

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

PAAB Docket No. 2017-036-10329R

Parcel No. 470470346000000

Jerry and Karen Berry,

Appellants,

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 1014 Filmore Street, Sidney. The property's January 1, 2017 assessment was initially set at \$35,910. An 11% equalization order was subsequently issued by the Iowa Department of Revenue which resulted in a total assessed value of \$39,860, allocated as \$3,740 to land value, and \$36,120 to dwelling value. (Ex. A).

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 1915. It has 1104 square feet of gross living area, an unfinished half basement, a one-story covered open porch, and a wood deck. It is listed in normal condition with a 4-05 (average) grade. The site is 0.117 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 Tabor and rural residential sale prices 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.

Region	# of Sales	Median Sale 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. Sidney’s assessments were on average about 5% below market value.

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. 9). 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 four comparable properties that are summarized in the following table. (Ex. 3-7).

Comp	Address	GLA	Bsmt Fin	Sale Date	Sale Price	Site Area	Garage
Subject	1014 Filmore	1104	None	NA	NA	0.12	None
1	1111 Cass	1026	150 RecRm	Jun-17	\$34,000	0.20	1 Det
2	300 Fletcher	1672	100 Stnd	Dec-16	\$37,000	0.20	2 Att
3	1207 West	1058	400 Stnd	May-16	\$25,000	0.25	None
4	1000 Filmore	1082	None	Mar-17	\$20,886	0.12	1 Att

The comparable properties were built from 1880 to 1945, and are similar one-story homes. Berry testified Comparables 1 and 3 have an extra bathroom. She stated Comparable 2 was partially used for a printing shop prior to its sale. We note it is older than the subject and lacks central air conditioning. She indicated Comparable 4 was partly remodeled and is located at the opposite end of the block from the subject. Berry did not provide the realtor listing sheets or other documentation showing the condition of these properties. Further, the sales were not adjusted for differences between them and the subject to arrive at an opinion of value as of January 1, 2017.

All comparables sold for less than the subject's assessed value of \$39,860 and appear to be equal or superior to the subject. Most sales have larger sites and some have garage amenities. This would suggest the subject property's assessment is excessive. Additionally, the assessed values that were submitted into the record suggest a trend of over assessment.

The Board of Review was critical of Berrys' Comparables 3 and 4, asserting they were reflective of distressed sales. Further, Comparable 3 is shown to be a multiple parcel sale.¹ Berry verified the sales of Comparables 3 and 4 took place after foreclosure sales and Comparable 3 is indicated as a multiple parcel sale. Berry noted they are shown as normal sales on their respective property record cards. (Ex. 5-6). We agree with the Board of Review's criticism regarding these two sales and give them less consideration.

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 didn't 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 Board of Review suggested an income approach could be completed on this property, as it is an income-producing rental property. Berry indicated the property

¹ We note that Lewis and Opal Smith are the listed seller for Comparables 1 and 3.

rented for \$500 a month. Accounting for insurance, taxes, and reserves, the Board of Review calculated a net operating income for the subject of \$4500. The Board of Review believes a 10% capitalization rate would be conservative and, using that figure, estimates a value by the income approach of \$45,000. It believes this supports the assessment.

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 valuation “will result in a greater value than permitted under section 441.21.” *First State Bank v. Bd. of Review of Monroe Co.*, 424 N.W.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).

In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at market value.” *Id.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “[A]bnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value”

§ 441.21(1)(b). Abnormal transactions include, but are not limited to, foreclosure or other forced sales, contract sales, discounted purchase transactions, or purchases of adjoining land or other land to be operated as a unit. *Id.*

“The burden of persuasion rests on the party seeking to show that market data cannot readily establish market value before proceeding to the other-factors approach to valuation.” *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 667, 682 (Iowa

2016). Where a party bearing the burden convinces PAAB that comparable sales do not exist or cannot *readily* determine market value, then other factors may be used.

§ 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlson Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2). If sales cannot readily establish market value, “then the assessor may determine the value of the property using the other uniform and recognized appraisal methods,” such as income and/or cost. § 441.21(2).

To the extent the Board of Review argued PAAB should consider an income approach to value for this property, we find the Board of Review has not shown the subject’s value cannot be readily determined by the sales comparison approach. The Berrys submitted recent sales of properties located in Fremont County and this information persuades us that the subject’s fair market value can be readily determined by the sales comparison approach. Moreover, the Board of Review’s income approach relies on actual revenue and expenses instead of market figures, there is no support for the capitalization rate, and it failed to include expenses traditionally accounted for in any income approach. As such, we would not give it any weight.

Based on the 2016 countywide sales breakdown, the Berrys contend the equalization order should not have been applied uniformly to Sidney. 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 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.

Comparable 1 sold well after the assessment date and will not be considered. Berry testified Comparable 2 was partially used as a printing shop prior to its sale. Therefore, while it is much larger in size, we question the condition and utility of this property. We note that it is much older than the subject and lacks central air conditioning. Berry made no adjustments to these sales to arrive at an indication of value for the subject. Nonetheless, we note that each comparable has a lower sale price than the subject’s assessed value.

As previously stated, we give less weight to Comparables 3 and 4 because of their sales history. Moreover, there is no information in the record about the condition of these properties and Berry made no adjustments for differences to arrive at an indication of value.

Ultimately, while there is some support that 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 results 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.

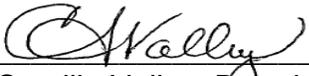
Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Dennis Loll, Board Member



Karen Oberman, Board Member



Camille Valley, Board Member

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