

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Kenneth Abel,
Appellant,

v.

Union County Board of Review,
Appellee.

ORDER

Docket No. 13-88-0008
Parcel No. 06010-000-475-00

On December 24, 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. Appellant Kenneth Abel was self-represented and requested his appeal proceed without a hearing. County Attorney Timothy Kenyon represents the Board of Review. The Appeal Board now, having examined the entire record, and being fully advised, finds:

Findings of Fact

Kenneth Abel is the owner of property located at 1868 205th Street, Creston, Iowa. The real estate is classified agricultural. The dwelling had an assessed value of \$100,230 as of January 1, 2013. Abel protested the assessment to the Union County Board of Review on the grounds that the assessment was not equitable compared to like properties in the taxing jurisdiction under Iowa Code section 441.37(1)(a)(1) and that there was a change in value since the last assessment under sections 441.37(1)(b) and 441.35(3). Abel listed three properties and their assessed value on the petition form.

The Board of Review denied the protest.

Abel protested the assessment to the Union County Board of Review on the grounds assessment was not equitable compared to like properties in the taxing jurisdiction under Iowa Code

section 441.37(1)(a)(1) and that there was a change in value since the last assessment under section 441.37(1)(b) and 441.37(1)(a)(2). The Board of Review denied the protest.

Abel then appealed to this Board reasserting his claims. Abel asserted the property's improvement value should be reduced by \$38,167. In a re-assessment year like 2013, a protest based on 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).

According to the property record card, the subject property is a one-story dwelling built in 1979. The dwelling has 1520 square-feet of living area; a full basement with 675 square feet of finish; a concrete stoop; a deck; and a 576 square-foot, attached garage. The property is listed in normal condition with an average quality grade (4+00). The improvements sit on 35.75 acres of agricultural land, which is separately assessed and not part of this appeal.

Abel only provided the addresses and assessed values of three properties he considered comparable for equity purposes. He provided no other information. Since he also failed to provide any evidence of those properties' fair market values, such as normal sale prices or appraised values, to complete an assessment/sales ratio, his inequity claim must fail.

Abel also claims his property's value has declined because of confined animal feeding operations (CAFOs) being constructed in the vicinity of his Creston home. In his opinion, the improvement value should be reduced by \$38,167 based on report completed by Hans R. Isakson, Ph.D., Department of Economics, University of Northern Iowa. The report, "Estimation of the Impact of the Effect of Confined Animal Feeding Operations on the Assessed Value of Selected Houses in Union County, Iowa," was completed May 14, 2013.

The report bases its conclusion on a previous analysis conducted by Isakson and Mark D. Ecker, Department of Mathematics, University of Northern Iowa titled, "An analysis of the impact of Swine CAFOs on the value of nearby houses." 39 AGRICULTURAL ECONOMICS 365-372 (2008). In the

original analysis, Isakson and Ecker identified CAFOs as locally undesirable land uses (LULU) because of concerns of unpleasant odors and ground water contamination. They conducted a study to evaluate the impact of swine CAFOs on arm's-length, house sales in Black Hawk County, Iowa from January 2000 to November 2004. Isakson and Ecker used housing sales data and swine CAFO data incorporating variables measuring the number of animal units, the prevailing winds, and distance of the homes from the CAFOs. The variable "wind angle" measured the extent to which a house is downwind from a nearby CAFO in winter and/or summer months. Isakson and Ecker's study found houses that are very close (within 3 miles) and directly downwind from a CAFO suffered large adverse impacts. In applying the study to the subject property and others similarly situated in Union County, Isakson noted these properties in question were all less than three miles from two different CAFOs, identified as the Taylor North and South Sites.

In estimating the adverse effect of the CAFOs, Isakson conceded he did not know the market value of the subject property or other properties in Creston; therefore, he adjusted their assessed values. Isakson noted the Union County sites were much larger than the properties in the Black Hawk County study. He specifically used the only assessed value of the properties' improvements (dwelling and agricultural buildings), excluding the assessed value of the land because he did not believe agricultural land would be impacted from an agricultural use. We question why the same logic Isakson applied for excluding agricultural land from the calculation would not also apply to the agricultural buildings. Like agricultural land, agricultural buildings are assessed differently than dwellings on agricultural land under Iowa law. He reported Abel's property is located 0.754 miles from Taylor North animal feeding operation (CAFO) and 1.891 miles from Taylor South CAFO. Isakson applied the wind angle variable (degree of prevailing wind x angle of the house from true north) from the primary study to the Union County properties. He calculated that the wind angle of Abel's property was 74 degrees for the Taylor North Site and 65 degrees for the Taylor South site. Based on this he

estimates a negative effect on Abel's assessed improvement value (dwelling and agricultural buildings) of \$38,167 (74 degrees x 0.49% = 36.26% value reduction). Based on this analysis, Abel requests the assessed value of the improvements be reduced by \$38,167.

Union County Assessor Gene Haner submitted a letter (Exhibit A) explaining the Board of Review's action. Haner reported the hog confinements in question were not constructed until after the January 1, 2013, assessment date. The confinement owner applied for a new address prior to construction of one of the CAFOs on March 28, 2013. As of April 2, 2013, there were no improvements other than a driveway. Further, Haner reported an open house was held on June 19, 2013, at one of the CAFOs and at that time, there were no hogs in the building. Therefore, the Board of Review concluded the CAFOs could not have had an adverse effect on the property value for the 2013 assessment. We agree.

In the certified record, Haner also provided two sales of properties located near hog confinements, presumably in an effort to demonstrate property values of homes near CAFOs had not declined. These sales occurred in 2004 and 2008 and the sale prices were significantly higher than the assessed values of the properties at the time of sale. While this information demonstrates a continued market for dwellings near confinements, it does not demonstrate the impact on value, if any, of their proximity to such facilities. For this reason, we give it no consideration.

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, or a "fair and reasonable exchange . . . between a willing buyer and a willing seller." *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* 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. Abel did not prove his property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests. He did not develop an assessment/sales ratio of comparable properties, nor did he not allege the assessor failed to apply an assessing method uniformly to similarly situated properties.

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).

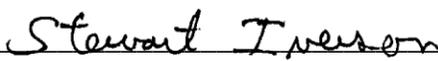
Abel submitted Isakson's analysis of the impact of nearby CAFOs on his property's value. While an interesting theoretic concept, Isakson's method is not based on an established and recognized approach to property valuation. While we recognize that close and downwind proximity to CAFOs may have a negative impact on property values, Isakson's predictions of estimated value loss are premature, at best, as neither of the CAFOs were operational as of the assessment date. Furthermore, the study lacks any indices of the property's fair market value, such as an appraisal, comprehensive market analysis, current sales data, or paired sales analysis. Additionally, the sales comparison approach is the preferred method to assess property under Iowa law. § 441.21(1)(b). Ultimately, we find do not find Isakson's method of estimating future decline in improvement values to be reasonable or supported by current, local market data.

After consideration of the evidence, we find Abel failed to demonstrate the subject property is inequitably or over assessed.

THE APPEAL BOARD ORDERS the January 1, 2013 assessment of the Board of Review is affirmed.

Dated this 7th day of February 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:
Kenneth Abel
1868 205th Street
Creston, IA 50801
APPELLANT

Timothy R. Kenyon
County Attorney
Union County Courthouse
Creston, IA 50801
ATTORNEY FOR APPELLEE