

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

---

**Sheila Kistenmacher,**  
Petitioner-Appellant,

**v.**

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

**ORDER**

**Docket No. 12-103-0316**  
**Parcel No. E011-10**

---

On September 6, 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 Sheila Kistenmacher was self-represented. City Attorney Tom Warner is counsel for the Board of Review, and he represented it at hearing by telephone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Sheila Kistenmacher, owner of property located at 2569 Middle Road, Davenport, Iowa, appeals from the City of Davenport Board of Review decision reassessing her property. According to the property record card, the subject property consists of a two-story, frame dwelling with 1646 total square feet of living area. It has a full, unfinished basement with a 200 square-foot, garage stall. The property is also improved by a 242 square-foot, enclosed porch and a 96 square-foot, open porch. The improvements were built in 1920. The dwelling is on a 0.363-acre site.

The real estate was classified residential for the January 1, 2012 assessment and valued at \$186,670, representing \$76,800 in land value and \$109,870 in improvement value. There was no change in value from the previous year.

Kistenmacher protested to the Board of Review on the ground that there has been a downward change in value since the last reassessment under Iowa Code sections 441.37(1)(b) and 441.35(3). The Board of Review denied the protest.

Kistenmacher then filed her appeal with this Board on the same ground. At hearing, she noted she now claims \$109,000 is the actual value and fair assessment of the subject property. She arrives at this value based on the \$119,000 appraised value less approximately \$10,000 for necessary repairs.

Kistenmacher purchased the subject property from a lender in October 2011 for \$89,000. The property previously sold at a sheriff sale in March 2011 for \$113,244. Kistenmacher reports the March price included unpaid utilities. This evidence indicates her purchase was not a normal arm's-length transaction and the sale price may not have been a valid indication of the property's fair market value at the time of Kistenmacher's purchase.

Kistenmacher offered partial property record cards of four neighboring properties, two of which sold in 2011-2012. This information is not useful to support her downward change claim. Likewise, her land value comparisons were not relevant to her claim. For her benefit, however, we note that Kistenmacher calculated adjacent land assessments on a per-square-foot basis to show her property was assessed higher than neighboring lots. The comparison to neighboring properties is misplaced because her property's record card indicates the lot was assessed by a different method, multiplying a unit value by the effective-front-foot of the property. Effective-front-foot is calculated by multiplying the actual frontage by the lot's depth factor. Therefore, her effective front foot is as follows:  $118 \times 0.97 = 144.45$  EFF (*See Exhibit 5*). The other properties ranged from 64 feet to 68 feet of road frontage, while Kistenmacher has 118 feet of frontage. It is likely that her higher land value is due to the fact that her property has nearly twice the road frontage of the adjacent properties.

Spencer Zimmerman of Bi-State Appraisal Services, Bettendorf, Iowa, completed an appraisal of the subject property. In his opinion, the property's fair market value was \$119,000 as of November

12, 2012, which we find would be indicative of a value for the January 1, 2013, assessment. He describes McClellan Heights as a neighborhood of roughly 400 homes built between 1905 and 1940 with winding streets and irregular lots following topography.

Zimmerman completed the report based on a sales approach using seven comparable properties that sold in 2012 from \$82,200 to \$136,000, or \$54.65 per square foot to \$113.56 per square foot. He adjusted for differences between the subject property and the comparable properties for sale/financing concessions, gross living area, condition, basement finish, HVAC, and other amenities. He noted Comparable #6, at 2513 East Street, sold as a sheriff sale. It sold again in March 2012 as a real estate owned (REO) sale, which was not an arms' length transaction. Zimmerman did make a positive adjustment of \$30,000 for this sale condition. Adjusted sales prices ranged from \$113,360 to \$126,938, or \$61.36 per-square foot to \$111.74 per-square foot with a median of \$78.53 per-square foot. The subject property is assessed at \$113.41 per-square foot, which is above the upper end of this range. It was sold for \$72.30 per-square foot, which is within and near the lower end of the range; however, as previously noted, its sale was not considered normal because it was from a lender.

The appraiser reports the property was initially listed for \$128,000 in May 2011. It was subsequently reduced to \$121,500, then to \$99,900, and finally to \$94,900, before it sold in October 2011, for \$89,000. He notes the lot slopes down toward the ravine in the back of the property and that erosion was evident at the back of the lot, in the landscaping, and beneath the parking slab. Zimmerman observed signs of progressive erosion that, if not addressed, could undermine the stability of the foundation. In the interior, Zimmerman reported no updating in fifteen years and evidence of deferred maintenance. His appraisal was subject to repairs or alterations of the deficiencies and adverse conditions, including handrail replacement, flooring installation, and remedy of the erosion problem. He did not estimate a cost to cure these deficiencies.

Kistenmacher provided evidence of the subject property's value in late 2012, which could possibly support a 2013 valuation in a claim of over-assessment as of January 1, 2013. She presented no evidence, however, of its January 1, 2011, and January 1, 2012, values, which are necessary to show a change in value in an interim assessment year. Therefore, the preponderance of the evidence does not demonstrate there has been a downward change in their property's value since the last reassessment. We recommend the assessor review this property and its assessment given the evidence suggesting it may be over-assessed.

### *Conclusions 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. 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

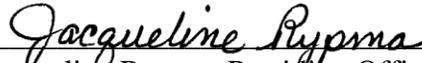
sales are not available to determine market value then “other factors,” such as income and/or cost, may be considered. § 441.21(2). The property’s assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

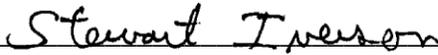
In a non-reassessment or “interim” year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). The last unnumbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward trend in value. For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451. While the record strongly suggests the subject property could be over-assessed as of January 1, 2013, it lacks evidence of the January 1, 2011 and January 1, 2012 values, and falls short of the proof necessary to prove the interim year ground of change in value.

We find a preponderance of the evidence does not prove there has been a change in the value of Kistenmacher’s property since the last reassessment.

THE APPEAL BOARD ORDERS that the January 1, 2012, assessment as determined by the Davenport City Board of Review is affirmed.

Dated this 17th day of October, 2013.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

Copies to:  
Sheila Kistenmacher  
985 Lincoln Road, Suite 221  
Bettendorf, IA 50306  
APPELLANT

Tom Warner  
Davenport City Attorney  
226 W 4th Street, Room 303  
Davenport, IA 52801  
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>October 17, 2013</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	