

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

John R. Harvey,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1122
Parcel No. 030/00937-010-000

On November 2, 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 John R. Harvey was self-represented. Assistant County Attorney David Hibbard is counsel for the Board of Review and represented it at hearing. Both parties submitted documentary evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

John R. Harvey, owner of property located at 1102 21st Street, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. According to the property record card, the subject property is a two-story, frame dwelling having 1792 total square feet of living area, a full basement with 896 square feet of finish, and a 457 square-foot unfinished attic. The property is also improved by 256 square-foot open porch and an 80 square-foot enclosed porch. The dwelling was built in 1900, is in below-normal condition, and has a 4-05 (average) quality construction grade. It is situated on a 0.127-acre site.

The real estate was classified as residential on the initial assessment of January 1, 2011, and valued at \$55,700, representing \$8800 in land value and \$46,900 in dwelling value.

Harvey protested to the 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), there was an error in the assessment section 441.37(1)(a)(4), and there had been a downward change in value since the last reassessment under section 441.37(1)(b) and its reference to section 441.35(2). The error ground essentially claimed over-assessment. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, No. 05-1422, 2006 WL 1750300 (Iowa Ct. App. 2006) (unpublished). We only consider the grounds of over-assessment and equity.

The Board of Review denied the protest.

Harvey listed one property, 1106 21st Street, for equity comparison. The property is located next to the subject property and sold for \$37,000 in September 2010. While this property is similar in age, size, condition, and style to the subject property, the sale was the result of a deed in lieu of foreclosure and purchased from the lender. Because this is a distress sale and not a normal sales transaction, we do not find it indicative of the property's fair market value.

The certified record included three 2010 normal arm's length sales of two-story homes. The sale prices were \$55,000 to \$105,000, or \$40.92 to \$57.31 per-square foot. Cost adjustments were made to the comparable properties for differences in living area, quality, basement area, air conditioning, garage, and condition. Adjusted sales prices were \$32.43 to \$44.07 per-square foot. The analysis concluded an indicated value for Harvey's house of \$59,260. The subject property is assessed at \$31.08 per square foot, at a lower rate than the unadjusted and adjusted sale price ranges. We give this limited consideration because the adjustments are not market-based.

Harvey points to a news report showing that home values in Des Moines dropped by four percent to support his claims. The report appears to be from the Des Moines Register with information collected from the Polk County Assessor for 2009 and 2010. The Board of Review submitted an

affidavit from Amy Thorne, Residential Deputy Assessor for the Polk County Assessor, which indicates that while property values in Des Moines fell by four percent from 2009 to 2011, values in the subject property's neighborhood (DM95) actually increased by 5.3%. Thorne's affidavit states the subject property's assessed value increase of 6.3% is attributable partially to the neighborhood increase as well as the application of the new 2008 Iowa Department of Revenue Assessment Manual.

Harvey also asserts that Board of Review member Dee Dee Steger's properties have received property assessment reductions and preferential treatment. The evidence indicates that three properties partially owned by Steger received assessment reductions from the Board of Review in 2007. Beyond this assertion, however, Harvey provides no further evidence of preferential treatment.

We note the only comparable Harvey provided was a distress sale and no adjustments were made for sale conditions to remove the distorting effects of the abnormal sale. Therefore, the sale price is not a reliable indication of its market value. We find Harvey's evidence of market value does not support his claim of over-assessment.

Further, since this same property was the only comparable listed for equity comparison, the data was insufficient for an equity analysis. Also, we note this property is assessed for \$62,100, even higher than the subject property's \$55,700 assessed value. This data does not support Harvey's claim of inequitable assessment.

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). 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. § 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 also 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 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.* 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.

Here, Harvey presented no evidence showing that the assessor applied assessment methodology non-uniformly. He also did not show that the subject property is assessed higher proportionately to its market value. In fact, aside from a distressed sale, Harvey provided no evidence of the subject

property's market value, such as an appraisal. Harvey did not prove by a preponderance of the evidence that his property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests.

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) the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Harvey relied upon the sale of the house next door to him as an indication of his property's fair market value. Section 441.21(1)(b) provides that a sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for through adjustments. Because the comparable property Harvey listed was sold as a distress sale and this distorting factor was not clearly accounted for, we find it unreliable as a market value indicator for both the comparable property and the subject property. Harvey presented no further evidence of the subject property's market value.

Further, although property values in the entirety of Des Moines fell by four percent, values in the subject property's neighborhood increased by 5.3%. The neighborhood increase, along with application of the 2008 IDR Assessment Manual, indicates that the subject property's assessment increase of 6.3% is not excessive. Viewing the record as a whole, Harvey failed to prove by a preponderance of the evidence his property is assessed for more than authorized by law.

Therefore, we affirm Harvey's property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2011, is \$55,700, representing \$8800 in land value and \$46,900 in dwelling value.

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

Dated this 15 day of November 2012.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Chair

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>11-15</u> , 201 <u>2</u>	
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>[Signature]</u>