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PAAB

PROPERTY ASSESSMENT APPEAL BOARD

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-077-00899R

Parcel No. 181/00553-070-984

Scott Brustkern,

Appellant,

v.

Polk County Board of Review,

Appellee.

Introduction & Procedural Background

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on August 12, 2016. Scott Brustkern was self-represented. Assistant Polk County Attorney Mark Taylor represented the Polk County Board of Review.

On September 9, PAAB issued an order modifying the 2015 assessment of Brustkern's property located at 1605 NW Wagner Boulevard, Ankeny. PAAB found the evidence showed Brustkern's property was inequitably assessed under Iowa Code section 441.37(1)(a)(1)(a). PAAB reduced the assessment from $250,400 to $229,460 by applying a 10% market adjustment.

The Board of Review filed an Application for Rehearing/Reconsideration on September 29. Brustkern did not respond to the Application. PAAB subsequently granted the Application on October 18, indicating it would consider the arguments raised in the Board of Review's Application in a forthcoming order.

Having considered the arguments raised in the Application and having reviewed the record again in its entirety, PAAB hereby issues its Amended Findings of Fact, Conclusions of Law, and Order.

Findings of Facts

Brustkern purchased the subject property in October 2013 for $246,000.

Brustkern asserts his property is assessed higher on a per-square-foot basis than other comparable properties in the same location. He believes the correct assessment is $227,000. Moreover, he notes his property backs up to a townhome development and is on a high traffic street. (Appeal).

Brustkern submitted five properties he considers comparable to his that he believes demonstrate his home is not equitably assessed. The following table is a summary of his equity comparables. (Exs. C & D).

Address	2015 Assessment	Gross Living Area (GLA)	Basement Finish
Subject	$250,200	2193	800 LQ
1602 NW Wagner Blvd	$216,500	2107	None
1529 NW Wagner Blvd	$203,800	2244	None
1609 NW Wagner Blvd	$236,600	2335	800 LQ
1513 NW Campus Dr	$236,300	2244	None
1601 NW Wagner Blvd	$237,500	2409	905 Avg

Amy Rasmussen, Director of Litigation for the Polk County Assessor's Office, compared the subject property's cost analysis to the comparable properties that Brustkern submitted to the Board of Review. (Exs. B & D). She pointed out that there were differences in basement finish, size of the garage, porch and deck areas, as well as other differences such as the number of bathrooms that would result in differences between the cost of the properties and subsequent assessed values.

Brustkern questioned Rasmussen about the property located at 1609 NW Wagner Boulevard. Brustkern identified this property as "the most comparable" to his, stating it has the exact same floor plan. We find this property has the same amount and quality of basement finish and is, in our view, similar to the subject property. We do note some differences between the properties, such as the living area on the main and upper levels that contribute to slight differences in cost, as well as a larger deck and patio that

increase its replacement cost new (RCN). Consistent with this conclusion, 1609 NW Wanger Boulevard's RCN is higher than the subject's; yet, its total assessment is roughly $14,000 *less than* the subject's.

At PAAB's request, the Board of Review filed the complete property record cards for 1609 NW Wagner Boulevard and the subject. Rasmussen explained the primary underlying difference between these two properties is the negative 10% market adjustment applied to 1609 NW Wagner Boulevard. At the time of its sale in May 2010, 1609 NW Wagner Blvd was assessed at $239,600. It sold for $228,000 and then the property was assessed for $230,900 as of January 1, 2011. Rasmussen stated the Assessor's Office applied the negative 10% market adjustment after its sale and that it would be on the assessment "until the property sells or there is a reason for the Board [of Review] to remove those."

Rasmussen explained a negative 6% adjustment was made to 1513 NW Campus Drive for the same reason; however it was applied by the Board of Review, not the Assessor's Office. The record shows that 1513 NW Campus Drive is also substantially similar to the subject. While it has a higher grade than the subject property, it lacks any basement finish. Despite these differences, 1513 NW Campus Drive's RCN is nearly identical to the subject's and each property is receiving the same adjustment for physical depreciation and neighborhood. Like 1609 NW Wagner Boulevard, its assessment is roughly $14,000 *less than* the subject's due to the market adjustment.

The following table summarizes the RCN of each property, the replacement cost new less depreciation (RCNLD), and the final assessed values. Comparing the assessments, we understand Brustkern's concern that his property's assessment is higher than similarly situated properties.

Address	RCN	Physical Depreciation	Neighborhood Adjustment	Market Adjustment	RCNLD	Total Assessed Value
Subject	$275,708	8%	17%	None	$209,516	$250,400
1609 NW Wagner Blvd	$284,596	8%	17%	-10%	$194,643	$236,600
1513 NW Campus Dr	$275,553	8%	17%	-6%	$196,834	$236,300

Conversely, the subject was assessed for $254,400 when it sold in October 2013 for $246,000. No market adjustment was made to the subject post-sale even though it sold for less than its assessed value. As already stated, it was reassessed in 2015 for $260,200 before the Board of Review reduced the assessment to $250,400.

The Board of Review submitted three properties for an equity analysis. (Ex. F). We find they are all inferior to the subject, as demonstrated by the fact that their replacement costs new range from $15,000 to $23,000 below the subject's.

Conclusions of Law

I. Standard of Review and Generally Applicable 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)(b). 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*.

II. Inequity Claim Under Iowa Code Section 441.37(1)(a)(1)(a).

Brustkern asserts his property's "assessment is not equitable when compared with assessments of other like property in the taxing district." Iowa Code § 441.37(1)(a)(1)(a). The fundamental basis for this claim has long been recognized. *Burnham v. Barber*, 70 Iowa 87, 30 N.W.20 (Iowa 1886); *Barz v. Bd of Equalization of Town of Klemme*, 133 Iowa 563, 111 N.W. 41 (Iowa 1907); *Iowa Cent. Ry. Co. v. Bd. of Review of Eliot Tp., Louisa County*, 157 N.W. 731, 732 (Iowa 1916). In *Iowa Cent. Ry. Co.*, the Iowa Supreme Court stated the "paramount object which the law seeks to insure in distributing the burdens of taxation is equality." 157 N.W. at 732. The Court went on to state that "although the property of a taxpayer is assessed at less than its true value, nevertheless, if it is assessed higher proportionately than other property, he has a just cause of complaint." *Id*.

Since then, Iowa courts have reaffirmed that the law seeks equality in order to evenly and fairly distribute the tax burden. *Hanselman v. Humboldt County*, 173 N.W.2d 75 (Iowa 1969) (systemic and intentional assessment of property at higher rate than similar property cannot be upheld); *Metropolitan Jacobson Development Venture v. Bd. of Review of City of Des Moines*, 524 N.W.2d 189, 193 (Iowa 1994) ("Like property within a taxing district must be treated similarly.").

Similarly, in its Standards on Property Tax Policy, the International Association of Assessing Officers (IAAO) focuses on policies to promote vertical and horizontal equity of assessments. In particular, horizontal equity requires that similarly situated taxpayers bear the same or similar tax burdens. p. 9, *available at* http://www.iaao.org/media/standards/Standard_on_Property_Tax_Policy.pdf (last visited Dec. 9, 2016). The IAAO Standards on Mass Appraisal of Real Property, which the Iowa Real Property Appraisal Manual encourages Assessors to use, defines equity as "a synonym for tax fairness." p. 18, *available at* http://www.iaao.org/media/standards/MARP_2013.pdf (last visited Dec. 9, 2016).

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, Inc. v. Bd. of Review of the City of Davenport, Scott County, 497 N.W.2d 860, 865 (Iowa 1993).

Eagle Food Centers involved the 1990 valuation of the Spring Village Shopping Center (Spring Village). *Id*. at 861. The tenant, Eagle Food Centers, challenged the assessment on the basis that it was inequitable under Iowa Code section 441.37(1)(a) (now section 441.37(1)(a)(1)(a)). In finding inequity, the court noted "many inconsistencies in the assessment of Spring Village compared with the assessment of other like shopping centers in the area." *Id*. at 864. First, the Court acknowledged differences in the interest percentage, allowance for recapture, and the capitalization rates between Spring Village and the other shopping centers. *Id*. As calculated, the Spring Village capitalization rate was lower than the other shopping centers, which would naturally result, *ceteris paribus*, in a higher value conclusion. *Id*. Second, the Court found differences in vacancy allowance among the properties and the inclusion of tax reimbursements in the calculation of Spring Village's gross income. *Id*. Third, the Court noted differing methods for calculating operating receipts and expenses amongst the shopping centers. *Id*. at 865. The Court then stated, "Obviously, the assessment of Spring Village is not equitable when the income approach is not uniformly applied to comparable properties." *Id*.

Alternatively, a taxpayer may also 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.

PAAB's September 9 Order modified the subject's assessment after concluding inequity was shown due to the non-uniform application of an assessing method based on *Eagle Food Centers*. The Board of Review believes PAAB misapplied *Eagle Food Centers*. (Application p. 4). The Board of Review asserts the *Eagle Food Centers* Court was applying *Riso v. Pottawattamie County Bd. of Review*, 362 N.W.2d 513 (Iowa 1985), and by extension, the previously stated *Maxwell* test. In an abrupt turn of thought, however, the Board of Review's Application also admits the *Eagle Food Centers* Court did not apply the *Maxwell* test. (Application p. 6).

The Board of Review contends that *Eagle Food Centers* does not overrule *Maxwell*, adopt or apply a new standard, and that the *Riso/Maxwell* evidentiary requirements remain in effect. Further, the Application notes that since *Eagle Food Centers* was decided in 1993, it has not again been applied by the Iowa courts.

At the outset, PAAB is not inclined or willing to disregard a precedential holding of the Iowa Supreme Court because a party contends that holding is now stale by virtue of a lack of instances where Iowa courts have had the opportunity or need to apply it. As of today, the *Eagle Food Centers* ruling has not been expressly or impliedly overturned. Nor has the Iowa Legislature codified the evidentiary requirements of *Maxwell* or limited the applicability of *Eagle Food Centers*. Therefore, *Eagle Food Centers* remains good law.

We also disagree with the Board of Review's argument that the *Eagle Food Centers* Court was applying *Maxwell* or *Riso*. The district court ruling in *Eagle Food Centers* makes no attempt to apply the evidentiary requirements of *Maxwell*. Indeed, the district court does not even cite to *Maxwell* or *Riso* and nonetheless came to the conclusion that the Spring Village assessment was inequitable.

Similarly, the Iowa Supreme Court did not attempt to apply *Maxwell*'s evidentiary requirements in *Eagle Food Centers*. To the extent it applied *Riso*, the *Eagle Food Centers* Court simply noted that in *Riso* the Court "set out the appropriate criteria for an

appeal based on the ground that the assessment was not equitable." *Eagle Food Centers*, 497 N.W.2d at 863 (citing *Riso*, 362 N.W.2d at 517). It went on to state that "the gist of this ground is that the property is assessed higher proportionally than other like property." *Id*.

Given the foregoing, we do not believe the stringent evidentiary requirements of *Maxwell* constitute the only method available to prevail on an equity claim under Iowa Code section 441.37(1)(a)(1)(a). Like in *Eagle Food Centers*, the non-uniform application of an assessing method to similarly situated and comparable properties may sometimes, but not always, result in inequity under Iowa law. That is to say, the non-uniform application of an assessing method to like properties can cause unequal distribution of the tax burden.

The Board of Review's Application also challenges PAAB's ruling on the basis that approximate uniformity and reasonable equality exists in this case. (Application pp. 5-7). The law does not require absolute equality in property assessment. *Crary v. Bd. of Review of Boone*, 286 N.W. 428 (Iowa 1939) (quoting *Butler v. City of Des Moines*, 258 N.W 755, 758 (Iowa 1935)). Rather, approximate uniformity and reasonable equality of assessment has been found to be sufficient. *Crary*, 286 N.W. at 430; *Maxwell*, 133 N.W.2d at 712.

Here, the record includes two properties (1609 NW Wagner Blvd and 1513 NW Campus Dr) that are receiving market adjustments that result in a roughly $14,000 disparity between their assessed values and the subject's. We found that 1609 NW Wagner Boulevard and 1513 NW Campus Drive are substantially similar to the subject. The discrepancies in assessments amount to an approximate 5.5% variance between the subject and these comparables, which results in a difference of approximately $300 in property taxes annually. Brustkern is undoubtedly bearing an unequal burden of taxation when compared to these similarly situated, comparable properties.

Brustkern's assessment is the highest of all the properties in the record. Excluding the aforementioned properties, the remaining properties in the record have assessments ranging from $203,800 to $237,500. (Ex. C, F). Admittedly, these properties are likely inferior in some respects to the subject. At the same time, they are

located within the subject's neighborhood, offer common exterior appeal, and have substantially similar amenities.

It is also not true, as the Board of Review asserts, that 1609 NW Wagner Boulevard's market adjustment was applied by the Board of Review because of a protest lodged by the property owner. (Application, p. 7). 1609 NW Wagner Blvd's property record card makes no notation of any Board of Review activity after the current property owner's purchase in 2010. Per Rasmussen's testimony, the adjustment was applied by the Assessor's Office. Rasmussen testified the adjustment to 1513 NW Campus Drive was added by the Board of Review.

Rasmussen testified the market adjustments would remain in place until those properties sold or it was determined they should be removed, whenever that may be. As a result, the subject's inequitable assessment could continue indefinitely, requiring Brustkern bear his unequal tax burden now and in to the future. Such a policy brings about questions of equal protection. *See Allegheny Pittsburgh Coal Co. v. County Com'n. of Webster County, W. Va*., 488 U.S. 336 (1989). We find the stated rationale for the indefinite application of market adjustments is arbitrary. Such a stance results in an abrogation of the Assessor's duty to ensure properties within the jurisdiction are assessed in accordance with Iowa Code section 441.21. Iowa Code § 441.17.

Further, such a stance is not warranted under the facts of this case. Although a market adjustment to 1609 NW Wagner Bouelvard may have been appropriate at the time of its purchase in 2010, the same cannot be said for its continued application after the subject's purchase in 2013. As already noted, the subject was purchased in October 2013 for $246,000. Despite the fact that 1609 NW Wagner Boulevard is reasonably similar to the subject, it remained assessed well-below the subject's purchase price in the 2015 reassessment year.

We are, of course, aware that the mass appraisal techniques employed by assessors do not always allow for individual attention to specific properties and the continual review of adjustments previously applied by the Board of Review or other entities. Therefore, it is not surprising that these issues may not become apparent, and thereby redressable, until the case comes before the Board of Review or PAAB. As a

result, we find ourselves obliged to remedy the inequity now by application of a negative adjustment to the subject property in the range of 6-10%.

iii. Conclusions

The foregoing facts present a challenging question because they demonstrate that the subject property, while potentially assessed consistent with its market value, is inequitably assessed as compared to similar properties in its neighborhood. The sole cause of this discrepancy appears to be the application of market adjustments to 1609 NW Wagner Blvd and 1513 NW Wagner Blvd. These market adjustments are a non-uniform application of an assessing method to substantially similar properties. *Eagle Food Centers,* 497 N.W.2d at 864-65. Their continued application is arbitrary and results in an unequal distribution of the tax burden.

For the present, the only authority this Board has to resolve this inequity is to apply a market adjustment to the subject. The record includes substantially similar properties that have received between 6-10% negative market adjustments. Initially PAAB concluded the proper adjustment was negative 10%, giving all consideration to 1609 NW Boulevard. Upon further reflection, we find that both 1609 NW Boulevard and 1513 NW Campus should be taken into consideration, as well as considering the final assessed value as a result of the adjustment. We find both of these comparable properties are sufficiently similar to the subject, and their final assessed values are $236,300 to $236,600. In light of this, PAAB reconsiders its previous order and hereby amends the correct adjustment to be applied to the subject property's improvements to negative 6% – resulting in a valuation of $237,900 (rounded), allocated as $40,900 in land value and $197,000 in dwelling value.

Order

PAAB ORDERS that the Polk County Board of Review's action is modified and concludes the subject's fair and equitable assessment as of January 1, 2015, is $237,900.

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

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