

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

PAAB Docket No. 2016-077-00231R

Parcel No. 090/07667-000-000

Kenneth and LeSon Quinn,

Appellants,

v.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on November 7, 2016. The Quinns were represented by attorney Richard W. Lozier, Jr. Mark Taylor, Assistant Polk County Attorney, represented the Board of Review.

The Quinns own a residential property located at 541 56th Street, Des Moines. Built in 1931, the one and a half-story home is situated on a 0.198 acre lot. (Ex. A).

The property's January 1, 2016 assessed value was set at \$281,200, allocated as \$45,300 in land value and \$235,900 in dwelling value. (BOR Cert). This value did not change from the previous year's assessment. On protest to the Board of Review, the Quinns claimed there had been a downward change in value since the previous reassessment year, as authorized under Iowa Code section 441.37(1)(a)(2). The Board of Review modified the Quinns' assessment, reducing it by \$42,300 to a total assessed value of \$238,900. The Quinns then appealed to PAAB reasserting their claim of downward trend and stating \$166,300 is the correct value for the subject property.

General Principles of Assessment 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).

The burden of proof is upon the taxpayer; however, when the taxpayer "offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation." Iowa Code § 441.21(3). To be competent evidence, "the testimony of the disinterested

witnesses must comply with the statutory scheme for property valuation for tax assessment purposes.” *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995).

Iowa Code section 441.37(1)(a)(2) and its reference to section 441.35(2) give rise to the claim of downward trend in value. See *Security Mut. Ins. Ass’n of Iowa v. Bd. of Review of City of Fort Dodge*, 467 N.W. 2d 301, 304 (Iowa Ct. App. 1991). This ground may only be pled in a non-assessment or “interim” year. Iowa Code §§ 441.35(2), 441.37(1)(b); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977).

Findings of Fact

The subject property contains 8640 square feet of land (0.198 acres), a one and one-half story brick dwelling with 411 square feet of one-story addition and an attached single car garage. Built in 1931, the home contains 2193 square feet of above ground living area, two fireplaces, two bathrooms, and 500 square feet of low-quality basement finish.

The January 1, 2016 assessed value on the Quinns’ 541 56th Street property was initially set at \$281,200, the same as its January 1, 2015 assessed value. (Ex. A).

Quinn testified that over time the roots of a tree had worked to invade the north wall of their basement. He acknowledged he first noticed issues with the basement wall several years ago (2011-2012), as the paneling on the wall was pushing out. The wall collapsed in 2015 when the tree was removed. The Quinns offered several photos into the record depicting the damage and the steel bracing that was subsequently installed to reinforce the compromised basement wall. (Exs. 6-22).

Quinn testified they obtained two cost estimates for repairing the damage, stating he believed both companies were proposing to do comparable work. The record includes a \$48,500 estimate from Basement Replacement Experts, Inc. dated May 3, 2016, and a \$26,500 to \$32,000 estimate from Crose & Lemke Construction, Inc. dated March 8, 2016. (Exs. 3 & 4). The first estimate called for replacing the north basement footing and wall, wrapping the wall in a waterproofing skin, installing new basement

windows with covered wells, building a new sump pit with new sump pump, pouring a 40-foot concrete gutter along the north wall, removing a tree stump, sodding and landscaping. (Ex. 3). The second proposal was less extensive, as it called for reusing the existing footing, installing a new reinforced north basement wall, replacing the drain tile above the footing and terminating it at an interior sump basket. (Ex. 4).

Quinn testified that inside their house you can see other issues that impact the value of their home, such as door jams out of alignment.

Quinn also pointed to exterior damage on the subject property. Photos were entered into the record depicting cracks in the exterior concrete surfaces adjacent to the dwelling. (Exs. 23-24). He further noted the top of the chimney is leaning and in need of repair, which has been estimated at a cost of \$8500 to \$15,000. (Exs. 5).

Quinn asserts the estimates they received to remedy the damage were considerably higher than the \$42,300 adjustment made by the Board of Review. If the highest estimated cost of the chimney repair is combined with the high end of the basement wall bids then the Quinns will spend a total of \$63,500. However, Quinn acknowledged that they did not accept any of the bids in the record and that those estimates have since expired.

Quinn further testified that the Tudor-style house next door at 537 56th Street, which they consider to be comparable to their home, sold in April 2014 for \$205,350, an amount below the subject property's \$238,900 assessed value. The Quinns believe the price they could get for their property will be no higher than the neighbor's sales price, particularly given the damage to their foundation. Quinn testified that even after repairs are made to their home they will be required to reveal the damage that occurred, which he believes will dissuade potential buyers from paying more than the price received by their neighbors for their home.

Amy Rasmussen, Director of Litigation for the Polk County Assessor's Office, testified on behalf of the Board of Review. Rasmussen commented on the differences between the subject property and the Quinns' comparable at 537 56th Street. (Attachment to Appeal to PAAB; Ex. C). In particular, Rasmussen pointed out that the subject property has more main living area, an extra bathroom, and an additional

fireplace. She also noted that the neighbor's home appears to suffer from worse foundation issues, as evidenced by the 12% functional obsolescence applied by the Assessor for the neighbor's foundation as compared with the 10% functional obsolescence applied for the subject property's foundation. (Ex. B & C).

Conclusions of Law

“For even-numbered assessment years, when the property has not been reassessed,” a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code § 441.37(1)(a)(2); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). “When this ground is relied upon, the protesting party shall show the decrease in value by comparing the market value of the property as of January 1 of the current assessment year and the actual value of the property for the previous assessment year.” *Id.*; see also *Equitable Life Ins. Co.*, 252 N.W.2d at 450 (holding for a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and the final valuation). Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

The Quinns contend the collapse of their basement wall caused the value of their property to decline after its January 1, 2015 reassessment. They further contend the January 1, 2016 subject property assessment should be \$205,200, based on the sale of a neighboring property they consider comparable then reduced by the average estimated cost of repairs to arrive at an assessed value of \$166,300.

However, we find the record void of evidence submitted by the Quinns proving the market value of the subject property on January 1, 2016, as well as its actual value on January 1, 2015. Both are required in order to prevail in a downward change in value claim.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

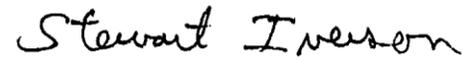
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015).

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.



Camille Valley, Presiding Officer



Stewart Iverson, Board Chair



Karen Oberman, Board Member

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