drive	\$227,200	3-10
241/00993-820-095	8808 Daybreak Road	\$226,500	3-10
241/00993-820-078	7402 Moonlight Drive	\$216,500	3-10

He also notes that 7328 Dawn Drive and 8808 Daybreak Road have partially finished basements whereas his basement is unfinished.

¹ Grade is a term used by the assessor to describe the quality of an improvement. See *Iowa Real Property Appraisal Manual 2008*, Grading Section, pp. 3-1 – 3-28.

Weber also believes his land assessment should not be more than what he paid for it in April 2009, which was \$42,500. However, he did not offer any evidence to support his assertion that the price he paid for the subject site in 2009 is the market value of the site as the assessment date.

The Board of Review submitted an affidavit from Paul Humble, an appraiser in the Polk County Assessor's office. Humble explains that a number of considerations go into determining the grade of a property. The Assessor's office considers quality and quantity of construction, such as high quality materials and workmanship and the accumulation of extra building components; fenestration, which is the placement of doors and windows in a structure; and the shape of an improvement, which considers the complexity of the design, such as being a square or rectangle versus a design with multiple corners and offsets.

Humble notes the subject property has a high-pitch, hip-type roof compared the more simple gable roofs of the three properties Weber considered as comparable. Humble also pointed out the design of the subject property has the attached garage recessed from the rest of the home, compared to the other properties having their garages attached to the front portion of the house where it appears to be the dominant feature. Lastly, Humble believes the subject property has better "curb appeal" because the dominant feature is the front living area and not the garage.

Viewing the property record card for all three properties and the subject property, this Board agrees with Humble that the subject property has a superior exterior appeal and a higher level of fenestration. Additionally, looking at the sketches of all the properties, the subject's design is clearly more detailed and complex than the three properties Weber believes are comparable. We agree with Humble's assessment of the grade.

Regarding Weber's claim about the land's assessed value, Humble notes the Board of Review lowered the land's value by 15% to reflect drainage and easement issues.

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 (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 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(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). However, 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. § 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, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property shall be one hundred percent of its actual value. § 441.21(1)(a).

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*, 257 Iowa 575, 133 N.W.2d 709 (1965). 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 its 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).

Weber did not provide sufficient evidence to support an equity claim under either test. Additionally, he did not argue or provide any evidence that the assessor applied an assessing method in a non-uniform manner.

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 appellant has a two-fold burden. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). First, the appellant must show that the assessment is excessive. Iowa Code § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. Second, the appellant must provide evidence of the property's correct value. *Boekeloo*, 529 N.W.2d at 276-77.

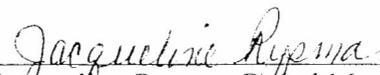
Weber has not produced evidence of the subject property's land value, or total value, as of January 1, 2011. Therefore, we determine the property's assessed value as of January 1, 2011, is \$231,400, representing \$53,200 in land value and \$178,200 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment as determined by the Polk County Board of Review be affirmed.

Dated this 3 day of January 2013.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member

Copies to:
Elmer Weber
8812 Daybreak Road
Johnston, Iowa 50131
APPELLANTS

Ralph Marasco, Jr.
111 Court Avenue
Room 340
Des Moines, Iowa 50309
ATTORNEY FOR APPELLEE

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>1-3</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 type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>Ralph Marasco, Jr.</i></u>