

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

PAAB Docket No. 2015-077-00771R

Parcel No. 241/00949-529-000

Jami Lehman,
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 19, 2016. Jami Lehman was self-represented. Assistant Polk County Attorney Mark Taylor represented the Polk County Board of Review.

On September 15, PAAB issued an order modifying the 2015 assessment of Lehman's property located at 7071 Hillcrest Court, Johnston. PAAB found the evidence showed Lehman's property was inequitably assessed under Iowa Code section 441.37(1)(a)(1)(a).¹ PAAB reduced the assessment from \$290,400 to \$284,000 by removing a positive 10% adjustment for the subject's walkout lot amenity.

The Board of Review filed an Application for Rehearing/Reconsideration on October 5. Lehman 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.

¹ Lehman also contended the subject was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(1)(b). PAAB found insufficient evidence to support that claim and this Order does not otherwise address it.

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

Lehman is the owner of a residential, two-story home located at 7071 Hillcrest Court, Johnston. Built in 1999, it has 1884 square feet of above-grade finish and a full, walkout basement with 1036 square feet of average-plus finish. It also has a two-car attached garage, a deck, a patio, and an open porch. The site is 0.201 acres. (Ex. A).

Lehman believes inequity exists because her property is assessed higher than other comparable properties in her immediate area. In particular, she asserts the site value is higher than nearby competing properties. Lehman relies on seven properties located in her neighborhood and map area— JH01/A1; she also provided the property located at 10416 Stonecrest Drive, Johnston, but decided not to rely on it. (Ex. C).

Lehman asserts all of these properties have walkout lots, like the subject, but, only her lot is being assessed for this amenity. Exhibit B shows the subject's lot received a positive 10% adjustment for the walkout amenity. In addition, approximately \$2700 worth of value was attributed to the improvements for the walkout basement.

Rasmussen conceded that if the comparable properties are walkouts, like the subject, the listings for those properties are incorrect and the Assessor's Office would need to inspect them to ensure they are listed and assessed correctly. Table 1 below is a summary of the comparable properties Lehman relied on. (Exs. C, 3-5, 6-7). Table 2 focuses on the properties with similar lot sizes.

Table 1.

Address	Site Size	2015 Assessed Site Value	AV/SF
Subject	8750	\$70,100	\$8.01
7031 Carey Ct	8810	\$63,800	\$7.24
7027 Carey Ct	11,550	\$67,000	\$5.80
7068 Hillcrest Ct	8780	\$63,800	\$7.27
7047 Carey Ct	17,368	\$73,900	\$4.25
7059 Hillcrest Ct	8750	\$63,700	\$7.28
7087 Hillcrest Ct	12,840	\$68,600	\$5.34
7047 Hillcrest Ct	11,910	\$67,500	\$5.68

Table 2.

Address	Grade	Gross Living Area	Garage	Basement Finish	Total Assessment
Subject	3+05	1844	588	1035 Avg+	\$290,400
7031 Carey Ct	3-10	2310	640	750 LQ	\$267,400
7068 Hillcrest Ct	3+00	2124	640	900 LQ	\$275,500
7059 Hillcrest Ct	3-05	1830	420	690 Avg+	\$231,100

The subject's lot is clearly valued higher than lots of similar size in the neighborhood. Of the properties with similar lot sizes, the property record cards for 7031 Carey and 7068 Hillcrest each indicate the property has a walkout basement and value is being attributed to the improvements for that amenity. However, neither lot is receiving the 10% positive adjustment that is applied to the subject's lot. (Ex. H). In contrast, it doesn't appear that 7059 Hillcrest is identified as having a walkout basement at all and therefore no adjustment is applied to either the land or improvements. (Ex. 8).

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).

Lehman asserts her 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 is 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 non-uniformity in the 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. 6-8). 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.

The Board of Review believes the subject's pre-PAAB ruling value of \$290,400 was uniform and reasonable because it was within 1% of the indicated market value of \$287,400. (Application p. 6). This argument ignores the fact that the subject's land assessment is at least \$6300 higher than comparable properties with similar lot sizes because of the non-uniform application of the 10% walkout amenity adjustment. We do not find this to be reasonably equitable. We also note the post-PAAB ruling value of \$284,000 is within an acceptable range of the indicated value of \$287,400.

The Board of Review's assertion "[t]he Lehman's were not subjected to a different assessing methodology than the comparable properties" is undercut by its admission that 7031 Carey Court and 7068 Hillcrest Court and the surrounding homes in the Johnston Neighborhood with walkout basements are incorrectly assessed. (Application p. 7). We find the valuation of specific amenities in the subject along with the corresponding failure to value the same amenities in comparable properties results in inequity in this case.

The Board of Review contends PAAB is "purposefully assessing property contrary to the standards of the Real Property Appraisal Manual." (Application p. 7-8). The Board of Review does not specifically identify how PAAB is departing from the Manual. We note that assessors, not PAAB, have the statutory directive to comply with the Manual. §§ 421.17(17), 441.17(2), 441.21(1)(h).

We are not persuaded to modify our prior ruling by the Board of Review's argument that PAAB's assessment modification will serve no lasting purpose because the adjustment will be removed for the upcoming 2017 assessment year. (Application p. 8). Although temporary it may be, PAAB's remedy will result in a more fair and equitable distribution of the tax burden than would have otherwise existed because of the inaccurate assessment of comparable properties in the subject's neighborhood.

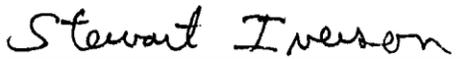
Order

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 \$284,000.

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
Karen Oberman, Presiding Officer



Stewart Iverson
Stewart Iverson, Board Chair

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