

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-079-01019R

Parcel No. 1938800

Faye J. & Edwin Thomas (Tom) Carey,

Appellants,

v.

Poweshiek County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on September 25, 2015. Faye J. & Edwin Thomas (Tom) Carey were self-represented. County Attorney Rebecca Petig is counsel for the Poweshiek County Board of Review, and Deputy Assessor Amy Vermillion represented it at hearing.

The Careys are the owners of a residential property located at 106 Harbor Lane, Montezuma. The subject site is located on Lake Ponderosa. It has 84.60 effective-front-foot of lakefront and is improved with a one-story home with a loft built in 1970. The improvements have 1944 square feet of living area, a full basement with 600 square feet of finish, and a 450 square-foot concrete patio.

The property's January 1, 2015, assessment was \$286,700, allocated as \$135,360 in land value and \$151,340 to improvement value. The Careys protest to the Board of Review claiming the assessment is not equitable as compared with assessments of other like property; and that the property is assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1)(a) and (b).

The Careys also submitted comments in the section of the protest form reserved for a change downward in value under section 441.37(1)(a)(2). However, we find the comments reflect a general complaint regarding the subject's location in a flood zone

and are not asserting there has been a change in value. Despite this, even if we found the comments did intend to raise this claim, in a re-assessment year like 2015, 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).

The Board of Review denied the petition.

The Careys appealed to this Board and asserted the subject property's assessment should be \$241,340.

Findings of Fact

Tom Carey testified on his own behalf and relied on exhibits he submitted to the Board of Review. Carey submitted spreadsheets (Exs. 2 & 3) and provided testimony regarding other lake front lots, asserting there is no consistent standard between the assessments. He relies on the square-foot size of each lot as his unit of comparison, concluding a range of \$5.31 per-square-foot to \$10.28 per-square-foot. (Ex. 2). He compares these results to his site, which has an assessed value of \$13.69 per-square-foot. We do not find it necessary to replicate his analysis or dwell on the testimony because his property is a lakefront site; the correct unit of comparison in this case is lake-frontage, not square-foot pricing.

Carey did not provide any other evidence of the property's fair market value such as an appraisal, comparable sales, or a comprehensive market analysis.

Deputy Assessor Amy Vermillion testified for the Board of Review. Vermillion points out that Carey is incorrectly analyzing his site and other competing sites on a square-foot basis, when the assessment was determined on a front-foot unit of comparison. She notes the Iowa Department of Revenue's REAL PROPERTY APPRAISAL MANUAL considers the front foot an appropriate unit of comparison, specifically for a site that abuts a body of water. (Ex. C). The Board of Review submitted several listings showing that lake frontage is advertised when marketing lake front properties. (Ex. D).

Vermillion presented the properties Carey submitted in an effort to show that the assessments are all similar at nearly \$1600 per-front-foot, with some variation allowing for diminishing returns on sites with larger than typical frontage. (Ex. E). The following chart is a summary of the properties demonstrating their assessments are equitable.

	2015 Assessed Site Value	Actual Front Foot	Effective Front Foot	Depth Factor	Assessed Value/EFF
Subject	\$135,360	110	84.6	0.94	\$1,600
1	\$98,010	60	61.26	1.08	\$1,600
2	\$96,290	60	60.18	1.02	\$1,600
3	\$81,040	40	50.65	1.07	\$1,600
4	\$133,950	65	93.02	1.10	\$1,440
5	\$122,940	79.78	76.84	1.10	\$1,600
6	\$82,840	49.9	51.77	1.03	\$1,600
7	\$100,830	60	63.02	1.05	\$1,600
8	\$179,150	149.95	139.96	1.20	\$1,280
9	\$89,450	57.28	51.22	1.06	\$1,746
10	\$137,180	102	100.87	1.00	\$1,360
11	\$152,930	95	106.2	1.18	\$1,440
12	\$86,500	60	60.07	1.06	\$1,440
13	\$154,350	131.9	113.49	1.02	\$1,360
14	\$165,050	143.1	125.8	0.99	\$1,312
15	\$159,460	135	117.25	1.05	\$1,360
16	\$119,840	50	74.9	1.07	\$1,600

With few exceptions, sites that have between roughly 50 to 90 effective-front-foot are valued consistently at \$1600 per-effective-front-foot. Generally, the sites with an effective-front-foot over 90 feet see a decrease in the assessed value per-front-foot based on the law of diminishing returns, which is based on the premise that additional expenditures beyond a certain point will not yield a return commensurate with the additional investment. APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 110-11 (5th ed. 2010).

The Board of Review also submitted an assessment/sales ratio analysis of seven 2014 sales. (Ex. F). Without exception, the 2014 sales are assessed for less than their sale prices.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB 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 that 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).

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 Careys offered sixteen properties they considered comparable for an equity analysis. However, it is unknown if any had recently sold and they submitted no other opinion of their market value; therefore, there is insufficient evidence to determine an assessment/sales ratio using these properties. The Careys also assert the Assessor failed to uniformly apply an assessing method to similarly situated or comparable properties. However, this opinion is based on a per-square-foot comparison, rather than the effective-front-foot comparison commonly used for sites with lake frontage. The evidence supports the Assessor’s use of effective-front-foot to value sites along Lake Ponderosa. Comparing the sites based on effective-front-foot, the data demonstrates equitability between the assessments. For these reasons, the Careys 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 Iowa Code 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 Careys did not provide any market value evidence to establish the subject property was over-assessed.

Order

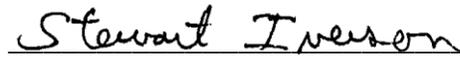
IT IS THEREFORE ORDERED that the Poweshiek County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 13th day of October, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:

Faye J. & Edwin Thomas (Tom) Carey

Amy Vermillion

Rebecca Petig