

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Brett A. Bosworth,**  
Petitioner-Appellant,

v.

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-77-0919**  
**Parcel No. 320/02262-021-000**

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On January 15, 2013, 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, Brett A. Bosworth, was self-represented. Assistant County Attorney David Hibbard 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*

Brett Bosworth is the owner of property located at 1690 Plum Thicket Lane, West Des Moines, Iowa. The real estate was classified residential on the January 1, 2011, assessment and valued at \$642,600, representing \$122,200 in land value and \$520,400 in improvement value. Bosworth protested the assessment to the Polk County Board of Review on the ground the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1). The Board of Review denied the protest.

Bosworth then appealed to this Board re-asserting his claim and contends the correct value of the subject property is \$528,700, allocated \$115,000 to land and \$413,700 to the improvements.

According to the property record card, the subject property is a two-story, single-family home built in 2002. It has 3586 square feet of above-grade living area and a full basement with 1220 square feet of living-quarter quality finish. Additional features include a 736 square-foot, attached garage; a 426 square-foot deck; and a 509 square-foot patio. It has a 1+10 (excellent quality) grade, is in normal condition, and sits on a 0.452-acre site.

On his petition to the Board of Review, Bosworth provided the addresses of four properties in the subject's Glen Oaks subdivision that he considered similar to the property. These properties are located at 1770 Burr Oaks Drive, 5404 Plum Thicket Mews, 5401 Plum Thicket Mews, and 1707 Glen Oaks Drive. At hearing, he provided a list of thirteen<sup>1</sup> comparable properties. This list included 1707 Glen Oaks Drive and 5401 Plum Thicket Mews that he had provided at the Board of Review.

In an effort to ensure he was selecting similar properties, he based his selection on the following criteria:

- two-story homes with a golf-course view
- four or more bedrooms
- walk-out basements with 1000 square feet or more of basement finish
- between 4430 square feet and 6387 square feet of total living area
- partial brick exteriors (one is full brick)
- located within Glen Oaks
- similar age to the subject within a few years.

He included a spreadsheet of all of the properties and considered calculations using both a mean and median for different factors. The following is a replication of his spreadsheet.

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<sup>1</sup> Bosworth's spreadsheet numbers the properties 1 through 16. However, he skipped numbers 5, 12, and 14.

	Address	GLA	Fin Bsmt	Total Finish	2012 AV	Total Fin/SF	GLA/SF
Subject	1690 Plum Thicket Ln	3586	1220	4806	\$642,600	\$133.71	\$179.20
Comp 1	5522 Beechwood Terrace	4239	1700	5939	\$606,200	\$102.07	\$143.01
Comp 2	5535 Beechwood Terrace	3379	1335	4714	\$566,100	\$120.09	\$167.53
Comp 3	1707 Glen Oaks Dr	3650	1300	4950	\$612,900	\$123.82	\$167.92
Comp 4	1823 Glen Oaks Dr	3330	1200	4530	\$594,000	\$131.13	\$178.38
Comp 5	1420 Tulip Tree Ln	4153	1900	6053	\$731,500	\$120.85	\$176.14
Comp 6	1456 Tulip Tree Ln	3505	1750	5255	\$677,100	\$128.85	\$193.18
Comp 7	1102 Burr Oaks	3098	1200	4298	\$554,100	\$128.92	\$178.86
Comp 8	1129 Burr Oaks	4387	1400	5787	\$731,500	\$126.40	\$166.74
Comp 9	1150 Burr Oaks	4575	1600	6175	\$657,800	\$106.53	\$143.78
Comp 10	1618 Plum Thicket	4590	1100	5690	\$662,900	\$116.50	\$144.42
Comp 11	1710 Plum Thicket	3242	1400	4642	\$590,900	\$127.29	\$182.26
Comp 12	1623 Plum Thicket	3130	1910	5040	\$544,900	\$108.12	\$174.09
Comp 13	5401 Plum Mews	4447	1940	6387	\$599,800	\$93.91	\$134.88
				Mean <sup>2</sup>	\$625,362	\$118.04	\$165.48
				Median	\$606,200	\$120.85	\$167.92

Using the comparables' 2012 assessed values, Bosworth then takes the mean/median per square foot of the total finished area and the above grade finish and applies it to the subject property. Further, he provides a series of calculations and ultimately arrives at a recommendation for a total reduction of \$56,591 to his property and a requested assessed value of \$585,905, or \$121.91 per-square-foot.

We find Bosworth's method in determining his requested assessed value and this evidence largely irrelevant to an equity claim. To support an equity claim under *Maxwell v. Shivers*, a taxpayer has a significant evidentiary burden. 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). In effect, the taxpayer must provide evidence of the market values and assessed values of comparable properties and the subject property. *Id.* From there, the taxpayer must develop a sale-ratio analysis to determine if the subject property is assessed higher proportionally to its market value than the comparable properties. *Id.* Here, this would require a comparison of a prior year sale price (in this case 2010) or market value to the current year (2011) assessment. First, Bosworth used the 2012 assessed values for

<sup>2</sup> Mean and median calculation are based on comparable properties only and do not include the subject property.

all of the properties.<sup>3</sup> Secondly, none of the properties had sold and Bosworth did not establish market values for any of the properties. For these reasons, we give this analysis no consideration for Bosworth's equity claim.

Bosworth submitted the property record card for 1140 Tulip Tree Lane. He testified the property recently sold for \$485,000. The property record card shows a deed was recorded on June 18, 2012, well after the relevant January 1, 2011, assessment date, but does not verify the sale price. Bosworth provided no additional information about the sales transaction. The current assessed value of the property is \$565,300. Based on the difference in sale price and assessed value of this property, Bosworth argues he would be unlikely to be able to sell his property for its assessed value. In his testimony, Bosworth expressed a lack of knowledge regarding this property's characteristics, particularly the degree of basement finish. Based on this minimal evidence, we cannot conclude these properties are sufficiently comparable to be utilized in a sale-ratio analysis.

When questioned if he had a recent appraisal on his property, Bosworth stated that he had and that it had appraised for something "more than \$700,000." However, he did not believe this was relevant because the appraisal was completed for mortgage financing purposes. We again note that Bosworth did not make an over-assessment claim before this Board. However, the market value of all the properties, including the subject property, would need to be established to properly consider an equity claim.

The Board of Review provided a comparison of each of Bosworth's thirteen properties to the subject property, making cost adjustments based for the differences. This is not an equity analysis and we give it no consideration. The Board of Review also provided the cost analysis for each of the thirteen properties but again, does not develop a sale-ratio analysis for an equity claim.

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<sup>3</sup> Iowa assessments are biennial and while we could be assume the 2012 assessments reported are the actual 2011 assessment, the record is not clear. Even with the assumption that the 2011/2012 assessments are the same for each property provided, none of the properties are sales and no market value was established for any of the properties to develop a sale ratio analysis.

The Board of Review included a list of properties in the subject's subdivision. This list included three, two-story sales that occurred in 2009 or 2010. Comparing these to what appears to be the 2011 assessments; these sales indicate a sale ratio of 0.989 to 1.004. From this minimal evidence it appears properties in this area are assessed at or near market value.

### ***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).

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*, 133 N.W.2d 709 (Iowa 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.* 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.

Bosworth offered no evidence that the assessor applied a different methodology to his property than to other similarly situated properties. Furthermore, while Bosworth offered a total of thirteen comparable properties for an equity claim, he did not establish the market value of these properties, through sales data or other means. Therefore, he did not produce sufficient evidence from which this Board can complete a sale-ratio analysis for an equity claim. Bosworth did not prove by a preponderance of the evidence that his property is inequitably assessed.

Overall Bosworth’s evidence was more suited to a claim the property was over-assessed under Iowa Code section 441.37(1)(a)(2). This Board cannot consider his evidence as it relates to an over-assessment claim, however, because he did not make that claim to the Board of Review.

§ 441.37A(1)(b) (stating that “[n]o new grounds in addition to those set out in the protest to the local board of review” can be pleaded.).

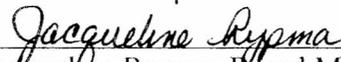
Therefore, we determine the property’s assessed value as of January 1, 2011, is \$642,600, allocated \$122,200 to the land and \$520,400 to the improvements.

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

Dated this 12 day of February 2013.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member



Stewart Iverson, Board Chair

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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>2-12</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	