

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Brian Mowrey,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-77-0493
Parcel No. 312/00441-000-000

On July 9, 2013, 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 Brian Mowrey was self-represented and did not request a hearing. Assistant County Attorney David Hibbard represented the Board of Review. The Appeal Board now having examined the entire record and being fully advised, finds:

Findings of Fact

Brian Mowrey is the owner of property located at 4013 67th Street, Urbandale, Iowa. The real estate was classified residential on the January 1, 2012, assessment and valued at \$139,900, representing \$35,600 in land value and \$104,300 in improvement value. This was a change in value from the January 1, 2011, assessment.

Mowrey 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); the property was assessed for more than authorized by law under section 441.37(1)(a)(2), asserting the correct value was \$135,900; and that there was an error in the assessment

under section 441.37(1)(a)(4). Mowrey's error claim was that his property is a three-level split home, not a four-level split home. According to the Appraiser Analysis in the record, this error was corrected. Mowrey also claimed there had been a downward change in value since the last assessment under sections 441.37(1)(b) and 441.35(2); however, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we consider Mowrey's only claims to be that his property is inequitably assessed and over assessed.

The Board of Review denied the protest.

Mowrey then appealed to this Board reasserting his claims.

According to the property record card, Mowrey's property is a three-level-split, frame home built in 1964. It has 969 square feet of above-grade living area and a 475 square-foot basement with 312 square feet of finish. Additionally, it has a 576 square-foot, detached garage built in 1969; a 157 square-foot deck, and a 272 square-foot patio. The subject site is 0.206 acres.

Mowrey provided one property he considered as an equity comparable. According to the record, this property, located at 4128 64th Street, Urbandale, is a similar style having similar size, features, and overall quality. There are minimal differences in age and condition. The property is assessed for \$136,700. Mowrey did not, however, provide any evidence of the market value of this property to develop a sale ratio analysis. Additionally, more than one comparable property is necessary to success in an equity claim.

To support his over assessment claim, Mowrey submitted a written statement asserting that "housing values have clearly fallen in the last two years." However, he provides no evidence to support this statement, nor any evidence of the market value of his property.

The Board of Review submitted five comparable properties: three split-level properties like the subject; a one-story property; and a split-foyer property. All five properties are generally similar in

terms of their year built, size, amenities, and grades. The five properties have sales prices between \$139,900 and \$156,500; or from \$133.49 to \$166.67 per-square foot, with a median of \$149.43 per-square foot. They are assessed from \$125,300 to \$147,100. The subject property is assessed at \$135,900, which is within this range; and for \$144.38 per-square foot, which is also well within the range of the comparable sales. The indicated sales ratios range from 0.90 to 1.04, with a median sales ratio of 0.94. This indicates that on a whole, these assessments tend to be indicative of the properties' fair market values.

We find the preponderance of the evidence does not support Mowrey's claims as of January 1, 2012.

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).

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.*, 497 N.W.2d at 862. However, where the assessor has reassessed the property, all grounds for protest typically available in a reassessment year may be protested. *Id.* In this case, the assessor revalued Mowrey's property.

To prove inequity, a taxpayer must provide more than one comparable property. The Iowa Supreme Court has interpreted "representative number of comparable properties" to be more than one property. *Maxwell v. Shiver*, 257 Iowa 575, 581, 133 N.W.2d 709, 712 (1965). 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). Furthermore, the word "shall" as used in the statute makes the listing of comparable properties mandatory as failing to do so would "directly frustrate[] the sole function of the requirement, which is to enable the board to make a preliminary determination on the matter of equitability of assessment." *Id.*

If a taxpayer provides a representative number of comparables, they may prove inequity by showing 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.

In this case, to prevail on an equity claim, Mowery needed to provide more than one equity comparable and then compare prior year sales prices (in this case 2011) to the current year (2012) assessments, or show different assessing methods were applied to similar properties. Mowrey’s evidence only included one equity comparable and also failed to meet the evidentiary tests of *Maxwell* or *Eagle Food*. Therefore, his equity claim fails.

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). Mowrey failed to prove his assessment was excessive or to provide evidence of the fair market value of his property.

THE APPEAL BOARD ORDERS the assessment of Brian Mowrey's property located at 4013 67th Street, Urbandale, Iowa, of \$139,900 as of January 1, 2012, as set by the Polk County Board of Review is affirmed.

Dated this 31st day of July, 2013.

Stewart Iverson

Stewart Iverson, Presiding Officer

Jacqueline Rypma

Jacqueline Rypma, Board Member

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>July 31, 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	<i>Jean Cooper</i>