

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

PAAB Docket No. 2016-008-00230R

Parcel No. 088325 101150003

Leroy Orth,
Appellant,

vs.

Boone County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on December 22, 2016. Leroy and LaVerna Orth are the owners of the subject property; they were self-represented. Boone County Assistant Attorney Matthew Speers represented the Board of Review.

The Orths' property is a one-story, modular home located at 2197 232nd Place, Ames. Built in 2004, it has 1404 square feet of gross living area (GLA), an unfinished basement, an enclosed porch, a deck, greenhouse, an attached two-car garage with a workshop and a shed. The site is 0.860 acres. (Ex. A).

The property's January 1, 2016 assessment was \$204,564, allocated as \$55,000 in land value and \$149,564 to improvement value. This was a change from the previous year's assessment. On his protest to the Board of Review, Leroy Orth claimed the assessment was not equitable as compared with assessments of other like property and the property was assessed for more than authorized by law under Iowa Code sections 441.37(1)(a)(1)(a & b). The Board of Reviewed denied the petition.

Orth reasserts his claims to PAAB and contends the subject property's correct assessed value is \$194,336. (Appeal to PAAB).

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). 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. Inequity Claim

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.

ii. 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).

Findings of Fact

Leroy Orth testified and submitted evidence in support of his claims. While we have carefully reviewed all of the record, we focus on his primary concerns in this Order.

Orth explained he purchased the property in 2011 from foreclosure. He has made improvements and additions to the house, but asserts the property still has deficiencies throughout that need to be repaired or updated.

Orth submitted three properties in support of his claims. They are set forth in the table below and referenced throughout the Order.

	Year Built	Site Size (Acres)	Gross Living Area (GLA)	Garage	Basement Finish	2016 Assessed Value
Subject	2004	0.86	1404	2 Att/ Workshop	None	\$204,564
1 - 2194 232nd PI (Pankey)	1999	1.44	1680	2 Att	None	\$188,304
2 - 2196 232nd PI (Beck)	1998	0.90	1782	2 Det	1200 Avg	\$167,834
3 - 1314 W Ave (Wickham)	1972	0.82	1508	2 Det/ Utility Bldg	614 Avg	\$205,535

The Pankey property includes two parcels to arrive at the total site size and assessed value. (Exs. 7-8) The Pankey and Beck properties are both one-story modular construction like the subject; whereas, the Wickham property is identified as a one-story frame construction and not a modular home. The subject property and the three comparable properties have similar grades (quality rating) between 4-10 and 4+10. While Orth's property is smaller than the others, it is also the newest and has many decks, patios, and porches as compared to the other properties.

Orth's property shares a driveway with the Pankey and Beck properties. (Ex. 1). Orth contends the condition of the Pankey property affects the value of his home and impacted the sale of the Beck property. Orth testified the Pankey property is poorly maintained, rarely mowed and has numerous vehicles in various states of salvage stored on the site for several years. (Ex. 12). In general, Orth believe this property creates an eyesore for him and the other neighbors. Orth also believes the Pankey property affected the listing and sale price of the neighboring Beck property based on a conversation with the seller. We note, however, the Beck property sold in September 2016 for \$178,000; a \$33,000 increase over the May 2015 sale of the same property. (Ex. 9). Typically, an *increase* in a sixteen-month time frame would not suggest the condition of the nearby Pankey property had a negative effect on the sale.

Only the Beck property recently sold. However, it occurred well after the January 1, 2016, assessment date. Without determining the applicability of a September 2016 sale to this case, we note Orth did not make adjustments for differences between that sale and the subject property, which is necessary to arrive at an opinion of value.

None of the properties sold in 2015.

Orth also testified that based on his research, the average sale price of homes in Story County was \$173,500 and the average sale price of properties in Boone County was \$140,000. (Ex. 4, p. 2). He explained the averages included all homes in each county, from the least expensive to the most expensive. Despite the inclusion of all properties in his research, he believes these averages reflect the value of his property and are supported by information he received from two real estate offices in Ames. He reports one office told him the range of value for his home was between \$115,000 and \$162,798; and another office gave him a range of \$214,912 to \$243,500. (Ex. 4, p. 2).

The ranges Orth references are from several comparative market analyses (CMA), which were submitted to the Board of Review and are part of the certified record. Two CMAs were completed by Donna Wobig of Friedrich/Iowa Realty, Ames. The CMAs have two dates, just a week apart April 13 and April 20, 2016. Wobig's April 13 CMA opines a value of \$167,125. (Certified Record). Her April 20 CMA recommends a list price of the subject property of \$217,483, which is more than the 2016 assessment that Orth is contesting. (Ex. B, p. 7). Wobig does not adjust or analyze the data in either CMA. Because there is a significant difference in Wobig's opinions, and there is no explanation for the difference, we find they are unreliable for determining the subject property's market value.

The final CMA was completed by Jean Langeland on April 11, 2016. Langeland submitted four sales in her analysis but does not adjust them for differences. She ultimately concludes the subject property has a value between \$180,000 and \$190,000, but offers no explanation of how she arrived at that opinion. Although Langeland's CMA is in the certified record, it was not submitted as evidence and there was no testimony regarding it. We give it no consideration.

Orth also asked how the property's \$114,850 base price was determined. (Board of Review Certification, p. 7). We note assessors are required to value properties using the Iowa Department of Revenue's REAL PROPERTY APPRAISAL MANUAL. Orth's property is identified as a one-story frame home with a modular architectural style and the cost comes directly from the MANUAL, P. 7-52, for a one-story frame home with GLA of approximately 1400 square feet. MANUAL, available generally at

<https://tax.iowa.gov/iowa-real-property-appraisal-manual>; see also

<https://tax.iowa.gov/sites/files/idr/documents/7RESIDENTIALSECTION.pdf>.

Assessor Paul Overton testified for the Board of Review. He confirmed that he did not consider any properties located within the city limits of Ames to value Orth's property. Overton explained a staff appraiser from the Assessor's office inspected the subject property in April 2016; and he has also been to the property.

Overton testified about the median ratio analysis that his Office conducts every year. While he conducts his analysis for the entire county, he breaks the county up into east and west because the areas have different value impacting influences; the Des Moines River serves as the boundary between these two portions of the County. Because his office has a small staff, only the east half of the County, where Orth's property is located, was reviewed and revalued for the 2016 assessment.

A review of sales for the eastern half of the County indicated a median assessment/sales ratio of 0.88, which suggests properties are assessed for less than their market value. As a result, the Assessor's Office completed a revaluation of land values for the 2016 assessment; this type of revaluation had not been done since 1996. We note the increase in Orth's assessment from 2015 to 2016 was solely based on a change to the land value; his improvement value remained the same. (Ex. 6, p. 3). Overton explained the Iowa Department of Revenue (IDR) requires an assessment/sales ratio must be between 0.95 and 1.05. If the ratio falls outside this range, the County may be subject to an equalization order.

Overton explained the subject property has a larger than typical garage area, but it is valued strictly as a garage. If it were valued to include a workshop area, it would increase the assessment. Overton also noted there are numerous enclosed porches, including a green-house room that has been added since Orth purchased the property in 2011. In Overton's opinion these features are over-improvements and therefore they were depreciated 5% to reflect the obsolescence. "Obsolescence is one cause of depreciation; an impairment of desirability and usefulness...that makes a property less desirable and valuable..." THE DICTIONARY OF REAL ESTATE APPRAISAL 13 (5th ed. 2010). Moreover, despite the updating that Orth has done since he purchased the

property, Overton chose to leave the condition rating at below-normal, which further reduces the assessed value.

One final issue Orth raised was whether assessments can increase more than 4% per year. Overton explained he believed Orth was referring to allowable growth in the *taxable* valuation of a class of property. Iowa Code § 441.21(4); see also IOWA LEGISLATIVE SERVICES AGENCY, LEGISLATIVE GUIDE, LOCAL PROPERTY TAX 23 (December 2015) *available at* https://www.legis.iowa.gov/DOCS/LSA/Legis_Guide/2009/LGLSL015.PDF (explaining the statewide assessment limitations also known as rollback provisions). Overton noted this has actually been changed to 3%. He noted this has nothing to do with market value or determining the assessed value of Orth's property under Iowa Code section 421.1.

Analysis and Conclusions

Orth asserts his property is both inequitably assessed and over assessed.

Orth submitted three neighboring properties for comparison. While the properties have some similarities, they also possess differences including the age of improvements, finished living space, and amenities such as decks, porches, and garage areas. None of these properties sold in 2015, nor was there any other evidence of their market value for that year. This information is necessary to complete a *Maxwell* analysis. Likewise, nothing in the record suggests the Assessor's Office failed to uniformly apply an assessing method to similarly situated or comparable properties.

One of the properties Orth submitted for comparison sold in September 2016, however the sale was not adjusted to account for differences between it and the subject property to establish a fair market value of the subject property.

The only other evidence of the subject property's market value was CMAs completed for Orth and submitted by the Board of Review. The CMAs suggested a wide range in value. Two CMAs were completed by the same Realtor within a one-week timeframe and varied significantly. Without any explanation for this variance, we

cannot rely on either in support of Orth's claims. The third CMA also lacked explanation and detail, and we conclude it cannot be relied upon.

For these reasons, we find Orth failed to show the subject property is inequitably assessed or over assessed.

Order

IT IS THEREFORE ORDERED that the Boone 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.

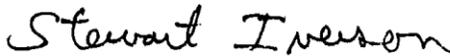
Dated this 30th day of January, 2017.



Karen Oberman, Presiding Officer



Camille Valley, Board Member



Stewart Iverson, Board Chair

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