

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

PAAB Docket No. 2015-030-00482R

Parcel No. 07-15-202-019

Albers Trust,
Appellant,

v.

Dickinson County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on May 2, 2016. Trustee Michael Albers represented the Albers Trust (the Trust) and participated by phone. County Assessor Stephanie Sohn represented the Board of Review. It did not participate in the hearing.

The Trust is the owner of a residential, one-story home located at 16792 255th Avenue, Spirit Lake. It was built in 1947 and has 1146 square feet of living area, a full, unfinished basement, an enclosed porch, two patios, a carport and an attached garage. The site is 0.316 acres with 79.85 effective front feet on East Lake Okoboji.

The property's January 1, 2015, assessment was \$434,100, allocated as \$336,400 in land value and \$97,700 in improvement value. On its protest to the Board of Review, the Trust marked the space for a claim that the property has suffered downward change in value since the last assessment under Iowa Code section 441.35. The protest also referred to a separate attachment that essentially states an overassessment claim under section 441.37(1)(a)(1)(b). Furthermore, in an assessment year, a downward change in value claim is akin to asserting the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). *Dedham Cooperative Ass'n., v. Carroll Cnty. Bd. of Review*, 723

N.W.2d 449, 2006 WL 1750300 (Iowa Ct. App. 2006) (unpublished). The Board of Review denied the petition.

The Trust then appealed to PAAB, asserting the correct fair market value is \$343,100.

Findings of Fact

Michael Albers testified about the history of the subject property. He explained that in July 2011 a severe storm caused roughly 45 feet of embankment to collapse. Prior to the collapse, the site had several terraces. After the collapse, it now has a 25 foot drop off at the edge of his site.

He obtained estimates to repair the damage and re-terrace the site, which totaled roughly \$100,000. Because of the high cost, he has opted to repair the damage on his own, as he is able. To date, he explained that he has invested roughly \$37,000, and expects it to take another three years to complete the repairs. (Petition). He suggests the assessment should be reduced by \$100,000; then increased at a rate of \$20,000 per year for the next five years as he completes the repairs.

The record contains various photographs of the subject. From these photographs, however, it is difficult to determine the severity of the collapse/erosion. We add that notes on the property record card indicate a property inspection occurred in 2013, wherein the inspector stated that the subject “does not look any different than the neighbor’s property.” Furthermore, there are no pictures of the subject prior to the collapse/erosion event for comparison purposes. As a result, it is difficult to determine what, if any, impact the property’s current condition might have on its market value.

The Board of Review submitted four sales of three sites on East Lake Okoboji that it asserts have similar steep banks and no terracing like the subject property. (Exs. A, B, D, and F). We give no consideration to Sales 1 and 2 because they are dated.

Sale 3 is of 16668 255th Ave, which occurred in August 2014 for \$358,500. The Board of Review indicates the home on the property was removed after purchase and asserts the sale essentially represents a vacant land sale. (Ex. K). The property has 72.87 effective-front-foot of lakeshore, which is similar to the subject’s 79.85 effective-

front-foot. In total, this sale appears to support the subject's land assessment of \$336,400.

Sale 4 is of 166692 255th Ave and took place in October 2014. The property sold for \$280,000, but has less lake frontage, no garage, and overall inferior dwelling improvements as compared to the subject.

The Board of Review acknowledges some erosion occurred on the lakes in 2011. However, the Board of Review does not believe that the comparable sales indicate that bank erosion has had any effect on land values. Furthermore, it contends that terracing is one of the more expensive means of erosion control.

Albers is critical of the Board of Reviews use of the term "erosion" in describing the damage that has occurred to his site. (Ex. K). He believes it understates the damage caused by the 2011 storm and the resulting limited use of his site until repairs are completed. We note that the Matt Thelen from Oleson Landscape also used the term erosion to describe the circumstances of the subject in his preliminary proposal on behalf of Soil Nail Launcher Inc.

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).

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).

We are sympathetic to the Trust's situation and the costs and difficulties associated with remedying problems that have arisen outside of one's control. However, the evidence presented here does not demonstrate the subject property is overassessed. Aside from pointing to a property condition that may or may not affect its market value, the Trust has not shown how that condition has, in fact, impacted the property's market value. The only comparable sale in the record appears to support the subject's land assessment. The Trust did not submit any evidence of the market value of its property, such as comparable sales adjusted for differences or an appraisal, to prevail on its claim.

Order

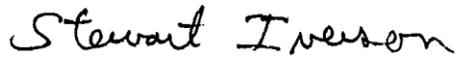
IT IS THEREFORE ORDERED that the Dickinson County Board of Review's action is affirmed.

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.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

Michael Albers

Stephanie Sohn