

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

PAAB Docket No. 2019-017-10023R

Parcel No. 06-07-278-001-00

**Harvey Kunzman Jr.,**

Appellant,

vs.

**Cerro Gordo County Board of Review,**

Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 1, 2019. Harvey Kunzman Jr. was self-represented. Deputy County Attorney Steven Tynan represented the Cerro Gordo County Board of Review.

Harvey and Nancy Kunzman own a residential property located at 1512 Southfield Place, Clear Lake, Iowa. The subject property's January 1, 2019, assessment was set at \$257,950, allocated as \$45,430 in land value and \$212,520 in dwelling value. (Ex. A).

Harvey Kunzman petitioned the Board of Review contending the property was inequitably assessed under Iowa Code sections 441.37(1)(a)(1). The Board of Review denied the petition.

Kunzman then appealed to PAAB. On his PAAB appeal, Kunzman selected all grounds available under Iowa Code sections 441.37(1)(a)(1-5). Prior to going on the record at hearing, Kunzman and the Board of Review acknowledged the true nature of his claim was that his property was assessed for more than the value authorized by law

under as provided under Iowa Code section 441.37(1)(a)(2). Thus PAAB will consider only this claim.

## **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 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)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701–71.126.2(2-4). 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, 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).

## **Findings of Fact**

The subject property is a 0.259-acre site with a one-story home built in 1990. The home has 2022 square feet of gross living area (GLA), 650 square feet of rec-room-quality basement finish, a 960-square-foot patio, and a two-car attached garage. It is listed as good-quality construction (3+05 grade) and in normal condition. (Ex. A).

Kunzman testified he bought the subject site in 1990 and subsequently built a home on it, doing all of the construction himself. He described his property as outdated having all the original finishes – paint, carpet, flooring, etc. He disputes the Assessor’s description of the property as well maintained. He added his lot sometimes suffers from flooding, endures odors from neighboring farming activity, and is plagued by the nightly sound of train whistles from a nearby crossing. We assume his neighboring comparable property owners have similar complaints. Kunzman argued there is no support for an \$18,150 or 7.5% increase in assessed value as there have been no improvements or

updating since the home was built 29-years ago. Kunzman argued the subject property's correct value is \$225,000.

Kunzman expressed frustration with finding comparable properties. He asserted his home is not really comparable in age, quality, and condition with any other home in the area, but he believes the following properties are close and support his claims. (Exs. 1-8).

Comparable	Address	Year built	GLA	Basement Finish	Assessed Value	Assessed Value/SF
Subject	1512 Southfield Pl	1990	2022	650	\$257,950	\$ 127.57
1	2310 16th Ave N	1994	1921	1500	\$295,710	\$ 153.94
2	1507 N 23rd St	1978	1120	0	\$165,620	\$ 147.88
3	1517 Southfield Pl	1981	2096	0	\$316,860	\$ 151.17
4	2210 14th Pl N	1990	1598	0	\$226,850	\$ 141.96
5	1417 N 24th St	1997	1483	1000	\$227,730	\$ 153.56
6	2007 N 24th St	1994	1645	0	\$240,810	\$ 146.39
7	1911 N 24th St	1994	1766	0	\$255,900	\$ 144.90

Kunzman's property is the second largest of the listed properties, and only two of his comparables have any basement finish. Nevertheless, it is not the highest assessed.

He believes Comparable 3, located across the street, has some superior features compared to his home including a finished garage, an additional bath, three decks, a fireplace, an above-ground pool,<sup>1</sup> and a bigger lot. (Ex 4). He noted it is, however, outdated and rundown like his. He offered real estate agent Kristi Wilcke's September 2018 handwritten note stating it is her professional opinion it will sell for less than its asking price of \$225,000 due to the current condition of the property. (Ex. 4, p 15). Kunzman testified this property subsequently sold for \$208,000 on March 6, 2019. We note, however, that the March 2019 sale is reported as a foreclosure sale; the seller was Federal National Mortgage Association. As such, the sale would not be considered a normal, arm's-length transaction. (Exs. 4 & F). Additionally, the property record card for this sale, indicates a recent building permit for a \$9,000 interior remodel. (Ex. F).

Despite this evidence, Kunzman still insisted this property was comparable to his and that the sale price was due to the condition of the property.

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<sup>1</sup> We note for Kunzman's benefit that an above-ground swimming pool would, for assessment purposes be treated as personal property and not included in the assessment of real property.

Kunzman identified Comparable 2 as one-half block away from the subject, with a recent sale price of \$138,500, which is less than its \$165,620 assessment. He asserts this supports his contention that properties are over assessed. The Board of Review noted this sale had unusual conditions and was most likely a sale from an estate. (Ex 3). Additionally, the property is 12-years older than the subject, has significantly smaller GLA, and no basement finish. (Ex. 3).

Kunzman testified Comparable 7 is a very nice house yet its total assessed value is \$2000 lower than his assessment. In his opinion, Comparable 7 is superior to his home because it has a three-stall garage, two fireplaces, a bigger lot located across from the lake, and has been fully remodeled. (Ex. 8). However, the Board of Review noted this property is approximately 250-square-feet smaller than the subject, lacks a large patio, and has not sold since 1998. (Ex. L). It appears this property has no basement finish.

Kunzman also referenced Comparable 6 as nicer, newer house than his, with a larger lot and garage and more updates. (Ex. 7). This property is assessed at \$240,810; again lower than the subject. It is approximately 400-square-feet smaller than the subject, has no basement finish, and it last sold over 5 years ago.

Kunzman believes Comparable 5 is the most similar to his property and is assessed for \$30,000 less. This property has only 1483 square feet of living area, but also has 1000 square feet of living-quarter-finish in the lower level, and one additional bedroom. (Ex. 6). This property has less deck area than the subject and has not sold since 1998. (Ex. I).

Although not mentioned at the hearing, Kunzman's Comparable 1 sold in April of 2018 for \$285,000. (Ex. 2). It is just slightly newer than the subject but has similar square footage, more bedrooms and baths, and a higher assessment at \$295,710.

Kunzman did not make any adjustments to the comparables to reflect differences between them and the subject.

We note Kunzman also protested and appealed the subject property's assessment in 2018. (*Kunzman v. Cerro Gordo Cnty. Bd. of Review*, PAAB Docket 2018-017-10049). In that case, he asserted there was an error in the assessment, inequity in the assessment, and that the property was assessed for more than

authorized by law. After a contested case hearing, PAAB found Kunzman failed to support his claims and affirmed the assessment. Kunzman offered four of the same comparable properties in the 2018 case as he has offered in this appeal.

The Board of Review provided an explanation of the 2019 valuation process and a spreadsheet of property details of the seven properties Kunzman submitted to the Board of Review, several of which were different than those he submitted to PAAB. (Exs. D & E). The additional properties are set forth in the table below. None of the properties recently sold.

Exhibit	Address	Year built	GLA	Basement Finish	Assessed Value	Assessed Value/SF
Subject	1512 Southfield PI	1990	2022	650	\$257,950	\$127.57
G	1509 Southfield PI	1988	1520	0	\$213,920	\$140.74
H	1501 Southfield PI	1980	1536	1050	\$274,080	\$178.44
K	1418 N 24th St	1998	1578	800	\$238,550	\$151.17

In that analysis, the subject property was again on the low end of per square foot valuations and, according to the Assessor, actually supported that his assessment was equitable.

### **Analysis & Conclusions of Law**

Kunzman contends 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. *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. *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).

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). "In arriving

at a market value, sale prices of property in abnormal 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, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.” *Id.*

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)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Sales prices must be adjusted “to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments”. *Id.* (other citations omitted). “[A] difference in use does affect the persuasiveness of such evidence because ‘as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced.’” *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

It is insufficient to simply compare other properties’ assessments to succeed in an over assessment claim. As is the statutory preference, such a claim is usually demonstrated through sales of the subject or comparable properties. Although Kunzman expressed frustration with the requirement that similar properties need to be considered, we note again for his benefit, that similar does not mean identical. The properties sought should bear the most similar characteristics possible, and then be adjusted to account for any differences. Typically, this would be demonstrated in a competent appraisal or a comparative market analysis.

Here, the subject property did not recently sell, and only a few of Kunzman’s comparables recently sold. Comparables 2 and 3 were bank sales following a

foreclosure or family sales from an estate. These abnormal transactions are not to be taken into account in arriving at market value unless they can be adjusted.

§441.21(1)(b). Comparable 1 sold for almost \$28,000 more than the subject's current assessed value. Kunzman did not adjust this sale to account for any differences between the two properties and establish a market value for his property. In addition to the lack of normal, adjusted sales, no evidence was submitted to demonstrate what, if any, impact surrounding odors or noises might have on the subject's valuation.

Viewing the record as a whole, we find Kunzman failed to demonstrate the subject property is over assessed.

### **Order**

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

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

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 sections 441.37B and Chapter 17A.19 (2019).

  
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Karen Oberman, Board Member

  
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Dennis Loll, Board Member

  
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