

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

PAAB Docket No. 2017-036-10328R

Parcel No. 470470661000000

Jerry & Karen Berry,

Appellant,

vs.

Fremont County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 19, 2019. Jerry and Karen Berry were self-represented. Attorney Brett Ryan represented the Fremont County Board of Review.

Jerry and Karen Berry own a residential property located at 11 Draper Drive, Sidney. The subject property's January 1, 2017 assessment was initially set at \$85,060. An 11% equalization order was subsequently issued by the Iowa Department of Revenue which resulted in a total assessed value of \$94,410, allocated as \$7,400 to land value, and \$87,010 to dwelling value. (Ex. C).

Berrys petitioned the application of the equalization order to the Board of Review. The Board of Review met during a special equalization session, and denied the petition. (Ex. B). The Berrys 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).

Findings of Fact

The subject property is a one-story home built in 1977. It has 960 square feet of gross living area, an unfinished basement, two decks, and a two-car detached garage. It is listed as average-quality construction (grade 4+00) and above-normal condition. The site is 0.437 acres. (Ex. A).

Karen Berry retired in 2015, after serving 27 years as the Fremont County Assessor. She asserts she is knowledgeable of market values and other factors affecting real property because of her background. She testified that she over assessed her own property while serving as Assessor to avoid any criticism regarding its assessed value.

The Berrys contend the application of the 11% equalization order caused their property to be over assessed. The Berrys submitted the equalization study of 2016 sales completed by the Fremont County Assessor. (Ex. 10). Berry noted 34 of the 71 sales used for support of the equalization order were from Tabor or were rural residential sales, which in her opinion are the “hot properties” in the County. She noted the sale prices of properties located in Tabor and rural residential are much higher than their assessments which skewed the overall County results and did not reflect what was

happening in Sidney. In her opinion, the uniform application of the equalization order is unfair to residents of Sidney. (Ex. 10).

Findings from the 2016 Fremont County equalization study are summarized in the following table.

City/Region	# of 2016 Sales	Median Assessment/ Sales Price Ratio
Farragut	7	92.98
Hamburg	10	95.83
Sidney	15	94.37
Tabor	15	82.15
Rural Res	19	89.59

The equalization study shows low median assessment to sale price ratios in all Fremont County cities/regions, ranging from about 82% of market value in Tabor to about 96% in Hamburg.

Berry analyzed the assessment and sale prices of eighteen 2017 Sidney sales; resulting in a 2017 sale-to-2017 assessment ratio ranging from 84% to 302%, with a mean of 123% and median of 110%. (Ex. 11). Five of the properties sold for more than their 2017 assessed value with thirteen selling for less than their 2017 assessed value.

The Berrys also submitted six comparable properties that are summarized in the following table. (Exs. 3-8).

Sale	Address	GLA	Basement Finish	Sale Date	Sale Price	2016 & 2017 Assessed Value (AV)	Post Equalization AV	AV/SP Ratio (After Equalization)
Subject	11 Draper Dr	960	None	NA	NA	\$85,060	\$94,410	NA
1	210 Fletcher St	1292	150 Stnd	Jun-17	\$82,000	\$85,020	\$94,370	1.15
2	806 Clay	988	None	Jun-17	\$76,500	\$60,020	\$66,620	0.87
3	1107 Filmore	1064	None	Jul-16	\$82,000	\$69,910	\$77,600	0.95
4	205 North	1356	625 LQ	Jan-17	\$84,900	\$95,260	\$105,740	1.25
5	604 Birch	864	None	Oct-16	\$84,500	\$71,970	\$79,880	0.95
6	609 Birch	1104	None	Nov-16	\$73,000	\$68,900	\$76,480	1.05

We give no consideration to Comparables 1 and 2, as both occurred well-after the assessment date. (Exs. 3 & 4). Berry testified regarding conditions and some of the features of the remaining four sales, noting Sale 3 had been updated, and Sale 5 had new basement finish. Some of her testimony is contrary to information contained on the Beacon sheets, and she offered no other supporting evidence, such as a listing sheet. (Exs. 5-8). We note that the Beacon sheets do not provide any information about a property's condition or quality of construction.

Furthermore, the Board of Review pointed to differences that exist between each of the four sales and the subject property. Berry did not consider adjustments to account for the differences in order to arrive at an opinion of value for the subject.

Fremont County Assessor Brenda Mintle testified that she made the decision to apply the State-mandated equalization order uniformly throughout the County. She agreed that 2017 Sidney sales have slightly higher sale ratios than some parts of the County, but did not believe they warranted an alternative method for equalization.

At hearing, the Board of Review reasserted its belief that the Berrys' assessed value before the equalization order was at market value and the equalization order was fairly applied.

The Berrys also asserted their property is over assessed because it is incorrectly listed in above-normal condition. However, they did not provide any evidence, such as photographs, to support their belief the condition rating is incorrect.

Analysis & Conclusions of Law

The Berrys assert the equalization order results in the subject property being over assessed.

In an appeal challenging the application of an equalization order, the claim is essentially that the revaluation "will result in a greater value than permitted under section 441.21." *First State Bank v. Bd. of Review of Monroe Co.*, 424 NW.2d 441, 443 (Iowa 1988). Any adjustment by PAAB to the assessment "shall not exceed the percentage increase provided for in the department's equalization order." § 441.49(4).

The Board of Review argued that the equalization order was for the entire county and was fairly and appropriately applied. While the sale ratios do give some support for market segmentation within Fremont County, the Berrys cannot now challenge the equalization order itself or its general application. Rather, they must show that the order, as applied to their property, causes it to be assessed for more than authorized by law.

The Berrys' Comparables 1 and 2 sold well-after the assessment date and are therefore not considered relevant, but we do consider the sales of Comparables 3 through 6 relevant to the assessment at issue. Comparables 3 through 6 are similar residential properties that sold contemporaneous to the assessment date. Each comparable has a lower sale price than the subject's assessed value. This may suggest that the subject is over assessed. However, there are some significant differences between the subject property and these comparables that are not addressed by the evidence. The Berrys did not adjust the sales for these differences to arrive at an indication of value.

Ultimately, while this record indicates the property's assessment may be excessive, we find the Berrys have failed to sufficiently prove the property's actual fair market value as of January 1, 2017. Accordingly, we are not persuaded the Berrys have shown the equalization order resulted in an assessment greater than authorized by section 441.21.

Order

PAAB HEREBY AFFIRMS the Fremont 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.



Dennis Loll, Board Member



Karen Oberman, Board Member



Camille Valley, Board Member

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