

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

PAAB Docket No. 2015-091-01169C

Parcel No. 48-860-00-1116

Executive Laser Wash, Inc.

Appellant,

v.

Warren County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on March 28, 2016. Attorney Jason Craig of Ahlers & Cooney, P.C., Des Moines, represented Executive Laser Wash, Inc. (ELW). County Assessor Brian Arnold represented the Warren County Board of Review.

ELW is the owner of a commercial car wash located at 800 N. Jefferson Way, Indianola. The car wash was built in 1994 and has a total of seven bays, including four automatic bays and three manual bays. The site is 1.302 acres.

The property's January 1, 2015, assessment was \$658,600, allocated as \$397,000 in land value and \$261,600 in improvement value. ELW protested to the Board of Review and claimed the property was inequitably assessed; was assessed for more than the value authorized by law; that there was an error in the assessment; and that there was fraud in the assessment under Iowa Code sections 441.37(1)(a)(1)(a-b, d-e). The Board of Review denied the petition.

ELW then appealed to PAAB.

Findings of Fact

I. Subject History

Amir Jeshani, owner of ELW, purchased the site in 1994 from the Small Business Administration and subsequently built a car wash. Prior to Jeshani's ownership and development of the property a fuel station and auto-service/repair shop was operated on the site. When operated as a fuel station, the property had five underground storage tanks (USTs). The tanks were removed in 1991.

Jeshani testified he was aware of the property's rating as low risk for environmental contamination when he purchased the property. Because of this, he was required to install monitoring wells that had to be observed and recorded every three months for a two-year period. It was his belief that after this was completed he would receive a No Further Action (NFA) status from the Iowa Department of Natural Resources (DNR). He testified that he spent around \$100,000 to complete these monitoring requirements. These costs are uncontested.

At some time in the late 1990's or early 2000's the City of Indianola put in underground plastic waterlines that crossed through the subject site. Jeshani testified it was his belief that the DNR then reclassified the subject site because of the location of the plastic waterlines to a contaminated area. However, the record indicates that a change in the DNR's rules regarding the assessment of leaking underground storage tank (LUST) sites resulted in the reclassification of the subject as a high-risk site in 2003. (Ex. 9, p 2). The following chart is a summary of the elements rated by the DNR and its final recommendation for the subject site because of this rule change. (Ex. O).

Groundwater Ingestion	Rating
Actual - drinking water well	No Further Action
Potential - nondrinking water well	No Further Action
Potential - protected groundwater	No Further Action
Groundwater Vapor to Enclosed Space	High
Groundwater to Water Line	No Further Action
Surface Water - General Use	No Further Action
Surface Water - Designated Use	No Further Action
Soil Leaching to Groundwater	Low
Soil Vapor to Enclosed Space	Low
Soil to Water Line	No Further Action
Consultant Recommends	High Risk

Despite its 2003 reclassification as High Risk, there has been no enforcement action on the site since that time. (Ex. P). Moreover, the Enforcement and Compliance History Online (ECHO) prepared by the EPA reports that there has been no compliance monitoring of the subject site in more than five years; no notices of violation or informal enforcement; and no formal enforcement actions in the last five years. (Ex. P). Jeshani also testified that after the site was reclassified in 2003, the DNR did not contact him for nearly ten years.

In August 2013, Jeshani received a letter from DNR requesting access to the property to conduct tests. (Ex. 10). The letter describes a number of items that could affect the utility of the property on a spectrum – from testing that would have minimal impact to installation of monitoring wells that may have a greater impact. The letter also notes any associated costs for this would come out of the Iowa Underground Storage Tank Fund (UST Fund), but that the UST Fund has the authority to undertake recovery of these costs, including placing a lien on the real estate. Because Jeshani was not provided with any assurance he would not be responsible for remediation, he declined to allow access for the testing.

In a June 2014, letter to Jeshani’s attorney, the Deputy Administrator of the UST Fund indicated that Jeshani was not considered to be a “responsible party” for the

contamination and, pursuant to Board policy, cost recovery efforts would not be pursued against him. (Ex. Q).

In another June 2014 letter, DNR attorney Aaron Brees states that the DNR does not provide an enforceable assurance that would have the “effect of relieving a person of all present or future liability associated with the UST release(s) of concern.” (Ex. R & Ex. 12). However, the letter also states that only the legally responsible party is liable for the cost of remediation and a buyer of an already contaminated site would have no liability unless it takes action that worsens the contamination. It suggests, however, that a new owner would still be responsible for monitoring costs. Lastly, the letter points out, that owners of contaminated sites that are not legally responsible for the contamination are statutorily protected from third-party lawsuits. Iowa Code § 455B.751.

In a similar letter, also dated June 2014, to Northwest Bank, Brees notes there is a lender exemption from liability for security interests held on tank site or a site contaminated by an off-tank source. The provision states that a lender who holds a mortgage on a property or takes title to a property by foreclosure is not liable for contamination on the site. (Ex. S).

Through all of this correspondence, the DNR again requested access to the subject site in much the same manner as it did in its August 2013 letter. It indicates a *revised* Right of Entry and Indemnity Agreement was enclosed. This revised Agreement was not provided to PAAB.

A September 2014 letter from Jeshani’s attorney to the DNR indicates that an agreement for access to the subject site has been reached. However, Jeshani is still seeking assurance that he will not incur any cost or liability for the assessment/monitoring work. (Ex. 13).

As of the January 1, 2015, assessment date, there has been no testing on the subject site. Until testing occurs, remediation costs cannot be determined.

II. Equity Claim

In support of its equity claim, ELW submitted nine commercial properties located in Indianola, which are summarized in the following chart. (Ex. 15).

Address	Property Type	2013 Assessed Value	2015 Assessed Value	Change in Assessment from 2013-2015
Subject	Carwash	\$ 533,700	\$ 658,600	23.4%
506 N Jefferson Way	Carwash	\$ 506,080	\$ 534,600	5.6%
1905 W 2nd Ave	Carwash	\$ 151,100	\$ 159,700	5.7%
910 N Jefferson Way	Grocery Store	\$4,282,800	\$4,379,900	2.3%
1207 N Jefferson Way	Fast Food	\$ 745,000	\$ 764,500	2.6%
607 N Jefferson Way	Convenience Store	\$ 312,000	\$ 313,300	0.4%
1303 N Jefferson Way	Restaurant	\$ 386,600	\$ 385,800	-0.2%
1103 N Jefferson Way	Fast Food	\$ 351,900	\$ 363,700	3.4%
300 N Jefferson Way	Fast Food	\$ 432,600	\$ 447,200	3.4%
700 N Jefferson Way	Fast Food	\$1,175,400	\$1,181,500	0.5%

ELW asserts that its assessment is inequitable because its assessment increased over 20% from 2013 to 2015, compared to other commercial properties in Indianola and along the same business corridor that saw increases between roughly 0% and 6%.

III. Error and Fraud Claims

ELW asserts there is an error and fraud in the assessment because “the assessor has repeatedly ignored the rulings of the PAAB.” (Petition, p. 1). It submitted a summary of the assessment history from 2011 to 2015. (Ex. 1). However, we note this history excludes changes in the assessment made by the Board of Review. The chart below includes a complete assessment history.

Assessment Year	Assessment Action	Assessed Value	Value Change
2011	Original Assessment (1/2011)	\$631,700	N/A
	BOR Affirmed Value (5/2011)	\$631,700	\$0
	PAAB Modified Value (4/2012)	\$430,000	-\$201,700
2012	Assessed Value	\$430,000	\$0
2013	Original Assessment (1/2013)	\$594,600	\$164,600
	BOR Modified Value (5/2013)	\$535,100	-\$59,500
	PAAB Modified Value (2/2015)	\$533,700	-\$1400
2014	Assessed Value	\$533,700	\$0
2015	Original Assessment (1/2015)	\$658,600	+\$124,900
	BOR Affirmed Value (5/2015)	\$658,600	\$0

Jeshani also testified there have been no changes to the property over the four-year assessment history that would warrant any changes in the assessment. Moreover, he is frustrated that his assessment increases every year, despite rulings by PAAB, and believes he is being harassed.

Arnold explained that the day after the 2013 PAAB hearing, he became aware of the sale of a car wash located in Norwalk. It was a newer property, but it was similar to the subject in that it had four automatic bays and two manual bays. It sold for \$1,500,000, of which, \$600,000 was personal property, and therefore the sales price to the real estate was \$900,000. After research, he determined this sale was a family transaction and it was not considered arm's length. However, because of this sale, he decided that he needed to hire an independent real estate appraiser to help determine the fair market value of the subject property for the next assessment period.

IV. Over Assessment Claim

ELW submitted two appraisals completed by Ted Frandson, Frandson and Associates, LLC, Des Moines. (Ex. 7). The first appraisal has an effective date of January 1, 2013, and was prepared for use in ELW's 2013 property assessment appeal. (Ex. 6, p. 2). The second appraisal has an effective date of May 15, 2014, and it was prepared for Northwest Bank as part of a mortgage package to secure a loan on

another property Jeshani owns. (Ex. 7, p 1). ELW called Frandson as a witness and his testimony focused on the May 2014 appraisal.

The Board of Review record also includes an appraisal, which the Board of Review relied on in its decision. Patrick Schulte, Commercial Appraisers of Iowa, Inc., West Des Moines, completed the appraisal. The effective date of Schulte's appraisal is January 1, 2015, and it was prepared for Warren County Assessor Brian Arnold to assist in the 2015 assessment of the subject property. Schulte was not called as a witness and did not testify.

Because Frandson completed his May 2014 appraisal for lending purposes, his conclusions include equipment, which is not subject to real estate tax. He estimates the value of the equipment at roughly \$202,000. (Ex. 7, p. 8). To arrive at an opinion of value for the real estate only, and considering the existing contamination, Frandson relied on the following equation:

$$\begin{array}{l} \$860,000 \text{ (value of real estate and equipment with no contamination)} \\ - \underline{\$202,000 \text{ (value of equipment)}} \\ \$658,000 \text{ (value of real estate only with no contamination)} \\ \times \underline{.75\% \text{ (25\% reduction due to contamination)}} \\ \$493,500 \text{ (value of the real estate only, considering contamination)} \end{array}$$

Both Frandson and Schulte provided value opinions of the subject property, assuming there was no contamination. The following chart summarizes their conclusions of the real estate only, considering contamination.

	Final Opinion of Value for the Real Estate only and Considering Contamination
Frandson	\$493,500
Schulte	\$740,000

Frandson developed all three approaches to value, whereas Schulte developed only the sales comparison and cost approaches. Schulte explained that he did not develop the income approach as the income he was provided is attributable to the

operation of a business rather than a rental of real property. Therefore, in his opinion it is not applicable for assessment purposes because it includes income derived from equipment, business, and goodwill. (Schulte Appraisal, pp. 38-39). Frandson was critical of Schulte because he did not include the income approach, which he considers to be the best approach in the valuation of a carwash.

A. May 2014 Frandson Appraisal

Frandson completed all three approaches to value: sales, income, and cost. He testified that the income approach is the best way to value this car wash and gave the income approach the most weight in his reconciliation. Because he completed the appraisal for financing purposes, his conclusions for those approaches included the exempt equipment and considered the value of the property both with and without contamination. Those conclusions are in the chart below.

Cost Approach	\$839,000
Sales Comparison Approach	\$840,000
Income Approach	\$879,000
Final Conclusion of Value	\$860,000 (including \$454,000 in land value, \$204,409 in improvement value, and \$201,591 in equipment value)

Although Frandson focused on this 2014 appraisal (Ex. 7) at hearing, we note he used all of the same comparable sales for his sales comparison analysis that he used in his 2013 appraisal. (Ex. 6). We also question discrepancies between the two appraisals. For instance, the 2013 appraisal determines a depreciated value of the subject’s equipment of \$171,811 (Ex. 6, pg. 60), compared to his testimony at hearing asserting an equipment value of roughly \$202,000. Moreover, despite using the same site sales to establish land value in both the 2013 and 2014 appraisals, the conclusions differ by \$43,000. His 2013 conclusion of the site value was \$411,000, whereas his

2014 conclusion was \$454,000. We note other discrepancies that cause us to question the reliability of his analysis.

1. Uncontaminated Valuation

To complete the sales approach, Frandson used four sales that occurred between June 2009 and July 2013.

Comparable	Sale Date	Sale Price	Total Bays	Type of Bay	SP/Bay	Adjusted SP/Bay
Subject	N/A	N/A	7	4 Auto/3 Manual	N/A	N/A
1-1905 W 2nd Ave, Indianola	Jun-09	\$315,000	4	1 Auto/3 Manual	\$78,750	\$103,163
2-5740 Merle Hay Rd, Johnston	Nov-12	\$400,000	5	2 Auto/3 Manual	\$80,000	\$118,400
3-301 Sandpiper Ct, Polk City	Feb-10	\$455,000	6	2 Auto/4 Manual	\$75,833	\$116,025
4-113 Brick St, Bondurant	Jul-13	\$850,000	4	2 Auto/2 Manual	\$212,500	\$131,750

The subject property, at the time of Frandson’s May 2014 appraisal, was twenty years old. The sales ranged in age from nine to seventeen years old. Frandson adjusts the sales for differences, including location, age/condition, and equipment. (Ex. 7, pp. 41-43). After adjustments, he determined a per-bay value for the subject property, including equipment, of \$120,000.

As previously noted, because Frandson’s opinion was for mortgage purposes, he included the equipment value in his sales and opinion of value. He adjusted the sales for differences between the actual values of their equipment compared to the subject equipment.

We are concerned that three of the sales occurred between 2009 and 2012; yet Frandson asserts no time adjustments were required to establish an opinion of value for 2015. He testified that in his opinion, the car wash market has remained stable since 2009. However, we question this because Sale 4, which sold in 2013, had an unadjusted sale-price-per-bay more than two-and-a-half times that of the other three more dated sales he included for his analysis. Moreover, in his income analysis, he

reports the actual effective gross revenue for the subject property has increased each year since 2011, with an overall increase from 2011 to 2013 of nearly \$100,000. (Ex. 7, p. 52). He states in his report that 2013 was an above-average year due to favorable weather, and that sales in the first quarter of 2014 were down compared to the same quarter of 2013. (Ex. 7, p. 52). However, he ultimately estimated stabilized revenue of \$330,000, which is still nearly an 11% increase over the 2011 effective gross income. We find this contradicts his assertion that the market has been stable since 2009 and warrants no time adjustment.

Frandsen's value opinions were as of May 2014 and he did not update his report to a January 1, 2015, value opinion. When questioned about more recent, 2014 sales that he did not include in his analysis, Frandsen explained that we were aware of two sales that he would not have used; both of which Schulte considered. These sales are located at 1325 N. Ankeny Boulevard, Ankeny and 6604 Coachlight Drive, West Des Moines.

The sale located at 1325 N. Ankeny Boulevard took place after the effective date of Frandsen's report, but prior to the January 1, 2015, assessment date. He does not believe this is a good sale because it is a significantly better car wash in a better location and it has higher revenues than the subject property.

The sale located at 6604 Coachlight Drive near Jordan Creek Mall, which sold in January 2014, would have been available to him for consideration in his May 2014 appraisal. In Frandsen's opinion, this was a newer property, built in 2006, and he would not compare it to the subject for that reason and because he believed it had better equipment and was in a better location. We note Frandsen did consider a newer built sale in his analysis (Sale 4) that we find is similar in age to the Coachlight property, and he adjusted it because he asserted it had better equipment. Frandsen was consistently critical of the two sales, primarily for location and because they had superior equipment. However, equipment value is not included in the assessed value of the real estate and we do not find it to be a relevant issue. Ultimately, we do not find sufficient reason has been provided to support the decision to exclude the most recent car wash sales available.

Frandsen also completed the income approach to value. Both his testimony and report indicate he believes the income approach to value is the best method for valuing the subject property, and he gave it the most weight in his reconciliation.

Frandsen estimates gross revenue per wash of \$6.00 based on his analysis of pricing and costs of competing car wash facilities in Indianola. Based on his analysis of traffic counts and capture rates, he indicates sales of approximately 184 washes per day and estimates 290 wash days per year. Together, these indicate an estimated annual effective gross car wash income of \$320,160. Frandsen compares this to the subject's actual gross wash revenue from 2011-2013 and estimates stabilized annual revenue of \$330,000. He also estimates stabilized total expenses and concludes the subject's stabilized net operating income at \$101,065. (Ex. 7, p.58) We note this is less than his opinion of the stabilized net operating income (NOI) of \$115,044 in his 2013 appraisal report. (Ex. 6, p. 58). There is no explanation for the discrepancy.

Frandsen states that car wash sales indicate capitalization rates between 9% and 12%. He ultimately reconciles to an overall capitalization rate of 11.50% and concludes a value by the income approach of \$879,000 (rounded).

Like Frandsen's sales approach, we are concerned that the income approach to value relies on dated information about the subject property and market. No attempt was made to incorporate the subject's 2014 income and expense information into this report. Further, the data used to arrive at his capitalization rate appears to be based off of a sale from 2011 or 2012 and his mortgage/equity analysis doesn't specify its source.

In his cost approach, Frandsen estimates the subject's land value by using four land sales along N. Jefferson Way in Indianola that occurred between October 2005 and July 2013. He concludes an estimated market value for the site of \$8.00 per-square-foot for a total value of \$454,000 (rounded).

Frandsen estimates the replacement cost of the subject's improvements using the *Marshall and Swift Valuation Service*. He concludes the depreciated cost of the improvements to be \$384,559, including \$201,591 worth of equipment. He estimates the subject's total value by the cost approach at \$839,000(rounded).

Frandsen reconciles to an uncontaminated value for the subject of \$860,000. He gave weight to each approach, but gave increased significance to the income approach to value. He then deducts the depreciated cost of the equipment to arrive at a valuation of \$658,409, before application of a contamination/stigma adjustment.

2. Contamination/Stigma Adjustment

Frandsen asserts that lenders would be unwilling to finance the purchase of a contaminated site, or refinance a property that had contamination, limiting the pool of potential buyers; because of this, he believes the actual value of the property is diminished. (Ex. 7, p. 60). To account for this, Frandsen applied a minimum 25% discount to his opinion of value to arrive at a total contaminated value, less equipment, of \$493,500 (rounded). Frandsen reports that he found no sales of contaminated car wash properties and the actual cost of potential remaining cleanup has not been estimated. (Ex. 7, p. 60). Despite this, he applies a discount of 25% that he believes is a *minimum* discount that should be considered, and that it is likely greater than 25%. (Ex. 7, p. 60). Contradictory to Frandsen's assertion that the diminution must be 25% at a minimum, he did not indicate that he conducted any independent research into the contamination or its cost to remediate on the subject property. Rather, he referred to articles and information done by many other professionals. Essentially, Frandsen entirely speculates as to the impact the contamination may have on the property – removing and replacing pavement, etc. However, he has no evidence to support these assumptions. Frandsen admits he is not an expert at estimating the costs related to remediation.

We also note that despite Frandsen asserting it would be difficult to find a lender willing to finance the subject property because of its environmental status with the DNR, he completed the appraisal for Northwest Bank and identified the intended use of the report as “for financing purposes.” (Ex. 7, cover letter). Frandsen and Jeshani testified that the appraisal of the subject property was used to establish collateral value for a loan on another carwash owned by Jeshani. We do not find it relevant that a loan was not taken on the subject property itself, as both Frandsen and Jeshani assert; but

rather, that a lending institution was readily willing to make a loan using the subject property as part of the collateral package. In doing so, Northwest Bank issued a mortgage securing the credit of \$860,000 on the subject property, which is the 2014 appraised value as if there were *no contamination*. (Ex. B).

B. Schulte Appraisal

1. Uncontaminated Valuation

The following chart summarizes the sales Schulte used in his appraisal of the property.

Comparable	Sale Date	Sale Price (RE Only)	Total Bays	Type of Bay	SP/Bay	Adjusted SP/Bay
Subject	N/A	N/A	7	4 Auto/3 Manual	N/A	N/A
1-1325 N. Ankeny Blvd, Ankeny	Aug-14	\$1,380,000	8	4 Auto/4 Manual	\$172,500	\$119,522
2-5740 Merle Hay Rd, Johnston	Jan-14	\$ 990,000	4	4 Auto	\$247,500	\$125,779
3-113 Brick St, Bondurant	Jul-13	\$ 600,000	4	2 Auto/2 Manual	\$150,000	\$141,311

The subject property, at the time of Schulte's appraisal, was twenty-one-years-old. The comparable properties he submitted ranged in age from nine- to twelve-years-old. He adjusted the sales downward between 16% and 24% because they were newer properties.

Schulte removed the personal property from each sale, prior to making adjustments.

Schulte explained that the sale of car wash properties declined dramatically from approximately 2007 up to 2013. However, since January 2013, prices have been stable. (Schulte Appraisal, p. 35). He relied on three sales that occurred in mid-2013 and 2014, and therefore no market condition (time) adjustments were required to reflect a 2015 market value.

Schulte notes the subject has a good location on a heavily traveled street near a large grocery store. (Schulte Appraisal, p. 35). The first sale Schulte submitted was

located at 1325 N. Ankeny Boulevard. He considered this to be in a good location, similar to the subject. He explains that he considered factors such as good access and visibility from traffic arteries, as well as the type and quality of development in the immediate area in rating the location of the subject and comparable properties. (Schulte Appraisal, p. 35). We note this is the most recent sale in the record and the most similar to the subject property in bay count and bay size. He adjusted this sale downward for age/condition and land/bay ratio.

Sale 2, located at 5740 Merle Hay Road, is also one of the most recent sales in the record. Schulte determined its location was inferior to the subject, based on the factors previously noted. It was adjusted downward for its larger bays, age/condition, and land/bay ratio.

Both Schulte and Frandson considered the sale located at 113 Brick Street SE. It is Schulte's oldest sale but Frandson's most recent, occurring in July 2013. Schulte considered this sale inferior in location compared to the subject, and adjusted it for bay size, age/condition, and land/bay ratio. Frandson adjusted this sale downward 25% for equipment, stating it had "two recently replaced laser wash automatic washes." (Ex. 7, p. 42). However, Schulte reports it had only one updated automatic wash system, which was added in 2006. (Schulte Appraisal, Addendum). We find Schulte's verification to be more reliable as he notes he verified the sale with the grantor whereas, Frandson verified his information with a third party. (Ex. 7, p. 48).

Schulte also identified a fourth sale, located in Norwalk. It was a six-bay car wash (three automatic/three manual). It sold in November 2014 for \$1,500,000, which included all of the car wash equipment. However, after researching the transaction he discovered the sale was between related parties and the seller indicated the sale price did not reflect market value. Therefore, he chose not to include it for analysis. (Schulte Appraisal, pp. 36-37).

After adjustments, Schulte's per-bay range of value was roughly \$120,000 to \$141,000. He chose the lower end of this range, and concluded an opinion of \$125,000 per-bay, or \$875,000, for the real estate only. Schulte also developed the cost approach, and gave it some weight in his final opinion of value. His report indicates he

did not complete the income approach because the property's income is attributable to the operating business. His final reconciled value of the subject property, as if no contamination existed, and considering only the real estate was \$870,000.

2. Contamination/Stigma Adjustment

Schulte reports a history of the subject site and the contamination issues. However, contrary to the written correspondence between the DNR and ELW and its attorney, as well as testimony at hearing – Schulte asserts there is no financial assistance available for remediation of the subject site. Moreover, he asserts that if ELW chose to remediate the contamination, it would likely incur the cost – but that ELW has no financial obligation to remediate if it so chooses. (Schulte Appraisal, pp. 41-42). We decline to rely on Schulte's opinion on this issue and instead defer to the DNR, which indicates funds are available for remediation.

Schulte also identified that lenders would likely implement stricter lending requirements on a property such as the subject because of its potential contamination concerns. As a result, there would be a fewer pool of potential purchasers. For this reason, he believes a discount is appropriate. (Schulte Appraisal, p. 42). Like Frandson, Schulte explained it was difficult to measure the impact of the stigma; however, he believes it would be somewhere between 10% and 20%. Ultimately, Schulte applied a 15% discount (\$130,000) to reflect the impact of the unknown contamination issues, which he believes would result in fewer buyers and stricter financing obligations. His opinion of the fair market value of the subject property, as of January 1, 2015, and reflecting the current DNR high-risk status of the property, is \$740,000.

C. Brian Arnold Testimony

County Assessor Brian Arnold also testified for the Board of Review regarding the market value of the subject property. Arnold testified that the Board of Review considered both the Frandson and Schulte appraisals and that it determined the assessment was not excessive. He further notes that the Schulte appraisal that was

commissioned by the Assessor's office has a conclusion of \$740,000, whereas the assessment is set at \$658,600, well below this amount.

Arnold also explained that he researched high-risk properties in Polk County to see if any had sold. (Ex. U). He found four sales of properties listed as high-risk by the DNR. (Ex. V-Y). He also conducted a similar search in Dallas County (Ex. Z) and found one high-risk sale. (Ex. AA). He acknowledges the properties are not similar to the subject but that he was trying to determine if there was an effect on the market value of the properties because of their high-risk designation. Ultimately, he was unable to come to any concrete determinations and did not offer the sales as comparable properties to the subject. Rather, he submitted the evidence to demonstrate that contaminated properties exist and transfer in the market place.

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. *Id.* In this case, ELW has not shifted the burden of proof as it has not presented testimony of two witnesses regarding the market value of the subject property. *Id.* However, even though the burden has not shifted, 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).

I. Inequity Claim

To prove inequity, 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.

ELW has not proffered evidence to satisfy the *Maxwell* test. However, ELW’s equity claim seems to be fashioned more like an *Eagle Foods* challenge. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860 (Iowa 1993). In *Eagle Foods*, a tenant of the Spring Village Shopping Center protested the assessment on the sole basis that its assessment was inequitable. *Id.* at. 863. The Iowa Supreme Court examined the income approach to value used by the City Assessor to value Spring Valley and other shopping centers. *Id.* The Court concluded Spring Valley was not treated the same as other like properties because the income approach was not uniformly applied. *Id.* at 864-65.

ELW believes the Assessor did not treat its property the same as other like properties because he should have applied roughly same percentage increase to the subject as was applied to other commercial properties. We note that ELW does not specifically identify which assessment method has not been uniformly applied. Rather, ELW’s complaint appears to be grounded in its concern that the Assessor obtained and

used an appraisal to set the subject’s assessment, but did not do so for other nearby properties.

In support of this claim, ELW submitted the assessments of other properties along the main commercial corridor in Indianola. We find the non-car wash properties are not comparable and similarly situated to the subject property. The other car washes show the following:

Address	Property Type	2013 Assessed Value	2015 Assessed Value	Change in Assessment from 2013-2015
Subject	Carwash	\$ 533,700	\$ 658,600	23.4%
506 N Jefferson Way	Carwash	\$ 506,080	\$ 534,600	5.6%
1905 W 2nd Ave	Carwash	\$ 151,100	\$ 159,700	5.7%

ELW complains that its assessment increased substantially more from 2013 to 2015 than these comparable properties. Here, a facial comparison of year-to-year increases in assessments is somewhat misleading. The subject property has been involved in assessment appeals since 2011 and this has caused fluctuation in the property’s assessment. Accordingly, it is expected that the subject’s year-over-year assessment increase may vary from the norm.

We also note procedural differences between *Eagle Foods* and the present case that complicate our analysis. The only claim before the *Eagle Foods* Court was that of inequitable assessment under Iowa Code section 441.37(1)(a) (1989) (now 441.37(1)(a)(1)(a)). Here, ELW’s equity claim is coupled with claims of overassessment, fraud, and error. In support of its overassessment claim, ELW presented an appraisal and testimony that the subject’s assessment should be reduced to \$493,500, a decline of roughly 7.5% from the 2013 assessment. In the same way that ELW claims that the Assessor did not treat the subject property equitably, ELW’s desired remedy would result in the non-uniform treatment of similarly situated properties.

Given the litigation history of the subject and its unique status, it was reasonable for the Assessor to obtain an appraisal and use that appraisal, along with other information, to set the subject's assessment. In our experience, it is common for assessors to obtain appraisals on properties to assist in fulfilling their statutory duty to value property under Iowa Code section 441.17(2). County Assessor Arnold testified that he regularly obtains appraisals to assist him in setting assessments and defending assessments in his jurisdiction.

Further, ELW obtained appraisals of the subject in its prior litigation challenging the assessment. It would be unreasonably hypocritical for this Board to hold that the Assessor may not obtain an appraisal for use in setting the assessment when ELW obtained and used appraisals in previous assessment challenges.

Lastly, the overarching and ultimate goal of real property assessment is to determine a property's market value. §441.21. See also *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996) (citing *Valley Forge Apartments v. Bd. of Review*, 239 N.W.2d 148, 151 (Iowa 1976)). The parties' main dispute lies in their disagreement about the property's fair market value and each party obtained appraisals with an eye toward better understanding the subject property's value. We find no fault in this. Likewise, we find that ELW has not shown that the Assessor applied an assessing method in a non-uniform manner.

II. Fraud and Error Claim

ELW asserts that the "Assessor's refusal to recognize the environmental contamination to the Property constitutes an error in the assessment." (Petition, p. 3). Further, ELW claims the Assessor's "disregard of PAAB's orders constitutes fraud."

An error claim under section 441.37(1)(a)(4) is not limited solely to clerical or mathematical errors. The plain language on which the taxpayer rests its claim allows a protest on the ground "[t]hat there is an error in the assessment." § 441.37(1)(a)(1)(d).

It is clear from the record that the 2015 assessment does in fact take into consideration that the subject site has a high-risk rating by the DNR and may suffer from some unknown level of contamination. The Board of Review considered both the

Frandsen and Schulte appraisals, which consider the current condition of the subject site; and we note the assessment itself is nearly 25% lower than Schulte's conclusion.

In an appeal claiming fraud, the fraud must be specifically stated.

§ 441.37(1)(a)(1)(e). Fraud is defined as, "A reckless misrepresentation made without justified belief in its truth to induce another person to act." Black's Law Dictionary (10th ed. 2014).

We note the circumstances of the subject property, and therefore its assessment, are unique. The evidence regarding the reclassification, monitoring, and potential remediation of the subject site has evolved throughout the last several years resulting in valuation changes between assessments. Additionally, the petition and appeal process at the local and state levels has contributed to the fluctuations in the assessments. Given the unique nature of the subject property and its condition, we find the Assessor was acting with prudence to enlist an independent third party in this case.

Because we believe the 2015 assessment takes into consideration the property's high-risk DNR status and, in that regard, is consistent with PAAB's prior orders, we find ELW has not established an error or fraud in the assessment. We find that ELW's concerns about the assessment are rooted in a difference of opinion with the Assessor and Board of Review about the property's correct fair market value.

III. Over Assessment Claim

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).

Following the methodology used by the appraisers in this case, we first analyze the evidence of the property's uncontaminated fair market value. From there, based on the evidence presented, we will determine what, if any, adjustment should be made to account for any contamination that exists on the property and/or any stigma associated with the site's designation as high risk.

A. The Subject Property's Uncontaminated Fair Market Value

Iowa Code section 441.21 requires that the sales comparison approach to value be used to determine a property's fair market value unless its market value cannot be established by that method of valuation. Only where the parties convince PAAB that comparable sales do not exist or cannot *readily* determine market value; then other factors such as cost and income can be used. *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, No. 14-0093, at 16 (Iowa Feb. 12, 2016) (citing *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 398-99 (Iowa 2009) (emphasis added)). See also § 441.21(2). Because the record contains an adequate number of sales and neither party contended the subject's market value cannot be readily determined by the sales approach, we necessarily focus our attention on the sales comparison approaches used by the appraisers.

Both ELW and the Board of Review submitted appraisals of the subject property to determine its fair market value considering the contamination and high-risk designation. ELW submitted the Frandson appraisal, which was completed for mortgage finance purposes in May 2014, and developed all three approaches to value (sales, cost, and income). He concluded the property's uncontaminated fair market (without equipment) was \$658,409.

The Board of Review submitted the Schulte appraisal as part of its certified record. Schulte valued the subject property using the cost and sales approaches to value. He concluded an uncontaminated value (without equipment) of \$870,000 as of the January 1, 2015, assessment date.

Frandson submitted four sales for his analysis, which occurred in 2009, 2010, 2012, and 2013. The record includes two additional, more recent sales that occurred in 2014 that Frandson declined to consider in his analysis. Frandson asserts the 2014 sales had superior equipment, and were not sufficiently similar in location. We disagree with both assertions noting that first, equipment is not valued for assessment purposes, and ultimately we find it has no bearing on the assessed value. Additionally, we are unconvinced that the 2014 sales are so superior in location that they could not be reasonably adjusted for this difference.

In total, we find that Frandson's appraisal does not reliably reflect the subject property's uncontaminated value as of the relevant date at issue – January 1, 2015. His reliance on dated sales and income data causes us to question the reliability of his conclusions. We are not convinced by his explanation or rationale for failing to utilize more recent sales and income data.

Furthermore, because the May 2014 appraisal was completed for mortgage financing purposes, Frandson's methodology is at-odds with valuing the property for this ad valorem property assessment appeal. As an example of this problem, we note that Frandson applied his 25% contamination/stigma adjustment to the non-assessable washing equipment located at the subject facility. We are unsure how non-assessable, removable equipment would be impacted by any contamination or stigma associated with the real estate. Likewise, in his sales comparison approach, he adjusts the comparables for variations in type, quality, and condition of wash equipment before deducting the subject equipment's value to arrive at his real estate value. We find Schulte's methodology of removing the non-assessable equipment at the outset of his sales comparison approach results in a more accurate valuation of the subject real estate.

B. Contamination/Stigma Discount

The DNR has determined one factor of many for this property is high-risk, and thus assigned a high-risk designation to the entire property. Moreover, the subject property has a history of appeal before both the Board of Review and PAAB. However, "previous decrees have no preclusive effect on subsequent tax assessments." *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (Iowa 1989). "[A] judicial decision on one year's tax is not res judicata for subsequent years because each tax year is an individual assessment which does not grow out of the same transaction." *Id.*; see also *Colvin v. Story County Bd. of Review*, 653 N.W.2d 345, 348 (Iowa 2002). Nevertheless, prior valuations are competent and persuasive evidence of value in a subsequent year. *Id.* (internal citations omitted).

The subject property was reclassified to a high-risk designation by the DNR in 2003. However, the DNR declined to contact ELW for nearly a decade since that reclassification. In addition, there has been no monitoring of the property and no action taken on the property since this designation was determined. As of this date of this hearing, no monitoring of the site has occurred and no determination of the extent of the contamination or what, if any, remediation steps may result. Despite this, the communication appears to acknowledge that ELW is not a responsible party and provides documentation that a lender would not be held responsible for remediation costs should it find itself in the ownership of a defaulted mortgage. We also note, the subject property has continued to operate to its fullest capacity with no interruptions because of the high-risk designation.

Notwithstanding all this, we recognize the high-risk DNR designation would create uncertainty and risk with the ownership of the property. Additionally, we recognize the stigma associated with this type of property is recognized and difficult to quantify. We also note that remediation is distinct from stigma. Remediation is the actual costs to clean up a contaminated property for both on-site contamination and off-site impacts and it is distinct from stigma. THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, pp. 212-213 (14th ed. 2013).

Stigma is an adverse public perception regarding a property, commonly the identification of a property with a condition such as environmental contamination... and may also result in a diminution in value... Environmental contamination such as a leaking underground storage tank is one of the most common causes of stigma...have the potential to create a market perception that lowers value...Measuring the effect of stigma on value can be difficult because the damage caused by stigma is not simply the cost to repair a defect. *Id.* pp. 212-213.

In *Boekeloo v. Bd. Of Review of City of Clinton*, 529 N.W.2d 275 (Iowa 1995), the Iowa Supreme Court examined the impact of groundwater contamination on the assessment of a property. The court stated that “environmental contamination will have some adverse effect on the value of the contaminated property” and noted that Iowa law requires assessors to consider any factor that may affect market value. *Id.* at 278 (citing *Bartlett & Co. Grain v. Bd. of Review*, 253 N. W. 2d 86, 88 (Iowa 1997)). The

court held that the assessor must consider the contamination of the groundwater under the property as a factor in its valuation. *Id.*

Both Frandson and Schulte agreed that some contamination/stigma adjustment was necessary. However, they disagree as to the exact amount of adjustment necessary. Schulte indicates that the adjustment is somewhere between 10 and 20 percent, ultimately settling on 15% to arrive at his final value conclusion.

Frandson's opinion of value considers the contamination of the subject site, and in his opinion because the extent of the contamination and potential remediation is unknown, it requires a diminution of *at least 25%*, and he believes it "is likely that the discount is greater than 25%." (Ex. 7, p 60). It appears Frandson is factoring both potential unknown remediation costs, as well as stigma in his discount. Frandson testified that because it is unknown what the remediation costs may be, the discount could be even greater to cover those costs.

Frandson and Jeshani testified that the property suffered from additional diminution because no lender would be willing to provide a mortgage on a contaminated property. While we agree, we note Frandson's appraisal was prepared for mortgage lending purposes; and as a result, a mortgage was placed on the subject property. We do not find it relevant that the funds from the mortgage was not used in relation to the subject property – but rather that the subject property was mortgaged as part of a lending decision and used as collateral on other property held by Jeshani.

Having already concluded that Frandson's appraisal does not reliably reflect the subject's market value as of January 1, 2015, we need not decide which appraiser applied the correct contamination/stigma adjustment. We note that if we applied Frandson's 25% adjustment to Schulte's final value conclusion of \$870,000, the result would be \$652,500. This is consistent with the current assessment of \$658,600.

We add that the parties to this case have not materially aided our analysis of the necessity or amount of a contamination/stigma adjustment. Neither party presented any relevant, recent evidence that the subject site is, in fact, still contaminated. Our review of the record shows that, to the contrary, ELW has been attempting to deter any evaluation of the subject's contamination status. While ELW may have legitimate

reasons for being cautious in evaluating the subject's status, all we know at this point is that the subject is considered high-risk by the DNR and was, at one time, determined to be contaminated. Whether that contamination still exists is an open question. Because of this, ELW argues that there is unknown risk involved in this property due to its unknown contamination status. Unfortunately, as the appraisers in this case demonstrated, quantifying an unknown is rife with difficulty. The appraisers' opinions concerning the amount of adjustment lacked certainty, do not appear to be based on any paired-sales analysis or research, and, in our opinion, are largely speculative. Because our findings of fact and ruling must be based on evidence and not merely speculation, we are wary of continually granting a contamination/stigma adjustment to a property without the necessary evidentiary support.

In conclusion, we find that Frandson's appraisal does not reliably reflect the subject's uncontaminated fair market value as of the assessment date. Consequently, we also find that his conclusions do not reliably reflect the subject's fair market value with the application of a contamination/stigma adjustment.

Assuming, without deciding, that Schulte's appraisal is the correct estimation of the subject's uncontaminated fair market value, applying ELW's preferred 25% contamination/stigma adjustment results in a valuation essentially mirroring the current assessment. As a result, we find that ELW has not met its burden of showing the subject is assessed for more than authorized by law.

Order

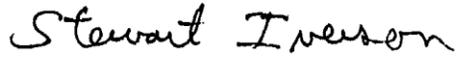
IT IS THEREFORE ORDERED that the Warren County Board of Review's action is affirmed.

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:

Jason Craig

Warren County Board of Review