

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

PAAB Docket No. 2018-036-10003R

Parcel No. 470470661000000

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 11 Draper Drive, Sidney. The property's January 1, 2018 assessment was set at \$94,410, allocated as \$7,400 in land value and \$87,010 in dwelling value. (Ex. A).

The Berrys petitioned the Board of Review asserting the property was assessed for more than authorized by law. Iowa Code § 441.37(1)(a)(2). The Board of Review granted the petition, in part, and reduced the assessment to \$89,730. (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 (2018). 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 may consider any grounds under Iowa Code section 441.37(1) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB 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(3)(a). 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. *Id.*; 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 in above-normal condition with an average quality construction (grade 4+00). 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 submitted six comparable properties that are summarized in the following table. (Exs. 2, 3-5, & 8-10).

Address	Gross Living Area	Basement Finish	Garage	Site Size (Acres)	Sale Date	Sale Price	Assessed Value
Subject	960	None	2 Det	0.437			\$89,730
1 - 210 Fletcher	1292	150 Std	2 Att	0.30	Jun-17	\$82,000	\$94,370
2 - 806 Clay	988	None	1 Att	0.16	Jun-17	\$76,500	\$66,620
3 - 205 North	1356	625 LQ	1 B/I	0.31	Jan-17	\$84,900	\$105,740
4 - 206 Fletcher	1110	500 Std	1 Att	0.30	Sep-17	\$85,000	\$93,540
5 - 510 Birch	1104	None	2 Att	0.23	Nov-17	\$72,500	\$77,310
6 - 608 Birch	1056	None	2 Att	0.23	Feb-18	\$69,000	NA

The comparable properties were built between 1964 and 1979 and most are one-story homes like the subject. Comparable 3 is a split-foyer with a tuck under garage.

The Board of Review was critical of the Berrys' comparables, asserting they were reflective of distressed sales. Comparables 4, 5, and 6 had multiple transfers during the past four to five years, including several foreclosures. In the case of Comparable 4, the property was transferred to Walburt Quality Management LLC via foreclosure on September 27, 2017, for \$48,281. Two days later, the property was sold to Wando Investment Group for \$85,000. Less than a year later, Wando sold the property for \$113,000. (Ex. 3). Comparables 5 and 6 sold from the same seller (Kam Trust) within several months of each other. It appears Comparable 5 was originally sold on contract in 2014, but reverted back to the Kam Trust in August 2017. The property was then resold in November 2017. Comparable 6 appears to have been resold by Kam Trust in February 2018 after the foreclosure of a prior contract sale.

We also note that Exhibit 8 shows that Comparable 1 transferred twice on the same date. It appears the property transferred out of an estate and then was sold. Comparable 2 seemingly was part of a multi-parcel sale. (Ex. 9). Despite this, all of the sales listed on the above-referenced table were normal sales according to the Beacon Sheets in the record. Nonetheless, we question the reliability of these comparables given the possible non-market conditions of sale.

Comparables 1, 3, and 4 sold for \$82,000 to \$85,000 compared to the subject's assessed value of \$89,730. These three sales appear to be generally equal or superior to the subject with more gross living area, additional bathrooms, and basement finish,

but some have smaller garages and all have smaller sites. Assuming the sales were normal, arm's length transactions, these sales suggest the subject property may be over assessed. Additionally, with the exception of Comparable 2, the 2017 sale prices are less than their assessed values, suggesting a trend of over assessment in the area.

Karen Berry testified about the conditions and features of the subject and sales asserting they are all similar. We note her testimony conflicts with the condition ratings listed on Exhibit 2. We note that Comparables 2, 5, and 6, which set the lower end of the sales range, are identified as being in below-normal condition on that exhibit.

The Berrys claim the subject property has a value of \$78,000, but made no adjustments to the sales nor provided further explanation to support this opinion.

Berry also testified about a property located at 4 Draper Drive, which she believes is a mirror-image to the subject. (Ex. 7). This property does not have a garage or fireplace, and is listed in normal condition; compared to the subject's above-normal condition. This property has not recently sold and we give it no consideration.

The Berrys assert their property is incorrectly listed in above-normal condition. They did not provide any evidence, such as photographs, to support their belief the condition rating is incorrect.

Fremont County Assessor Brenda Mintle testified that she completed an interior inspection of the subject to verify the listing information. In her opinion, the inspection was not the appropriate time to change the property's condition rating; and she was relying on the existing condition rating, which she believes is correct. When questioned, Mintle was unable to provide specifics on why she believed the subject was correctly listed at above-normal condition or what would constitute an above-normal condition rating.

Analysis & Conclusions of Law

The Berrys contend the subject property is over assessed.

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. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Sale prices of property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market distortion.

The Berrys questioned the subject property's above-normal condition rating, asserting it is incorrect. Mintle testified to her belief that the condition rating was accurate but was unable to provide an explanation as to why she had this opinion. Ultimately, the Berrys bear the burden of proof and offered no evidence showing the condition rating was inaccurate.

The Berrys submitted six recent sales they believe to be similar to their property. The Board of Review was critical of the properties, asserting they were distressed sales. While we likewise have concerns about the reliability of some of the sales, the sale prices and sale dates the Berrys relied on were listed as normal transactions on the Assessor's records.

If we assume the sales were normal, arm's length transactions under section 441.21, the sales generally indicate a pattern of over assessment. Additionally, based on the evidence in the record, several sales appear to be superior to the subject property in size and amenities (basement finish) yet they sold for less than the subject's current assessed value. This suggests the subject property may be over assessed.

We recognize, however, that Exhibit 2 indicates Comparables 2, 5, and 6 are in below-normal condition and those sales set the low-end of the sales range. Notably, there is no information to contradict the reported conditions of the comparables or the subject. Accordingly, the reliance on these unadjusted comparables may result in an undervaluation of the subject.

Moreover, there are differences between the subject property and comparables, but no adjustments were made to the sales. Due to the questionable reliability of the sales, the differences in listed conditions, and the lack of adjustments, we find the Berrys have not demonstrated the subject's correct value. Typically, this is

demonstrated with a competent appraisal or comparative market analysis that considers at minimum the sales comparison approach to value.

Based on the foregoing, we find the Berrys failed to show the subject is assessed for more than authorized by law as of January 1, 2018.

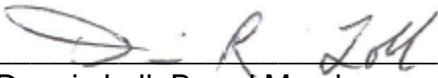
Order

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 (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 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.



Dennis Loll, Board Member



Karen Oberman, Board Member



Camille Valley, Board Member

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