

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

PAAB Docket No. 2017-077-00488R

Parcel No. 320/04126-998-029

Kurtis Van Pelt,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on November 28, 2017. Kurtis Van Pelt was self-represented. Polk County Assistant Assessor Christina Gonzalez represented the Board of Review.

Kurtis Van Pelt and Edita Omic own a residential property located at 1216 58th Street, West Des Moines. The property's January 1, 2017 assessment was set at \$218,800, allocated as \$44,300 in land value and \$174,500 in dwelling value. (Ex. A).

Van Pelt petitioned the Board of Review claiming the property's assessment is not equitable as compared with the assessments of other like property and the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(a, b). The Board of Review denied the petition.

Van Pelt then appealed to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). 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).

Findings of Fact

The subject property is a two-story home built in 1988. It has 1670 square feet of gross living area, a full unfinished basement, a deck, and a two-car attached garage. The site is 0.226 acres. (Ex. A). Van Pelt purchased the property in May 2015 for \$197,500.

On his petition form, Van Pelt listed three properties he believes demonstrate his property is inequitably assessed. The following table lists the information Van Pelt provided.

Address	Assessed Value
1213 58th St	\$189,400
1209 58th St	\$183,800
1205 58th St	\$195,600

Van Pelt did not submit any other information about these properties, such as listed on property record cards. Without this information, PAAB is unable to determine if the properties are comparable to the subject, or if the properties have recently sold to establish an assessment to sales price ratio analysis.

On his appeal to PAAB, Van Pelt explained that the property across the street from his at 1217 58th Street is the “exact same floor plan” as his but has a lower assessed value. (Ex. 1). Although its lot is slightly larger, the improvements are similar. It is assessed for \$204,300. In his opinion, this demonstrates his property is over assessed.

Director of Litigation for the Polk County Assessor’s Office, Amy Rasmussen, testified for the Board of Review. Rasmussen explained there are some differences in the grades (quality) between Van Pelt’s property and the property at 1217 58th Street, as well as some other minor differences that account for around \$10,000 difference between the two properties base costs.

Despite being nearly identical properties and located across the street from each other, Rasmussen testified they are located in different “neighborhood/pocket” areas resulting in different assessments. The subject is in pocket WD02/A1 and receives a 0.98 location adjustment (downward 2%); whereas 1217 58th Street is located in pocket WD02/A2 and receives a 0.92 (downward 8%) location adjustment. (Exs. B & C). The Board of Review offered no explanation for why the subject property was included in a different neighborhood/pocket area when it is located directly across the street from the 1217 58th Street property and there are no obvious features in the area calling for a division between the two properties.

Analysis & Conclusions of Law

Van Pelt asserts his property is both inequitably assessed and over assessed.

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). The plain language of section 441.37(1)(a)(1)(a) indicates that more than one comparable property is required to support an equity claim. *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).

Despite the similarity of Van Pelt's property to the property directly across the street, the Assessor is applying different location adjustments. While this might facially show that the Assessor is not uniformly applying an assessing method, Van Pelt only offered information about one comparable property.

In *Maxwell v. Shivers*, the Court stated that even if two properties are comparable, "it is well established that the showing of only one other comparable property in the area or district is not sufficient to afford relief, the rule being that an assessment is not discriminatory unless it stands out above the general level." 133 N.W.2d 709, 712 (Iowa 1965). The Court went on to note, "if the rule were otherwise, an isolated instance of under-assessment might result in a general reduction for all similar properties." *Id.* (citing *Crary v. Bd. of Review*, 286 N.W.428 (Iowa 1939)). In *Crary*, the taxpayer's relied on one equity comparable and the Court found comparison with one other property was not enough to grant relief. 286 N.W. at 430.

Accordingly, this record contains insufficient evidence to show the assessor is inequitably assessing the subject property.

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 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.*

Because the Maxwell test requires a showing of the subject property's actual market value and the Van Pelt's overassessment claim requires the same showing, we forgo a further equity analysis and turn to his overassessment 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).

Van Pelt submitted one comparable, but it did not recently sell. He did not submit any other evidence of the market value of the subject property such as a competent appraisal or cost analysis.

Viewing the record as a whole, we find Van Pelt failed to show the subject property is inequitably assessed or over assessed.


Order

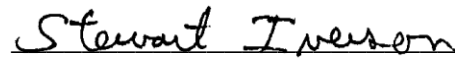
PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

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, Presiding Officer


Stewart Iverson, Board Chair


Camille Valley, Board Member

Copies to:

Kurtis Van Pelt by eFile

Polk County Board of Review by eFile