

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Tommie R. Garton,**  
Appellant,

v.

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

**ORDER**

**Docket No. 13-103-0492**  
**Parcel No. Y0903-14A**

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On January 14, 2014, the above-captioned appeal came on for telephone hearing 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. Appellant Tommie R. Garton was self-represented and submitted evidence in support of his appeal. The Board of Review designated City Attorney Tom Warner as its legal representative and he represented it at hearing. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Tommie R. Garton, owner of property located at 4225 East 58th Street, Davenport, Iowa, appeals from the City of Davenport Board of Review decision reassessing his property. According to the property record card, the subject property consists of a one-story, single-family duplex villa having 2238 total square feet of living area, and a full basement with 1029 square-feet of finish. It also has a 704 square-foot attached garage, a deck, a patio, and an open porch. The improvements were built in 2005. The dwelling has a high quality grade (2+00) and is listed in normal condition. Its site is 0.29-acres. The improvements are located in the Villas at Crow Valley subdivision.

The real estate was classified residential on the initial assessment of January 1, 2013, and valued at \$342,830, representing \$53,780 in land value and \$289,050 in improvement value. Garton

protested to the Board of Review on the grounds that the property assessment was not equitable compared to like properties in the taxing jurisdiction 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). The Board of Review granted the protest, in part, and reduced the assessment to \$340,000, allocated \$53,780 to land value and \$286,220 to improvement value.

Garton then filed his appeal with this Board and urged the same grounds. He claims \$325,689, representing \$53,780 in land value and \$271,909 in improvement value is the actual value and fair assessment of the subject property.

Garton purchased his dwelling in September 2009 for \$314,000. He felt the property was over-assessed since that time. In 2013, his attached neighbor's assessment (4227 East 58th Street) was reduced 9% to \$338,600, while his was increased by 3.7% to \$342,830. In his opinion, there is nothing about his house that is nicer than the neighboring property. In fact, he points out the neighboring property has been significantly upgraded with a sprinkler system, tile showers, granite countertops, built-ins, and a three-season porch, yet its assessment is lower. Garton also stated he has an unusually positioned, double-faced fireplace that he believes reduces his value. We note his property record card lists three fireplaces.

On his Board of Review protest form, Garton identified five properties in the same subdivision on East 58th and East 59th Street he felt were comparable to his property. He listed the assessed value and location of each. He reports the units have the same basic footprint and lot size. The higher value units have extras such as hardwood, tile, upgraded appliances, three-season porches, and larger basements or garages.

Address	Exhibit	TSFLA	Base Fin	Fireplace	3-Season	2013 AV
Subject	10	2238	1029	3	No	\$ 340,000
4214 East 59th	5	2230	570	1	No	\$ 307,470
4210 East 59th	6	2210	800	1	Yes	\$ 322,350
4213 East 59th	7	2230	1000	2	No	\$ 322,970
4221 East 59th	8	2190	1209	1	Yes	\$ 325,460
4227 East 58th	9	2254	1062	2	Yes	\$ 338,600

Garton adjusted the assessed values of these comparables based on square feet of living area and builder's costs including: \$26 per-square-foot for basement finish, \$10,000 for three-season porch, and \$900 for a fireplace. He subtracted the estimated value for each of these features to bring all properties to their base value levels. Using this method, Garton estimated his assessment should be \$325,689. Garton did not provide any other evidence of the subject's fair market value, such as an appraisal or recent sale of the subject.

We note that two of his comparable properties were recent sales. 4221 East 59th sold in December 2012 for \$275,000, while its 2013 assessed value is \$325,460; an assessment/sales ratio of 118%. 4227 East 58th sold in October 2011 for \$323,750, while its 2013 assessed value is \$338,600; an assessment/sales ratio of 115%. To show inequity, detailed information to determine whether the properties are comparable to the subject property, their assessments, and their 2012 sales price must be provided to develop an assessment/sales ratio. An assessment/sales ratio less than 100% suggests properties are under-assessed. A ratio over 100% suggests a property is over-assessed. The ratios of two of Garton's comparable properties suggest those properties may be over-assessed. However, Garton did not provide evidence of the subject's actual value to develop an assessment/sales ratio for comparison. Additionally, we note the result is the opposite using the Board of Review sales listed below, which have assessment/sales ratios of 96% and 97%.

Joe Vargas, an appraiser in the assessor's office, testified for the Board of Review. He reports a citywide revaluation was completed for 2013. Vargas offered three sales of townhomes he believed were comparable to Garton's property.

Address	TSFLA	Sale Date	Sale Price	\$PSF	2013 AV	AV PSF
Subject	2238	N/A	N/A	N/A	\$ 340,000	\$151.92
4207 East 59th	2250	5/15/2012	Not listed		\$ 354,530	\$157.57
4220 East 59th	2318	4/14/2011	\$380,000	\$163.93	\$ 364,540	\$157.27
4204 East 58th	2208	11/08/2012	\$383,000	\$173.46	\$ 371,870	\$168.42

Garton's property is assessed less per-square-foot (\$151.92) than the sale prices of the comparable properties (\$163.93 & \$173.46). We also note his assessment is less per-square-foot than the other townhomes' assessments (\$157.27, \$157.57 & \$168.42). This data does not support his claims of inequitable assessment or over-assessment. However, we find it of concern that the townhouse attached to the subject at 4227 East 58th Street (Exhibits 9, 10 & 12), while similar to Garton's property, also has a three-season porch and is still assessed for less than his. (Exhibits 8, 10 & 12).

Garton's method is not a recognized and established technique of valuation. We note the record does not include the complete property record card for the subject or any of the comparables and therefore we cannot confirm the specific value applied to individual elements. However, the *Iowa Real Property Appraisal Manual* values fireplaces for more than \$900 and Garton's double-sided fireplace may be valued in excess of \$5000. *Manual*, 7-76. Additionally, Garton's \$10,000 three-season porch adjustment, or approximately \$69 per-square-foot as applied to 4227 East 58th, differs from the value applied to that element by the Assessor's office. Vargas testified 4227 East 58th's three-season porch is valued at approximately \$5500, or \$38.19 per-square-foot. Compared to the *Manual*, Garton's method appears to under-adjust for fireplace improvements and over-adjust for the three-season porch. While there is insufficient evidence to determine if Garton's adjustments or the

*Manual* adjustments reflect market actions, the differences likely contribute to the appearance of inequity and over-assessment as compared to 4227 East 58th. Nonetheless, the burden of proof is on Garton and considering the lack of evidence establishing the subject's fair market value using recognized appraisal methods and sales data, we find the preponderance of the evidence does not support Garton's claims.

However, in light of his testimony regarding the double-sided fireplace and other listing differences as well as his neighbor's lower property assessment, we recommend Garton request an inspection of his townhouse to determine whether the listing is accurate.

### ***Conclusions 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.”

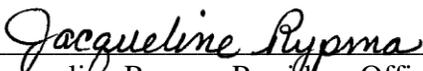
*Id.* at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

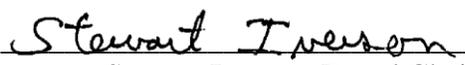
Garton provided five equity comparables. Two of the comparables recently sold, but an equity analysis typically compares prior year sales (2012 in this case) to the current year assessment (2013) to develop an assessment/sales ratio. Only one of the sales occurred in 2012 and more than one comparable is required to support an equity claim. Further, Garton did not establish his property’s actual value to complete the equity analysis contemplated by *Maxwell*. Ultimately, Garton 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), 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). Garton provided a list of similar properties but he did not submit any additional information, such as their complete property record cards, for this Board to determine if those properties are comparable to the subject. Although Garton adjusted for differences he identified using cost estimates, we are uncertain if the adjustments would be recognized in the market. Ultimately, Garton's evidence did not establish the fair market value of his property as of January 1, 2013. Therefore, we find a preponderance of the evidence does not prove his property is inequitably assessed or over-assessed.

THE APPEAL BOARD ORDERS that the January 1, 2013, assessment as determined by the City of Davenport Board of Review is affirmed.

Dated this 7th day of February, 2014.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

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