

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Alan Mengler,
Petitioner-Appellant,

v.

Linn County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-57-0512
Parcel No. 12194-76003-00000

On December 27, 2012, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Alan Mengler, was self-represented and requested his appeal proceed without a hearing. Assistant County Attorney Gary Jarvis represented the Board of Review. The Appeal Board now, having examined the entire record and being fully advised, finds:

Findings of Fact

Alan Mengler, is the owner of property located at 4633 Shellsburg Road, Palo, Iowa. The real estate was classified residential on the January 1, 2012, assessment. It was valued at \$193,160, representing \$37,160 in land value and \$156,000 in improvement value.¹ Mengler protested the assessment to the Linn 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), and that the property was assessed for more than authorized by law under section 441.37(1)(a)(2). Mengler also asserted there was an error in the assessment under section 441.37(1)(a)(4); however, his claim

¹ Although 2012 would typically be an interim assessment year, in Mengler's case the assessor revalued and changed the 2012 value from what it was the previous year. As a result, all grounds of appeal were available to Mengler. *Eagle Food Centers, Inc. v. Bd. of Review of City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993).

essentially reasserted his belief that the subject property was over-assessed. Mengler believed the correct value was \$170,000.

The Board of Review denied the protest.

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

According to the property record card, Mengler's property is a two-story, frame home built in 1900. It has 1536 square feet of above grade living area; a full, unfinished basement; and a 112-square-foot open porch. It also has five outbuildings including a 1008-square-foot garage built in 2007; a 672-square-foot garage built in 1996; a 720-square-foot garage built in 1965; a 220-square-foot carport built in 2010; and a 4050-square-foot steel utility building, with a 1782-square-foot, attached lean-to, built in 2011. There is also a 300-square-foot concrete patio. The subject site is 1.30-acres.

On Mengler's Board of Review petition, he listed one property for equity comparison. He did not supplement this claim with additional properties. Iowa law requires more than one comparable property to support an equity claim. Because insufficient evidence was presented for this claim, we will not consider it.

Mengler also submitted a market value appraisal of his property to support his claim that the property is over-assessed. Kevin Hunter of Hunter Appraisal Services, Cedar Rapids, Iowa, completed the appraisal with an effective date of February 13, 2012. While this date approximately six weeks after the assessment date, Hunter developed the sales comparison approach and considered three sales from 2011, prior to the assessment date. Hunter also considered two active listings in the appraisal. He concluded an opinion of value of \$170,000.

Hunter considered three sales of acreage properties: two were located in Palo, like the subject, and one in Center Point, approximately eleven miles north.² The sales occurred between July and December 2011, and sales prices ranged from \$146,950 to \$227,500. After adjustments for

² He also considered two active listings; however, because they were not closed sales and were active after the assessment date, we will do not consider them useful in the market value analysis.

differences, the sales have an indicated range of value of roughly \$152,000 to \$191,000. From within this range, Hunter concludes an opinion of value of \$170,000 for the subject property.

Hunter does not explain if he gave any consideration to the cost approach; however, he does state he developed it at the lender's request. Based this Board's experience, given the subject's age, we believe it is less reliable than the sales approach and give it limited consideration.

The Board of Review, in a written explanation of its evidence, takes exception with Hunter's appraisal. First, it notes the appraisal was intended for mortgage financing rather than ad valorem purposes. Second, it points out the appraisal has an effective date of February 13, 2012, which is after the assessment date. We find that regardless of the intended use of the appraisal, the report opines a fee simple, *fair market value* opinion, which we consider the relevant consideration. Additionally, all of the comparable sales used in the appraisal precede the assessment date, and the effective date of the appraisal is only approximately six weeks after that date. These facts, considered together, render the Board of Review's concern unfounded.

The Board of Review also takes exception with the sales considered by Hunter. It claims Comparable 1, located at 1956 Heck Road, was a transfer to/by a government/exempt organization, and therefore, it does not consider it an arm's-length transaction. The Board of Review does not provide the property record card for this property, and we are unable to confirm its assertion. While a sale from or to an exempt organization may not be considered an arm's-length transaction for equalization,³ it is not definitively abnormal under Iowa Code section 441.21(1)(b). We would agree with the Board of Review that in some instances this type of sale may distort market value. In this case, while the sale of Comparable 1 sets the lower end of the range for sale-price per square foot and adjusted-price per square foot, Hunter's reconciled value is well above the adjusted price per square

³ The Iowa Department of Revenue has a list of abnormal sales codes for equalization purposes; this list, while not adopted by administrative rule, provides guidance on what sales the Department considers when conducting a sales/ratio analysis for equalization purposes. See IOWA DEPARTMENT OF REVENUE, www.iowa.gov/tax/locgov/propequalroll.html.

foot of this comparable.⁴ We find, therefore, that even if Comparable 1's sale price was impacted by the sale condition as asserted by the Board of Review, Hunter's conclusion is reasonable based on all of the information in the appraisal.

The Board of Review also attempts to disqualify Hunter's Comparable 2 located at 7308 Railway Street. They assert this property is actually a one-and-a-half story home, whereas the subject property is a two-story design. Because of this, the Board does not believe it is comparable. We disagree. The property is comparable in size having 1686 square-feet of living area compared to the subject's living area of 1536 square feet; a 150 square foot difference, for which Hunter adjusted. Further, we do not believe the market would recognize a difference between the different styles in 100-year-old, rural properties.

The Board also comments in Exhibit C that the "owner provided three additional sales that included sales in Benton and Iowa counties." These sales are presumably the remaining sale Comparable 3 and the listings, Comparables 4 and 5. Regarding the location of these, we note that sales do not have to be located within the assessing jurisdiction under a claim of over-assessment.

The Board of Review admits that very few sales are available that are similar to the subject property based on land size, construction type, and number of detached structures. The Board of Review provided three properties it considered in Exhibit 3 listed as "Office Comps." The properties sold between January 2011 and April 2012, and have sales ratios between 72.97% to 108.70%, with a median ratio of 99.75%. Two of the properties, 3404 Springville Road and 4097 C Avenue Extension, are significantly larger sites. The Springville Road site is 4.26 acres and C Avenue's site is 5 acres compared to the subject site size of 1.3 acres. Additionally, both of these properties have larger homes than the subject property and no apparent adjustments were made for these differences. For these

⁴ The subject property's reconciled price per square foot is \$110.68, as compared to Comparable 1's sale price per square foot of \$85.

reasons, we do not find them sufficiently comparable. The property located at 4200 Rowley Road offers similar overall site and living area size to the subject, and indicates a sale ratio of 108.70%.

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. 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. Mengler offered only one comparable property for an equity claim. The Iowa Supreme Court has interpreted “representative number of comparable properties” to be more than one property. *Maxwell*, 257 Iowa at 581, 133 N.W.2d at 712. This “statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board.” *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992). Because Mengler provided only one equity comparable, he failed to prove his inequity claim.

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 taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Mengler provided an appraisal that concludes the subject property’s value is

\$170,000. Despite the appraisal having an effective date of approximately six weeks after the assessment date, all of the comparable sales occurred prior to the assessment date. Further, nothing in the record suggests market conditions changed during that period. For these reasons, a preponderance of the evidence shows the property was over-assessed.

THE APPEAL BOARD ORDERS the assessment of Alan Mengler's property located at 4633 Shellsburg Road, Palo, Iowa, is modified to a total value of \$170,000, allocated as \$37,160 in land value and \$132,840 in improvement value as of January 1, 2012. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Linn County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 23 day of January, 2013.

Karen Oberman
Karen Oberman, Presiding Officer

Jacqueline Rypma
Jacqueline Rypma, Board Member

Stewart Iverson
Stewart Iverson, Board Chair

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AUDITOR

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>1-23</u> , 2013	
By:	<input 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>Joel D. Miller</u>