

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

PAAB Docket Nos. 2018-029-00147C and 2018-029-00149C

Parcel Nos. 10-35-178-015 & 10-35-178-014

William Becker and 403 S Gear Avenue, LLC

Appellants,

vs.

Des Moines County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on September 30, 2019. Benjamin Brinck represented William Becker and 403 S Gear Avenue, LLC. Des Moines County Attorney Todd Chelf represented the Board of Review.

William Becker and 403 S Gear Avenue LLC (hereinafter collectively referred to as the Appellants) own adjoining commercial properties in West Burlington and requested their appeal be consolidated.

Becker owns a two-suite shopping center located at 401 Gear Avenue; and Gear Ave LLC owns a five-suite shopping center located at 403 S Gear Avenue. The following table summarizes the subject properties' January 1, 2018 assessments. (Ex. A).

Docket	Parcel #	Address	Assessed Land Value	Assessed Improvement Value	Total Assessed Value
2018-029-00147C	10-35-178-015	401 Gear Ave	\$108,200	\$699,900	\$808,100
2018-029-00149C	10-35-178-014	403 S Gear Ave	\$78,200	\$630,500	\$708,700

The Appellants petitioned the Board of Review. They appeared to be claiming the subject properties' assessments were not equitable as compared with assessments of other like property and that the properties were assessed for more than the value

authorized by law under Iowa Code section 441.37(1)(a)(1 & 2). The Board of Review denied the petitions. All parties agreed the claims before PAAB were that the properties' assessments are not equitable and that they are over assessed.

§ 441.37(1)(a)(1 & 2).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* 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 the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

401 Gear Avenue is a 0.710-acre site improved with a neighborhood shopping center built in 2006 fronting S Gear Ave. The improvements have 6996 square feet of gross building area and are listed in below-normal condition with a 3+00 grade (good quality). The building is a brick veneer with steel frame construction, and is also improved with a bank vault. The Assessor has applied 26% physical depreciation to the improvements. The site is also improved with 19,400 square feet of concrete paving, yard lights and signs. The property has two suites, with two occupants: Beckers Jewelry and Aspen Dental. (Docket 00147C, Ex. A).

403 S Gear Avenue is a 0.718-acre site improved with a neighborhood shopping center built in 2006. It sits to the west of 401 S Gear Avenue, but does not have frontage on S Gear Ave. The improvements have 6000 square feet of gross building area and are listed in below-normal condition with a 3+00 grade (good quality). The building is a brick veneer with steel frame construction, and is also improved with a bank night deposit, bank windows, and a silent alarm system. The Assessor has applied 26% physical depreciation to the improvements. The site is also improved with 21,600 square feet of concrete paving, fencing, and signs. The property has five suites, with three occupants: a real estate company, Ruhl and Ruhl; Aerus, a vacuum cleaner retailer; and a bank space that had been previously occupied by Mississippi Valley Credit Union. (Docket 00149C, Ex. A). In total, the building is currently 80% occupied.

Brinck testified on behalf of the Appellants.

Brinck testified that Burlington is not a growing market; it has had a 23.4% decline in the population; the poverty rate is about 20%; it is the fourth most dangerous city in Iowa; and Des Moines County is the 8th poorest county in the state. He believes all of these factors negatively impact the subject properties' market values.

Brinck noted that both of the subject properties' assessments have increased from 2017 to 2018 as seen in the Table 1. (Dockets 00147C & 10049C, Ex. 11).

Table 1

	Land Value	Improvement Value	Total Value
Subject - Becker (00147C)			
2017 Assessment	\$61,500	\$513,400	\$574,900
2018 Assessment	\$108,200	\$699,900	\$808,100
% Change Year-over-Year	76%	36%	41%
Subject - Gear Ave LLC (00149C)			
2017 Assessment	\$62,300	\$429,100	\$491,400
2018 Assessment	\$78,200	\$630,500	\$708,700
% Change Year-over-Year	26%	47%	44%

The Appellants submitted a construction breakdown of Becker's property. (Dockets 00147C & 00149C, Ex. 12). Brinck testified the cost of construction for Gear

Ave LLC's property would have been about the same. He noted they paid \$1.78 per square foot for the land. Because these costs are over twelve-years old, we do not find it relevant in ascertaining the properties' actual value as of January 1, 2018.

The Appellants do not believe the 2018 assessment adequately considers the recent foreclosure, sale, and increasing vacancy of the regional mall located across the street from the subject properties. (Dockets 00147C & 10049C, Exs. 15-16). Brinck and Becker testified the subject properties were specifically located on Gear Avenue to be in close proximity to this regional mall, which had approximately sixty tenants when the subject properties were built. Brinck testified the mall has been in decline and currently has between twelve to fifteen tenants. Becker further explained the decline of the mall has drastically affected his jewelry store business. He explained when he built his building and opened his store, he was hopeful the adjoining suite would be occupied by a complementary business such as a bridal gown shop or clothing retailer. However, after several years of a vacant suite, he took a non-retail tenant, Aspen Dental who has recently re-signed its lease at a lower rate.

Brinck also noted the mall's 2017 assessment was just over \$14 million; it was lowered to roughly \$11.6 million in 2018; and as of 2019, its assessment is \$5 million. The mall eventually sold at auction, as the result of foreclosure, in March 2019 for \$1.1 million; or \$2.71 per square foot. (Dockets 00147C & 00149C, Ex. 15). Brinck was critical of the purchaser of the mall, Kohan. He noted that Kohan has a poor reputation in mall management. (Dockets 00147C & 00149C, Ex. 16).

Brinck acknowledged there are car dealerships, a hotel, a Target, and some other retailers nearby. Brinck asserts the traffic count ranges from roughly 10,000 to 5,200 per day depending on where on the Gear Ave retail corridor a property is located; and the subject properties see a vehicle count somewhere at the lower end of this range. In Brinck's opinion, vehicle-per-day count is important to a retail business.

Additionally, Brinck asserts the subject properties have not been adequately depreciated, or that construction deficiencies have been considered in the assessment, which has resulted in both of them being over assessed. The Appellants submitted

photos of concerns with an efflorescence¹ issue on the exterior of the improvements, and cracked concrete parking and sidewalks. (Dockets 00147C & 00149C, Exs. 13-14). Brinck testified the efflorescence issue on both of the subject buildings has diminished over time but the brick used in construction was soft and of an inferior quality. He also stated the brick company that supplied the material for the subject properties is no longer in business. Brinck explained that because the properties were built with an inferior product he believes this would need to be disclosed if they were ever listed for sale.

Regarding the cracked concrete sidewalks and parking areas, Brinck testified that re-bar was not installed when the properties were built. Therefore, the concrete has been cracking and it is repaired as it occurs. He believes any potential buyer would be concerned about this and would negatively affect the value of the subject properties.

The Appellants submitted property record cards for eight commercial properties they consider similar to theirs but are assessed for less. (Dockets 00147C & 10049C, Exs. 2-10; 2a-9a). Brinck asserts the assessed values of the comparable properties demonstrate the subject properties are inequitably assessed and over assessed. Table 2 is a summary of their analysis.

Table 2

Comparable	Assessed Value	Gross Building Area (SF)	Year Built	AV/SF ²	Building Description
Subject - Becker	\$808,100	6,996	2006	\$115.51	Retail
Subject - Gear Ave LLC	\$708,700	6,000	2006	\$118.12	Retail
1 - 1521 S Roosevelt Ave	\$723,900	8,052	2002	\$89.90	Retail
2 - 1313 N Roosevelt Ave	\$414,600	4,906	1967	\$84.51	Office
3 - 411 W Agency Rd	\$2,192,700	26,480	2004	\$82.81	Retail
4 - 1308 Broadway St	\$418,000	5,700	1995	\$73.33	Office
5 - 2621 Mt Pleasant St	\$168,600	3,040	1969	\$55.46	Retail
6 - 101 Broadway	\$510,000	6,940	1907/1984	\$73.49	Bank
7 - 414-420 N Roosevelt	\$1,047,000	14,630	1964/1977/2015	\$71.57	Retail
8 - 3625 Flint Ridge Dr	\$248,200	4,080	2001	\$60.83	Office

¹ Efflorescence is a crystalline deposit of salts on surfaces of concrete, brick, stucco, or natural stone surfaces.

² Gear Ave LLC's Exhibit 10 (Docket 00149C) incorrectly reported its Assessed Value per square foot as \$101.24. The correct calculation is shown in the table. Other smaller differences in calculation errors for several of the comparable properties have also been corrected in the above table.

With the exception of Comparable 5, none of the above properties have recently sold. Comparable 5 sold in April 2018 for \$223,000 as a contract sale. (Dockets 00147C & 10049C, Ex. 6). It was not adjusted for the condition of sale or for any other differences as compared to the subject.

Warner testified Comparable 4 is exempt from taxation, as it is used by the Girl Scouts. He indicated that, due to its exempt status, Comparable 4 was not included in the 2018 revaluation and he could not state that its assessment was consistent with its market value. We give it no consideration.

Comparables 2 and 6 are significantly older than the subject. For this reason, we do not find them comparable to the subject.

Comparables 2, 4, 6, and 8 are used for office purposes, whereas Comparables 1, 3, 5, and 7 are retail use like the subject property. We find the office comparables less persuasive than the retail comparables. *Hy-Vee, Inc. V. Dallas Cnty. Bd. of Review*, 2014 WL 4937892 *5 (Iowa Ct. App. Oct. 1, 2014). These office comparables appear to lack similar amenities as the subject properties, such as a bank vault and windows, and would necessarily serve different market participants. For this reason and the reasons previously stated, we give Comparables 2, 4, 6, and 8 no consideration. Therefore, our focus will be only on the four comparable properties highlighted in Table 2 that have similar retail use as the subject property.

1521 S Roosevelt is listed as a small retail property and is the most similar in size and age to the subject properties but its grade is lower at a 4+10 (above-average quality). (Dockets 00147C & 10049C, Ex. 2). Because its grade is significantly lower than the subject properties' grades, this would contribute to the difference in its assessed value compared to them. Additionally, County Assessor Matt Warner testified for the Board of Review and reported that 1521 S Roosevelt was a light auto retail and repair shop and for this reason, he does not believe it is comparable to the subject properties. In his opinion, it is designed as a single-tenant property and does not have the partitions for different tenant options like the subject properties have.

Brinck testified the traffic count at this property is superior to the subject's at roughly 11,600 per day. Brinck also noted 1521 S Roosevelt has been on the market for

the last three to four years and is currently listed for \$599,000; asserting this would be the upper end of the value range for the subject properties. Brinck testified that he had a conversation with the listing agent, Kim Staub, and was told that if he offered \$550,000 for the property it would likely be accepted. He asserts this hypothetical sale price of \$550,000 would indicate a per square foot price of \$68.30, significantly lower than the subjects' current assessed values per square foot. While we are not inclined to place reliance on a listing occurring well-after the relevant assessment date or a hypothetical sale of the listed property, we do recognize the Appellants' concern that this property's list price of \$599,000 is much lower than its assessed value. However, we believe this is tempered with Warner's testimony that it is inferior construction compared to the subject properties.

411 W Agency Road is more than three times larger than each subject property; and, 2621 Mt. Pleasant Street is nearly 40-years older and the smallest comparable in the record at roughly half the size of the subject properties. (Dockets 00147C & 10049C, Exs. 4 & 6). These identified differences alone would explain variances in the assessed values of these two properties compared to the subject properties. Of the retail comparables offered, we find these properties to be the least similar to the subject properties.

414-420 N Roosevelt also offers some similarities to the subject properties. Although older and larger than both of the individual subject parcels, when they are combined, it offers similar building area and retail use. There is no evidence of the grade for this comparable in the record.

Notably, there was an absence of any testimony from Brinck or Becker indicating an opinion about the fair market value of the subject properties. Ultimately, they gave no explicit indication of what they believed the properties were worth or the remedy they were seeking at the hearing. While the appeal forms provide an indication of what the Appellants believe the properties are worth, no testimony or evidence employing traditional appraisal methodologies consistent with Iowa Code section 441.21 was offered to support those opinions.

Warner explained that 2018 was a reappraisal year for commercial properties in Des Moines County. Prior to this reappraisal, the most recent re-valuation of commercial property in Des Moines County occurred in 1998. The Assessor's Office relied on a third-party vendor, Vanguard Appraisals, to assist in the reappraisal process.

The Board of Review submitted four sales of strip malls, which are summarized in Table 3. (Dockets 00147C & 00149C, Exs. D-I).

Table 3

Comparable Sale	Total Assessed Value	Gross Building Area (SF)	AV/SF	Sale Date	Sale Price	SP/SF	Improvement Assessment per SF
Subject - Becker	\$808,100	6,996	\$115.51				\$100.04
Subject - Gear Ave LLC	\$708,700	6,000	\$118.12				\$105.08
1 - 1035 Lawrence Dr (Pancheros)	\$1,657,700	10,080	\$164.45	Feb-15	\$2,475,000	\$246	\$112.19
2 - 116 W Agency Rd (Subway)	\$1,208,600	12,000	\$100.72	Dec-05	\$2,610,000	\$218	\$77.28
3 - 411 W Agency Rd (Dollar Tree)	\$2,192,700	26,280	\$83.44	Mar-06	\$3,448,551	\$131	\$67.15
4 - 1802 4th St SW (US Cellular)	\$693,290	7,200	\$96.29	Apr-18	\$630,000	\$88	\$66.51

All of the Board of Review's comparable properties are strip malls built between 1996 and 2012. Sales 1-3 are located in Burlington and Sale 4 is located in Waverly. Warner asserts these properties are similar to the subject in terms of construction and overall appeal. None of the sales were adjusted for physical differences between them and the subject properties or for factors such as location or date of sale.

The Pancheros strip mall is southeast of the subject properties and is one of the most recent strip mall sales in the county. Brinck reported this comparable property had a traffic count three times greater than the subject properties. Warner testified it may have a higher traffic count compared to the subject properties, but he did not review the traffic count data. Warner testified the subject and comparables' improvements were valued using the same method, but different land rates were used to recognize differences in location. Removing the land value, the subject's improvements are valued within the range of the Sales 1-3 on a per-square-foot basis.

Warner testified that Sales 2 and 3 are both similar construction as well, but are larger than both of the subject properties. Because these properties are larger in size,

their assessed value and sale price per square foot are lower based on the theory of diminishing return.³

Sale 4 is located in Bremer County and the most recent strip mall sale in the record. (Dockets 00147C & 00149C, Ex. I). Warner noted this property was originally built as an auto parts store and was converted to a strip mall that looks very similar to the subject properties. (Dockets 00147C & 00149C, Ex. I, p. 8). Warner testified it sold as a vacant building and is located in a smaller community and therefore a weaker market than the subject properties.

Analysis & Conclusions of Law

The Appellants assert the subject properties are inequitably assessed and assessed for more than the value authorized by law. § 441.37(1)(a)(1 & 2). The burden of proof is upon the taxpayer, who “must establish a ground for protest by a preponderance of the evidence. *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009).

To prove inequity, a taxpayer may show 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 Appellants offered no evidence that the Assessor applied an assessment method in a non-uniform manner.

Alternatively, a taxpayer may 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 *Maxwell* test provides that inequity exists when, after considering the actual values (2017 sales) and assessed values (2018 assessments) of comparable properties, the subject property is assessed at a higher portion of its actual value. Because the *Maxwell* test requires a showing of the subject property’s actual

³ Diminishing return (also known as decreasing returns) is based on the premise that additional expenditures beyond a certain point will not yield a return commensurate with the additional investment. THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 32 (14th ed. 2013). See also INT’L. ASSOC. OF ASSESSING OFFICERS, PROPERTY ASSESSMENT Valuation 19 (3d. ed. 2010).

market value and the Appellants' over assessment claim requires the same showing, we forgo further equity analysis and turn to the 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)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

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.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W. 2d at 783. "Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court." *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86,88 (Iowa 1977)).

The Appellants offered several comparable properties they believe demonstrate their properties are over assessed. They argue their properties' assessments are excessive based on a comparison of the assessed value per square foot of their comparable properties with the subject. As stated in the findings, we do not agree that all of the Appellant's properties are comparable or that they necessarily demonstrate the subject is over assessed. More importantly, however, simply comparing assessments or assessed values per square foot is insufficient to demonstrate the property's actual value. Typically, market value is demonstrated with comparable sales, a competent appraisal, or a comparative market analysis.

Only one of their comparable properties had recently sold and it was a contract sale. Iowa Code states that the sale prices of the subject property or comparable properties in normal transactions are to be considered in arriving at market value.

§ 441.21(1)(b). Sale prices of properties in abnormal transactions, such as contract sales, must not be considered or must be adjusted to eliminate the factors which distort market value. *Id.* Iowa courts have acknowledged that contract sales should only be used with “considerable care.” *Redfield v. Iowa State Highway Comm’n.* 110 N.W.2d 397, 402 (Iowa 1961). Unadjusted contract sales “must be carefully examined to ensure they reflect the market value of the property.” *Payton Apartments, Ltd. V. Bd. of Review of City of Des Moines*, 358 N.W.2d 325, 329 (Iowa Ct. App. Sept. 25, 1984). This sale was not adjusted for the terms of sale, nor was it adjusted for any other physical differences that may exist between it and the subject properties. Therefore, we find this sale to be unreliable and give it no weight.

The Appellants identified that their properties experienced large increases in their assessed values from 2017. While we are sympathetic to that fact, simply showing that a change in an assessment has occurred is not proper methodology to support either an equity claim or an over assessment claim.

The Appellants also contend their properties suffer from construction deficiencies and a declining market, but we find they failed to quantify how these concerns impact the market value of their properties. As previously noted, the Appellants have not offered any opinion of value using appraisal methodology prescribed by Iowa Code section 441.21 to support their claims. Viewing the record as a whole, we find the Appellants failed to show their properties are inequitably assessed or assessed for more than the value authorized by law.

Because they believe there are physical characteristics that affect their properties’ value, they may wish to request an interior inspection from the Assessor’s Office to ensure the properties are properly listed.

Order

PAAB HEREBY AFFIRMS the Des Moines County Board of Review’s actions.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2018).

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.

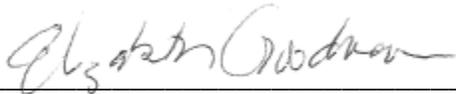
Any judicial review action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2018).



Karen Oberman, Board Member



Dennis Loll, Board Member



Elizabeth Goodman, Board Member

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