

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Damien and Kimberly Bond,
Appellants,

v.

Montgomery County Board of Review,
Appellee.

ORDER

Docket No. 14-69-0047
Parcel No. 240524300016000

On March 19, 2015, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Kimberly's father, Kailon Goettsche, represented the Bonds. Attorney Brett Ryan of Watson & Ryan, PLC was counsel for the Board of Review. The Appeal Board having reviewed the record, heard the testimony, and being fully advised finds:

Findings of Fact

Damien and Kimberly Bond are the owners of a residentially classified property located at 1969 Evergreen Avenue, Red Oak, Iowa. The property is a one-and-a-half-story home built in 2009. It is listed as having 1999 square feet of living area; a full, unfinished walkout basement; a two-car attached garage; a 1064 square-foot deck; and a 780 square-foot patio. The property is also improved with a 420 square-foot metal pole barn with an attached lean-to built in 2012. The site is 1.71 acres.

The Bonds protested the January 1, 2014 assessment of \$209,980, allocated as \$27,750 in land value and \$182,230 in improvement value to the Montgomery County Board of Review. This was a change in value from the previous year and thus all grounds for protest under Iowa Code section 441.37(1)(a)(1) were available. The Bonds asserted the property was inequitably assessed; assessed for more than authorized by law; and that there was an error in the assessment under sections 441.37(1)(a)(1)(a), (b), and (d). They asserted the correct value of the property is \$170,490, allocated

as \$10,260 in land value and \$160,230 in improvement value. The Board of Review denied the petition.

The Bonds then appealed to this Board, reasserting their claims and now assert the property's correct fair market value is \$180,000.

Kailon Goettsche testified on behalf of the Bonds. He explained that he had experiences as a Realtor; however, not for the last ten years or more and he never practiced in Red Oak.

The Bonds submitted six properties for equity comparison. (Exhibits 4-10). The following chart summarizes the properties.

	Year Built	Gross Living Area	Outbuildings	Site Size (Acres)	Assessment	AV/SF
Subject	2009	1999	Yes	1.71	\$209,980	\$105.04
1507 Bluegrass Rd	2010	1999	Det Garage	2.48	\$171,720	\$85.90
1849 G Ave	2005	2364	No	14.4	\$200,150	\$84.67
2105 Bluegrass Rd	2006	3392	Det Garage	2.48	\$333,050	\$98.19
201 Highland	2005	2685	Det Garage	0.86	\$244,870	\$91.20
1907 D Ave	2008	2188	Yes	5.05	\$309,980	\$141.67
1989 Boxelder Ave	2006	1914	Yes	8.50	\$279,750	\$146.16

We question if all of these properties are similar to the subject property. Several have a detached garage but lack any outbuildings like the subject. 1489 G Avenue has a significantly larger site and is a berm house. 2105 Bluegrass Road has a significantly larger gross living area (GLA).

Goettsche testified that the subject property is modular home with few upgrades and asserted that, as a result, it may have some stigma; yet all but one of the properties the Bonds deemed to be comparable were stick-built, which would indicate they believe it does not have a stigma. Ultimately, we do not find it necessary to determine if the properties are sufficiently similar because none of these properties sold recently and the Bonds did not provide an estimate of the current fair market value for each property to determine an assessment/sales price ratio. Because the evidence submitted is insufficient to calculate an assessment/sales ratio, we give it no consideration.

In support of their market value claim, the Bonds submitted an appraisal completed by Bessie Whitehead of Whitehead Appraisals, Shenandoah, Iowa. (Exhibit 11). Whitehead completed the appraisal for lending purposes as part of a refinance and concluded an opinion of value of \$180,000 as of April 2, 2012. All of the comparable sale properties are located more than twenty miles from the subject and the sales occurred between June 2011 and March 2012. No time adjustment has been made to demonstrate the property's fair market value as of the relevant assessment date.

The appraisal includes the subject parcel under appeal, as well as an adjoining vacant parcel also owned by the Bonds. The total site size considered in the appraisal is 6.11 acres compared to the parcel under appeal, which only includes 1.71 acres. Moreover, the appraisal does not include the pole-barn and attached lean-to built in 2012. We recognize the rationale for submitting the appraisal is because even with the additional site, the market value opinion is less than its 2014 assessment. However, because it does not solely value the subject parcel appealed to this Board, nor does it value all of the existing improvements as of the January 1, 2014 assessment, we will not rely on it to determine the market value of the subject property.

The Bonds also submitted a 2009 sales contract of the subject residence. (Exhibit 3). Goettsche testified that it was their belief the 2009 sales contract of \$95,799, and the \$27,750 assessed value of the site would be a fair representation of the market value. However, the 2009 contract does not include the addition of a deck, garage, and outbuildings. The total cost of these additional items was roughly \$23,000 in materials but did not include labor or entrepreneurial profit. (Exhibit C). We also note there were separate costs associated with the foundation for the subject improvements in 2009, totaling \$17,620. (Exhibit F). Ultimately, we do not find the 2009 costs of a portion of the improvements to be sufficient evidence to establish the market value of the subject as of January 1, 2014.

Brian Leinen, an appraiser with Vanguard Appraisals, testified on behalf of the Board of Review. Leinen explained that he spoke with Kimberly Bond during the 2015 informal hearing period, regarding the January 1, 2015, assessment. We do not find this conversation relevant to the 2014 assessment appeal before this Board.

Montgomery County Assessor Stacey Von Deilingen also testified for the Board of Review. She explained she looked at all the sales of what she considered the most similar to the subject property and created an assessment/sales ratio. (Exhibit H). She also submitted a list of every rural residential property in Montgomery County, with an assessed value of greater than \$150,000 that sold between 2012 and 2014 and calculated an assessment/sales ratio based on this information. (Exhibit I). Von Deilingen's analysis compares the sale price with the assessment at the time of sale. Von Deilingen testified that the ratios ranged from 51.41% to 105%. Further, all but one of the properties had ratios less than 100%, which she said indicates that rural residential properties in Montgomery County are under-assessed.

Von Deilingen also confirmed that Kimberly Bond's conversation with Lienen identified a discrepancy between the total living area noted in the appraisal (Exhibit 11) and the assessment. This was further confirmed with a blueprint supplied by Bonds. As a result, the 2015 assessment was corrected to a total living area of 1870 square-feet. This specific listing error was not raised in the 2014 protest or subsequent appeal to this Board.

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 reflecting market value are to be considered in arriving at market value. § 441.21(1)(b). Conversely, sales of property in abnormal transactions not reflecting market value shall not be taken into account. *Id.*

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*, 257 Iowa 575, 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.

The Bonds offered six properties they considered comparable to theirs for an equity analysis. However, none recently sold or had another opinion of their market value; therefore, there is insufficient evidence to determine an assessment/sales ratio using these properties. Moreover, the Bonds did not assert that the Assessor failed to uniformly apply an assessing method to similarly situated or comparable properties. For these reasons, they failed to show their property is inequitably assessed as compared to like properties.

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(1)(b), 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).

The record includes a 2012 appraisal; however, it included multiple parcels and did not reflect additional improvements built subsequent to the appraisal but prior to the 2014 assessment. For this reason, we give it no consideration.

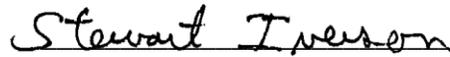
The Bonds submitted a 2009 invoice of the residence. However, there was no specific compilation of other invoices or costs of additional structures built since 2009. Moreover, there was no analysis of appreciation in costs since the original invoices; depreciation due to age; and no market value of the site was submitted to conclude the market value of the subject property by the cost approach as of January 1, 2014. As a result, we find that a preponderance of the evidence does not support the Bonds' claim that the property is assessed for more than authorized by law.

THE APPEAL BOARD ORDERS the 2014 assessment of Damien and Kimberly Bond's property located at 1969 Evergreen Avenue, Red Oak, Iowa, set by the Montgomery County Board of Review, is affirmed.

Dated this 14th day of April, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Cc:

Kailon Goettsche
308 Center Street
Red Oak, Iowa 51566
REPRESENTATIVE FOR APPELLANT

Brett Ryan, Attorney
Watson & Ryan, PLC
PO Box 646
Council Bluffs, Iowa 51502
ATTORNEY FOR APPELLEE