

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

PAAB Docket Nos. 2015-065-00602R through 00613R, and 2015-065-00616R

Thomas Kennedy,  
Appellant,

v.

Mills County Board of Review,  
Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 24, 2016. Thomas Kennedy owns eleven of the parcels on appeal with the two remaining parcels owned by his children, John (Tracy) Kennedy and Shannon Radar, dockets 2015-065-00616R and 2015-065-00604R respectively. Consultant Richard Stradley of The Stradley Group represented the Appellants. Attorney Brett Ryan of Watson & Ryan PLC represented the Mills County Board of Review.

The following table provides details of the parcels on appeal.

Docket	Parcel #	Status	Site Size (Acres)	2015 Total Assessed Value
2015-065-00602R	03242	Vacant Lot	0.585	\$16,279
2015-065-00603R	03240	Vacant Lot	0.551	\$18,334
2015-065-00604R	03242	Improved	0.597	\$110,903
2015-065-00605R	03254	Vacant Lot	0.462	\$6,715
2015-065-00606R	03198	Vacant Lot	0.509	\$11,464
2015-065-00607R	03282	Vacant Lot	0.297	\$16,975
2015-065-00608R	02812-001	Improved	1.00	\$116,377
2015-065-00609R	03241	Vacant Lot	0.658	\$18,817
2015-065-00610R	03239	Vacant Lot	0.460	\$17,896
2015-065-00611R	03244	Vacant Lot	0.613	\$16,416
2015-065-00612R	03078-003	Improved	40.00	\$133,977
2015-065-00613R	03251-001	Vacant Lot	0.517	\$6,752
2015-065-00616R	03251-003	Vacant Lot	1.120	\$2,693

On protest to the Mills County Board of Review, Kennedy claimed the properties were assessed for more than authorized by law under section 441.37(1)(a)(1)(b). The Board of Review denied the petitions. Kennedy then appealed to PAAB, reasserting the claim of over assessment.

### **Findings of Fact**

This is not the first time Kennedy has appealed the assessment of these parcels to PAAB. Although PAAB affirmed the 2012 assessments at-issue in those appeals, it also recommended the Mills County Assessor consider combining specific parcels as permitted under Iowa Code section 428.7. (Docket Nos. 2015-065-00613R & 00616R). Kennedy was critical of the Assessor's failure to combine the parcels. In response, Mills County Assessor Christina Govig testified that she intended to comply with the PAAB recommendation once the parcels at-issue are no longer subject to litigation. But, she stated, the parcels have been under appeal since 2012 and believes that combining them now will result in a loss of the parcels' history.

Kennedy called Govig to testify about the assessment process and history of the assessment for the appealed parcels. Govig explained she is not an appraiser and her office relied on an outside company, Vanguard Appraisal, which provided appraisals for the County's 2012 reassessment. After the assessments were determined in 2012, the Board of Review decreased the assessed value of the properties on appeal by 5%. Since that time, the assessments have remained unchanged.

Govig testified that an unimproved lot does not have utilities, whereas an *improved* vacant lot has utilities and other infrastructure. The subject parcels designated as vacant lots are all unimproved and valued as such. She also testified that she has been to the subject development at least six times.

Kennedy purportedly uses four adjoining vacant lots as a park. (Lots 4, 5, 6, and 7 – PAAB dockets 2015-065-00602, 2015-065-00603, 2015-065-00609R, and 2015-065-00610R). Photos were submitted to collectively demonstrate the use of these lots as a park. (Ex. 28). Govig testified she was not aware of this use. Moreover, she stated when she last inspected the development there were no picnic tables, playground equipment, or other improvements that would identify the use of these lots as a park. At that time they appeared to her to be vacant residential sites. Kennedy asserts the lots were dedicated as a park in May 2004. However, as of January 2015, no recorded instrument existed to identify the lots as a dedicated park area. Further, we note Kennedy never requested the lots be combined into a single parcel for assessment purposes. For these reasons each parcel requires its own distinct assessment, regardless of how Kennedy uses the lots.

Kennedy submitted an appraisal for each appealed parcel. (Exs. 1-13). The appraisals were completed by Jeanne McDonald of Residential Appraisal Services, Bellevue, Nebraska. McDonald developed the sales comparison approach to value for each report, with an effective date of January 2015. The record also includes January 2012 appraisals, submitted by the Board of Review, which were also completed by McDonald. (Exs. A2-B2, D2-M2). The Board of Review submitted Exhibit C4 for Docket 2015-065-00612R, however, the appraisal did not value the appealed parcel and therefore is not relevant. We also note that for Dockets 2015-065-00613R and

2015-065-00616R, McDonald's appraisals included multiple parcels and improvements. The actual parcels appealed for these dockets are unimproved lots and therefore we do not find either McDonald's 2012 or 2015 appraisals relevant to the corresponding appeals for these parcels.

The following table summarizes McDonalds's 2012 and 2015 value conclusions.

Docket	Exhibits	January 2012 Value Opinion	January 2015 Value Opinion	2015 Total Assessed Value
2015-065-00602R	H2 & 8	\$4,300	\$3,000	\$16,279
2015-065-00603R	K2 & 11	\$10,000	\$8,000	\$18,334
2015-065-00604R	B2 & 2	\$90,000	\$91,000	\$110,903
2015-065-00605R	F2 & 6	\$3,300	\$2,000	\$6,715
2015-065-00606R	L2 & 12	\$9,700	\$5,500	\$11,464
2015-065-00607R	M2 & 13	\$6,800	\$3,500	\$16,975
2015-065-00608R	A2 & 1	\$86,000	\$110,000	\$116,377
2015-065-00609R	J2 & 10	\$11,000	\$8,000	\$18,817
2015-065-00610R	I2 & 9	\$8,300	\$5,000	\$17,896
2015-065-00611R	G2 & 7	\$10,600	\$5,000	\$16,416
2015-065-00612R	3	None	\$130,200	\$133,977
2015-065-00613R	E2 & 5	\$114,000	\$128,000	\$6,752
2015-065-00616R	D2 & 4	\$111,000	\$122,000	\$2,693

Ultimately, we do not find it necessary to address each appraisal individually. For the following reasons we find McDonald lacks credibility as she failed to persuade PAAB that her analyses were based on sound rationale, that she was acutely aware of market dynamics, or that her 2015 conclusions -- specifically for the vacant sites -- were reasonable based on the comparable properties.

McDonald valued the subject properties in 2012 and again in 2015. While we do not find the 2012 appraisals relevant to a 2015 value conclusion, we do find the comparison of McDonald's appraisals demonstrate a lack of overall awareness or understanding of market dynamics for the subject's area, specifically for the 2015 opinions of value. On average, she concluded a value almost 40% lower for the vacant lots compared to her 2012 value opinions. When questioned about the rather large

reduction in her opinions over a three-year period, McDonald repeatedly testified it was a different market, noting a decline had occurred since 2012. Subsequently, she repeatedly acknowledged she was unaware of exactly when the market did decline. We find this lack of market acuity greatly compromises McDonald's credibility.

Moreover, in all of the 2015 appraisal reports McDonald identified the neighborhood as stable with marketing times for property sales between 3-6 months. When questioned about this description, McDonald explained that the market had declined, and had since rebounded – and that as of January 2015, the market had stabilized. While this could be a reasonable explanation, we again note McDonald was unable to say, with any specificity, what had transpired in the market to cause a 40% decrease on average to occur within a three-year period. In fact, when compelled to identify exactly when the market had declined she opined she really did not know.

Turning to McDonald's 2015 sales comparison analysis, we note that she used the same comparable properties for each vacant parcel, and the same improved properties for each improved subject parcel.

A. Vacant Lot Appraisals

The following table is a summary of her comparable sales for the vacant sites. (Exs. 6-13).

Comparable	Sale Date	Sale Price	Site Size (SF)
1 - 401 Maple St, Silver City	Aug-13	\$9,500	7,500
2 - 55121 202nd St, Pacific Junction	Apr-14	\$35,950	101,495
3 - 59076 280th St, Malvern	Jul-14	\$54,000	247,421

While we recognize the difficulty in valuing vacant land — especially in a rural area, we question the comparability of Sales 2 and 3, which are 2.3- and 5.7-acre sites. The subject sites on average are roughly 0.5 acres, which are much smaller by comparison. Moreover, because Sales 1 and 2 are identified as *buildable* acreages, we question their comparability with many of the subject vacant lots. McDonald asserts some of the lots are unbuildable due to conditions such as topography, drainage, zoning setbacks, or improvements from adjoining parcels encroaching onto them and thereby

limiting their actual utility as independent building sites. For these same reasons, we question why the Board of Review had not combined many of the subject parcels into a single assessment unit based on actual use and utility.

McDonald testified that she only selected sales from within Mills County because she wanted to use sales that were available to the Assessor's Office. For the present purposes, however, sales from outside of the taxing district can be used to evaluate the fair market value of a property.

Govig was critical of the use of Sales 1 and 3 located in Silver City and Malvern because she believes they are not comparable to the subject sites located in Oak Township. In her opinion, Oak Township, where the subject is located, has had aggressive expansion, whereas the Silver City or Malvern areas have seen limited expansion.

The Board of Review was critical of McDonald's gross adjustments on the vacant sites. The adjustments were high and depending on the appraisal report ranged from around 70% to 142%. Because the gross adjustments were significant, the Board of Review asserts the sales and subsequent analysis are unreliable. While we recognize it is preferable to have comparables that are similar enough they require minimal adjustment; we also recognize that when comparing properties with lower sale prices and valuations, it is not uncommon to exceed recommended appraisal guidelines. This alone does not influence our concerns with the overall credibility of McDonald's opinions.

However, what does concern PAAB, is McDonald's testimony that since 2012, the market has declined, increased, and subsequently stabilized at something still significantly less than the 2012 values. Furthermore, she was unable to professionally articulate or document the significant volatility in the market that she believes took place. As an example, she did not make any time adjustments to Sale 1, which sold in August 2013, despite the instability she asserts occurred between 2012 and 2015 in justification of her disparate opinions.

**B. Improved Lot Appraisals**

The following table is a summary of her comparable sales for the improved parcels, Dockets 2015-065-00604R and 2015-065-00608R. (Exs. 1-2).

Comparable	Sale Date	Sale Price
1 - 54911 Eads Rd, Pacific Junction	Dec-13	\$100,000
2 - 51177 Brohard Ave, Council Bluffs	Apr-14	\$110,000
3 - 303 5th St, Pacific Junction	Jan-14	\$82,000

Both of the improved subject parcels have manufactured homes built on them. The subject home located at 54826 Eads Road (2015-065-00604R) was built in 2002 and has 1809 square feet of gross living area (GLA). The subject home located at 53160 195th Street (2015-065-00608R) was built in 2001 and has 1404 square feet of GLA. McDonald's three comparable properties are manufactured homes like the subject property. We find these properties to be comparable to the subject properties she appraised.

While we do find the properties comparable, some inconsistencies are found in a few of the adjustments made within the two appraisals. Specifically, the location adjustments are different in the two reports despite the same comparable properties being used and the subject properties' location in the same general area. Regardless, we do not find this affects the conclusions to a meaningful degree.

Unlike McDonald's analyses of the vacant lots, which had an average reduction of 40% since 2012, the improved properties remained the same or increased roughly 20% over the last three years. We find it improbable that only vacant sites were subject to volatile market conditions resulting in significant decreases in values from 2012 to 2015, whereas improved properties either have had effectively no value increase or a 20% increase over the same time period.

**C. Board of Review Sales Data**

The Board of Review submitted fourteen sales in Oak Township in support of its decision. (Exs. A5-M5). Govig testified regarding the sales and asserts they demonstrate there has not been a decline in the market between 2012 and 2015. For

example, the property record card for 25259 Coral Lane indicates the bare site sold in 2012 for \$25,000 and again in 2016 for \$65,000. In aggregate, the Board of Review does not believe the market in Mills County or Oak Township has declined between 2012 and 2015, as suggested by McDonald's analyses. With the exception of the first sale, the remainder of the Board of Review's sales are all improved properties. While they all indicate an increase between previous sales, it is also unknown if there were any improvements made which contributed to the increases.

### **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.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into

account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *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).

### **I. Overassessment Claim**

Kennedy asserts the properties are assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(1)(b). In an appeal alleging a property is assessed for more than the value authorized by law, 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).

Recognizing this is not the first time the value of the subject properties has come before this Board, the Iowa Supreme Court has stated “previous decrees have no preclusive effect on subsequent tax assessments.” *Cott v. Board of Review of Ames*, 442 N.W.2d 78, 81 (Iowa 1989). However, the Court also noted that “[i]n cases involving valuation, it has been held that in the absence of a showing of change in value, it is presumed that a valuation fixed by the court continues to be the true value of the property in subsequent years.” *Id.* (citations omitted).

The Board of Review argues this presumption applies here and that Kennedy has not shown a change in value. In contrast, Kennedy argues the presumption does not apply because the presumption is not indefinite. Ultimately, we need not decide because we conclude Kennedy’s evidence of the subject properties’ values as of January 1, 2015, is not credible and reliable.

The record includes a 2012 and 2015 appraisal for the subject properties, both completed by McDonald. PAAB’s focus is on the value of the subject properties as of January 1, 2015. However, because the properties were valued by the same appraiser, with significant variances in her opinions from 2012 to 2015, we question the credibility of the conclusions.

Further, McDonald was unable to explain why the vacant sites had an average decrease of 40% from 2012 to 2015. She simply kept asserting it was a different market with different sales. While we agree 2015 was likely a different market with

different sales available for analysis compared to 2012, we do not believe it is reasonable for an appraiser to offer no explanation or support for vastly different conclusions on the same property that has had no physical changes over a three-year period. We agree the opinions of value would be relative to the time and sales available for analysis. However, the record reflects there have been no changes to the properties between her analyses, yet she was unable to explain when the market declined so drastically in a three-year period. In fact, although McDonald testified it was her belief the market declined, she could not identify when the decline occurred. Given the noteworthy differences between her 2012 and 2015 value opinions, the lack of evidence to support the significant decreases, and her own testimony citing a lack of knowledge as to when the market actually declined, we find the credibility of her conclusions unreliable.

Moreover, McDonald asserts the values of the improved properties were stable to increasing by nearly 20%. However, she provided no explanation as to why improved properties increased in value, while vacant sites were decreasing. Furthermore, the Board of Review's evidence indicated that values of improved and unimproved parcels likely appreciated from 2012 to 2015. For the foregoing reasons, we find McDonald lacks credibility and we give her 2015 opinions no consideration.

Kennedy expressed frustration at the assessment process because the Assessor's Office or the Board of Review seemed unwilling or unable to explain how the values are set for the vacant sites, simply citing that the values are determined by Vanguard Appraisal. The Board of Review asserts the values have been set since 2012 and have remained unchanged since that time. We do not find the Board of Review's response particularly helpful to the taxpayer and suggest it contact Vanguard to gain an understanding of how it determined the original 2012 values.

Overall, we find Kennedy failed to submit reliable evidence of the subject properties' current market values to support the claims of over assessment.

**II. Combining Parcels Under Section 428.7**

Iowa Code section 428.7 permits assessors to combine tracts of land and value them as a single unit for assessment purposes. We find the following parcels should be combined and valued as a single unit:

<u>Parcels to Be Combined into a Single Unit</u>
032520010000000
032510040000000
032510030200000

<u>Parcels to Be Combined into a Single Unit</u>
032510030100000
032510020000000
032510010000000

We see no reason to further delay combining these parcels, given their interdependency. If the Assessor wishes to maintain a record of the parcels' assessment histories, there should be means to do so. If necessary, we suggest the Assessor contact Vanguard or the Property Tax Division of the Iowa Department of Revenue for assistance or guidance in maintaining these records. However, not all of the above-listed parcels are currently within PAAB's jurisdiction and therefore our directive to combine the parcels is prospective in nature, as described in an accompanying order.

**Order**

IT IS THEREFORE ORDERED that the Mills County Board of Review's actions are affirmed.

IT IS FURTHER ORDERED that the parcels identified above shall be combined for assessment purposes, and revalued accordingly, beginning with the January 1, 2016 assessment. (See PAAB Order Docket 2016-065-00261R).

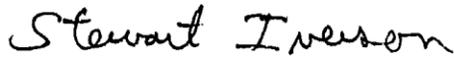
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any applications for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of

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.



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Karen Oberman, Presiding Officer



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Stewart Iverson, Board Chair



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Camille Valley, Board Member

CC:

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