

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

PAAB Docket No. 2015-077-00861R

Parcel No. 070/05103-000-000

Nanette Hall,
Appellant,

v.

Polk County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 9, 2016. Nanette Hall was self-represented. Assistant County Attorney Christina Gonzalez represented the Polk County Board of Review.

Nanette Hall is the owner of a residential property located at 3118 5th Avenue, Des Moines. The subject property is a two-story dwelling, built in 1907. It has 1584 total square feet of living area; an unfinished attic; an unfinished basement; and an enclosed porch. The dwelling is listed in above-normal condition with average construction quality (Grade 4+00). The property has 40% physical depreciation. The site is 0.149-acres.

The property's January 1, 2015, assessment was \$107,800, allocated as \$15,600 in land value and \$92,200 in dwelling value. On her protest to the Board of Review, Hall claimed the assessment was inequitable as compared to similar properties; that her property was assessed for more than the value authorized by law; and error in the assessment under Iowa Code sections 441.37(1)(a)(1)(a, b, and d). She also asserted a downward change in value claim under section 441.37(1)(a)(2), but we find that simply reasserts her overassessment claim. The Board of Review granted

the protest by applying a 5% nuisance factor, which reduced the assessment to \$104,100.

Hall then appealed to PAAB and seeks an assessment of \$86,240.

Findings of Fact

Hall testified her neighborhood has been plagued with crime and violence, which she contends has reduced the property values. (Ex. 2). She reports there have been shootings on her block, the property next door is owned by a slumlord and is occupied by undesirable tenants, and many of the dwellings on the street are now used as rentals. (Ex. 1).

Hall provided a general background of the recent history of violence on her street. She supplied a police report from April 2015 detailing a shooting incident at 3122 5th Avenue where five shots were fired at the residence. 3122 5th Avenue is located next door to the subject. In addition, Hall submitted a Des Moines Register article detailing the armed robbery of a pizza delivery driver at 3214 6th Avenue. (Ex. 1). Lastly, Hall describes the owner of the property at 3122 5th Avenue as a slumlord.

Further, Hall believes there is a connection between the shooting death of a male juvenile in April 2016 and the juvenile's family, who are tenants at 3122 5th Avenue. A police report and news story indicate that in May 2016 gunshots were fired from a Chrysler 300 at a group of kids. (Ex 1). Police officers found two bullet holes in the north side of the house located at 3017 5th Avenue, near the shooting. Apparently uninjured, the kids were driven from the scene by the resident of the property at 3122 5th Avenue. An additional police report indicates that the Chrysler 300 was also struck by gunfire while driving by 3017 5th Avenue that same evening.

Hall identified one equity comparable to the Board of Review. (Board of Review Petition). 3126 5th Avenue, is a two-story dwelling in the same neighborhood as the subject property. It is similar age, living area, and quality as the subject property, however, as compared with the subject, it is in below-normal condition. (Ex. D). It sold for \$60,000 in April 2015 in an arm's-length transaction despite its assessed value of \$88,700.

Hall identified three comparable sales at 3126 5th Avenue, 3101 5th Avenue, and 3100 5th Avenue. (Ex. 1). According to Hall, the property at 3101 5th Avenue is assessed at \$57,200. It sold in November 2015 for \$10,000 to Home Buyer Group, LLC and then resold for \$19,000 in December 2015. The 3100 5th Avenue property is assessed at \$45,200. The property was sold on contract for \$16,000 in January 2015. More recently, the buyer forfeited the contract and let the property go back to Oak Helm Partners. Hall testified the property is currently vacant.

Because of the circumstances surrounding the purchase and resale of 3101 5th Avenue and the fact that the 3100 5th Avenue was sold on contract, we find those sales are not normal, arm's length transactions. No adjustments were made to account for these sales conditions. Further, the sales were not adjusted to account for differences between them and the subject property. Amy Rasmussen, Director of Litigation for the Assessor's Office, testified the Board of Review changed the condition of the 3126 5th property to below normal and applied a market adjustment to reduce the assessment to \$60,000.

Rasmussen identified sales of six comparable properties used by the Board of Review in its analysis of Hall's protest. The following chart is a summary of those properties.

	Address	Eff Yr Built	Grade	TLA	Basement	AV	Sale Price	SP/SF	Adj Sale Price
	Subject	1907	4+00	1584	856	\$104,100	N/A		N/A
1	840 Euclid	1906	4+00	1593	0	\$ 95,600	\$105,000	\$69.51	\$ 103,100
2	3419 4th	1910	4+05	1833	780	\$105,200	\$ 99,000	\$54.01	\$ 88,300
3	3500 5th	1912	4+05	1552	728	\$ 97,400	\$ 94,000	\$60.57	\$ 105,300
4	204 E Euclid	1907	4+05	1666	833	\$ 85,400	\$ 78,000	\$46.82	\$ 80,500
5	3319 5th	1896	4+05	1483	401	\$112,000	\$109,000	\$73.50	\$ 119,000
6	3808 8th	1890	4+05	1581	784	\$87,600	\$ 89,000	\$56.76	\$ 127,100

The sale prices were adjusted to account for differences between them and the subject property. The indicated value for the subject property is \$105,100 based on this analysis. Hall's property is assessed at \$104,100, or \$67.72 per-square-foot, which is within the range of sales prices and adjusted sales 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.* In arriving at market value, sales in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors which distort market value, including but not limited to . . . foreclosure or other forced sales [and] contract sales." *Id.*

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).

Hall provided three comparable sales in support of her claim. We found two sales were abnormal and no adjustments were made to account for the abnormal sales conditions. Therefore, we give them no weight. The remaining property, 3126 5th

Avenue, was sold for \$60,000 in April 2015. This sale is inferior in condition to the subject and no adjustment was made to account for this difference.

In addition, Hall testified to incidences of crime and violence on her street and in the neighborhood. In particular, Hall is concerned about the subject's close proximity to the home at 3122 5th Avenue, located next door to the subject. We recognize the prevalence of crime and violence in a neighborhood can affect the residents use and enjoyment of their property and may impact the neighborhood's desirability in the market. We are especially sympathetic when the crime and violence appears to be associated with a property located next door. To recognize this effect, the Board of Review applied a five percent economic obsolescence to the subject. Hall contends this adjustment is arbitrary and is too low. However, we find no support in the record for any adjustment greater than five percent.

The Board of Review provided six normal, arm's length sales with adjustments. Hall's property falls within the range of the adjusted sales prices of these comparables. In total, we find the evidence does not show that Hall's property is overassessed.

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.

Hall did not assert the Assessor failed to uniformly apply an assessing method to similarly situated or comparable properties. Hall only provided one equity comparable. The plain language of Iowa Code section 441.37(1)(a)(1) requires more than one comparable to establish inequity. *Montgomery Ward Dev. Corp. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992), *overruled on other grounds by Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614 (Iowa 1996). This “statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board.” *Id.* Accordingly, we find that Hall has not shown this property is inequitably assessed.

Lastly, Hall’s Board of Review protest indicates her belief that there is an error in the assessment in that the subject property is incorrectly listed as over two-stories when it is, in fact, only two-stories. No testimony or evidence was offered by either party on this issue. As a result, we find there is insufficient evidence to show an error in the assessment. We suggest that Hall contact the Assessor’s Office to arrange an inspection if she continues to believe the property is incorrectly listed.

Order

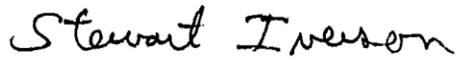
IT IS THEREFORE ORDERED that the Polk County Board of Review’s action is affirmed.

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.



Jacqueline Rypma, Presiding Officer



Stewart Iverson, Board Chair



Karen Oberman, Board Member

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