

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

PAAB Docket No. 2019-031-00108C

Parcel No. 10-07-376-001

Fred H. Becker (Becker and Becker Stone Co.),

Appellant,

vs.

Dubuque County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on May 14, 2020. Fred Becker was self-represented. Dubuque County Attorney CJ May represented the Board of Review.

Fred Becker, doing business as Becker and Becker Stone Company, owns a commercial property located at 14681 Derby Grange Road, Iowa. The Dubuque County Assessor set the subject's January 1, 2019, assessment at \$1,096,500, allocated as \$448,340 in land value and \$648,160 in improvement value. (Ex. A).

Becker petitioned the Board of Review contending the assessment was not equitable as compared with assessments of other like property in the taxing district. (Ex. C). Iowa Code § 441.37(1)(a)(1) (2019). The Board of Review denied the petition. (Ex. B).

Becker then appealed to PAAB re-asserting his equity claim and also claiming his property was assessed for more than the value authorized by law. § 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

The subject property is a 24.067-acre quarry located outside the Dubuque city limits. The site is improved with a truck scale¹; 18,300 square feet of concrete paving; yard lighting; and the buildings outlined in the following table. (Ex. A).

Improvement	Year Built	Building Size (SF)	Condition	Grade	Assessed Value
Single-Family Residence	1900	1607	Observed	4+00	\$500
Metal Light Industrial (B1)	1994	20,700	Normal	4+00	\$142,570

¹ Notes on the property record card indicate a 65% obsolescence adjustment has been applied to the truck scale in order to “remove the value of the scale but leaving the value of the foundation.” (Ex. A, p. 25).

Metal Light Industrial (A1)	2000	13,040	Normal	4+00	\$104,680
Metal Light Industrial (A2)	2010	7,680	Normal	4+00	\$114,990
Metal Warehouse	2007	5000	Normal	4+00	\$52,080
Metal Warehouse	1991	5900	Normal	4+00	\$38,180
Office	1996	3072	Normal	3+00	\$139,050
Quonset	1968	3200	Below-Normal	4+00	\$7,430

All of the buildings, with the exception of the office, have a 4+00 grade (average quality); the office has a 3+00 grade (good quality). The single-family residence is assessed for salvage value only. The other building improvements have various functional, economic, and other obsolescence applied, in addition to physical depreciation ranging from 18% to 65%.

Fred Becker testified on his own behalf. He explained he missed his Board of Review hearing that had been scheduled for May 24, 2019 because of an untimely delivery of the hearing notice. (Exs. 10-11).

Becker's sole concern is the subject's assessed land value; specifically how the first acre of his site was valued. The total site size is broken down into four sections and assessed at different land rates for each section, as seen in the following table. (Ex. A, p. 1).

Acre	Land Rate	Unit Price	Total Assessed Value
1.00	C-1150	\$350,000	\$350,000
4.00	C-175	\$14,000	\$56,000
11.18	C-60	\$2800	\$31,300
7.887	C-30	\$1400	\$11,040

Becker asserts the \$350,000 unit price of the first acre of his property is excessive and unfair. He agrees with the Assessor's determination of the per-acre unit price for the remaining portions of this site. Becker asserts the first acre should be valued at \$14,000 like the next 4.00 acres of his site and that the correct value for the entire site is \$112,340. The Assessor identifies the first acre as the active quarry site but Becker asserts he is mining approximately 4200 square feet of quarry, or less than 0.10 of an acre. (Exs. 8-9) He acknowledged, however, that additional area is subject to quarrying once the excess material has been stripped.

To support his claims, Becker submitted the assessed values of other quarries located in Clayton County, Jackson County, and the City of Dubuque. (Exs. 2-6). He testified the subject quarry is located between 20 and 25 miles from the Delaware, Clayton, and Jackson County lines and the subject is not located adjacent to any of the quarries in those jurisdictions. Becker explained the City of Dubuque quarry, as well as Jackson and Clayton County quarries, are comparable as they have limestone under the soil. He noted most of the quarries are primarily aggregate quarries, whereas the subject quarry produces building stone. He noted the only other building stone quarry in Iowa is in Jones County.

Becker's Clayton and Jackson County quarry exhibits include the first page of a host of different properties. (Exs. 2-4). Becker created a spreadsheet of the assessed land values for quarries located in Clayton and Jackson County compared to Dubuque County. (Ex. 7). He notes Clayton and Jackson County have lower land rates and believes this demonstrates the assessed land rate on his quarry is too high and not equitable. (Ex. 7).

Becker was unaware of the methodology employed by the Clayton or Jackson County Assessor's Offices to arrive at their valuations. Becker acknowledged that prior to the PAAB hearing he had a conversation with Dubuque County Assessor Dave Kubik and was informed the land rate designations, such as C-6, C-38, and so on, may vary from county to county. Despite this, Becker believes the description of these quarry designations such as expansion, depleted, or stockpile were similar from county to county. Becker also testified about a conversation he had with the Jackson County

Assessor who told him the assessed values for these quarries were carried over from the prior Assessor and she was not sure what the actual “C” designations correlated too.

Of the Clayton and Jackson County quarry properties submitted, several have sold within the last 10 years.

Sale	Exhibit/Address	Sale Date	Sale Price	Site Site (Acre)	NUTC Code ²
1	2 – 23656 Great River Rd., Clayton County	July-14	\$2,394,280	171.02	D0
2	2 – 36544 Skip Level Road, Clayton County	Jan-14	\$108,509	32.77	D17
3	2 – No address, Clayton County	Jan-14	\$29,680	14.00	D0
4	2 – 38067 Acorn Rd, Clayton County	Jan-14	\$149,621	59.00	D50
5	2 – 37080 Alpha Ave, Clayton County	Sep-15	\$125,000	36.29	D4/D14
6	2 - 250th St, Clayton County	June-18	\$2,000	77.73	D9
7	3 - Mississippi Rd, Clayton County	Jan-15	\$1,065,888	23.00	D22

The NUTC codes indicate that only Sales 1 and 3 can be considered normal. We have no other information about the sales to evaluate their usability under section 441.21 or about the properties in order to determine their comparability with the subject. Further, no adjustments have been made to these sales to provide an estimate of the subject’s value.

² NUTC codes, or sale condition codes, are used by assessors and the Iowa Department of Revenue to determine whether a sale can be used for the purposes of equalization. A table describing the NUTC codes is available at <https://tax.iowa.gov/sites/default/files/idr/documents/Sales%20Condition%20Codes.pdf>.

Becker also submitted the sale of a quarry in the City of Dubuque³ located at 1735 Kaufmann Avenue. It is 6.34 acres and sold in August 2017 for \$72,670 between family members. (Ex. 5). We find it is not a normal, arm's length transaction. Becker testified this is an active quarry that is currently quarrying stone, as well as sawing and splitting. Becker noted the 2019 assessed land value for this property is \$76,080, or \$12,000 per acre. Becker acknowledged he did not know what method the Dubuque City Assessor applied to arrive at the value of the Kaufmann Avenue assessment. The record does not contain the full cost report of this property and we can make no findings as to the land rate designations used or the unit prices applied.

Lastly, Becker noted Dubuque County purchased one acre of his quarry for a recent road expansion and he was paid approximately \$8500 for that acre. The property record card indicates 1.113 acres of depleted and waste land, located just south of the quarry pond and to the east of where the two roads intersect was put into a road right of way. (Ex. A, p. 25).

Becker did not offer an appraisal of the subject property, comparable sales adjusted for differences between them and the subject property, or any other evidence of fair market value based on other factors such as an income analysis.

Kubik testified for the Board of Review. Kubik explained that in 2014 a commercial and industrial reappraisal project occurred in the Dubuque County assessing jurisdiction. As a result of the project, it was determined that quarries in the jurisdiction were under assessed compared to recent sale prices. At the time of the reappraisal project, the Assessor's Office reviewed four sales of quarries, which are summarized in the following table. (Exs. E-H, J).

³ 1735 Kaufmann Ave. is located in the Dubuque city limits and therefore is assessed by the Dubuque City Assessor. § 441.1 (authorizing the creation of city assessors).

Exhibit/Address	Sale Date	Sale Price	Total Site Size (Acre)	Assessed Value of 1st Acre ⁴
E - Dodge St	May-12	\$4,250,000	66.56	\$700,000
F - 8507 Bellevue Hgts	May-11	\$3,200,000	205.17	\$630,000
G - 22558 Route 151	May-09	\$1,452,000	240	\$210,000 ⁵
H - 2533 Bernard Rd	Jan-09	\$155,000	48.61	\$70,000

Based on his analysis of these sales, Kubik testified he developed an allocation method to value quarries based on an acre-by-acre basis. The “first acre”⁶ price considers the activity of the quarry and its proximity to the City of Dubuque. Based on these sales the highest assessed value on an operational quarry is \$1,400,000 on the first two acres, or \$700,000 per acre; and the lowest quarry has a \$70,000 value assigned to the first acre. (Exs. E and H). The subject’s quarry has a \$350,000 assessed value to the first acre. (Ex. A, p. 1).

Kubik testified the determination of \$350,000 was based on the perceived activity level and proximity to the City of Dubuque. He based his determination of the activity of the quarry from viewing aerial photographs to determine how much the quarry face moves over time.

Kubik testified quarries that had a higher value applied to the first two acres (Exs. E & F) was because it was apparent those properties had higher activity levels apparent in the aerial photography and the sale prices. Other value considerations in his allocation process considered stockpile and storage areas; cropped areas, if applicable; expansion ground; and depleted or waste areas. Becker questioned whether the sale

⁴ Kubik’s testimony at hearing regarding the first acre values of these properties differed from what was shown on their property record cards. The property record cards showed higher first acre values than was indicated by Kubik’s testimony.

⁵ This quarry owned by Mathy Construction has multiple parcels for a combined 240-acre quarry. The highest land rating is found on parcel 073+192630004 which lists 2 acres at a C-975 land rate and a unit price of \$210,000.

⁶ This price may be applied to more than just the first acre. It is applied to the portion of the site that is actively being mined.

price for the quarry located at Dodge Street was due in part to future potential re-development of the property.

Kubik acknowledged these four sales “ran the gambit” of economic activity. Despite the wide range in sale prices, he testified it “became very clear” the activity level was driven partly by the proximity to the City of Dubuque. (Ex. J). Based on this analysis, Kubik attempted to mimic the market activity of these four quarry sales. Kubik also testified that to his knowledge the four sales were of quarries that sold crushed rock, as opposed to the cut stone produced by the subject quarry.

Since the revaluation project another quarry sold north of Epworth in August 2017 for \$311,240; it has a 36.6-acre site. (Ex. I). This parcel is located “quite a ways out” from Dubuque, and the land value is assessed at \$322,140, with \$210,000 applied to the first acre. (Ex. I, p. 1).

Kubik explained that after he implemented this allocation method to value the quarries in the Dubuque County assessing jurisdiction, he had conversations with quarry owners that disagreed with his analysis. After much conversation, however, he testified no one provided him with evidence his analysis was flawed, or any other evidence of the market value of the quarry sites. He further noted that quarry owners consider the quality and quantity of the stone being sold as proprietary, therefore an income analysis cannot be developed. Kubik conceded that income drives the value for this property type, but he does not have access to the necessary information to develop an income analysis.

Analysis & Conclusions of Law

Becker contends the subject property is inequitably assessed and over assessed, as provided under Iowa Code section 441.37(1)(a)(1 & 2). Becker bears the burden of proof. § 441.21(3). Becker’s concern is with the subject’s assessed land value, specifically the first acre land value. Despite Becker’s desire to focus on the land value, Iowa Courts have concluded the “ultimate issue...[is] whether the *total* values affixed by the assessment roll were excessive or inequitable.” *Deere Manufacturing Co. v. Zeiner*, 78 N.W. 2d 527,530 (Iowa 1956); *White v. Bd. of Review of Dallas County*,

244 N.W. 2d 765 (Iowa 1976)(emphasis added). While Becker's argument is focused on the land value and we address his argument, our analysis of the claims must focus on whether Becker has demonstrated the subject property's total value is inequitable or excessive.

Section 441.37(1)(a)(1) permits a property owner to protest their assessment on the basis that it is "not equitable as compared with assessments of other like property in the taxing district." 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). Alternatively, to prove inequity, a taxpayer may show the property is assessed higher proportionately than other like properties using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965). The *Maxwell* test provides that inequity exists when, after considering the actual values (2018 sales) and assessed values (2019) of comparable properties, the subject property is assessed at a higher proportion of its actual value. *Id.*

We recognize Becker does not agree with the Assessor's land rates applied to operating quarries. Becker submitted the quarry land rates of nearby counties, but an equity claim requires comparison of similar properties from within the same taxing jurisdiction. *Maytag Co. v. Partridge*, 210 N.W.2d 584, 594-95 (Iowa 1973) (deciding that for the equity claim in section 441.37, comparable properties must be located in the same assessing jurisdiction as the subject). As such, we can only consider comparables in the Dubuque County assessing jurisdiction for Becker's equity claim.

None of Becker's comparables were located in the Dubuque County assessing jurisdiction and therefore we cannot consider any of them. The Board of Review submitted quarry properties from the same jurisdiction, which demonstrate the subject's first acre land value is within the range of those properties. Although the record shows there are differences in the unit land rates the Assessor is applying in the assessing jurisdiction, Kubik testified he believed those differences were warranted based on location and activity level. Our review of the evidence similarly demonstrates the Dubuque County quarry properties, including the subject, varied in location, size, and in

the existence and quality of improvements. Given the differences between the subject property and the other Dubuque County comparables, as well as the lack of evidence of the subject and comparables' total values, we find the evidence does not support Becker's claim that the subject property is inequitably assessed as compared to like properties in the taxing district.

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). Sales prices of the 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. *Id.* In contrast to the equity claim, comparable properties for an over assessment claim need not be located in the same assessing jurisdiction. *Carlton Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997).

Becker's evidence included quarry sales, but we find that they were either abnormal sales or there was insufficient information to determine their comparability with the subject. Moreover, Becker made no adjustments to the sales to indicate an opinion of value for the subject and we find such adjustments are necessary because of differences between the subject and the sales. *Soifer*, N.W.2d at 783.

Viewing the record as a whole, we find Becker has failed to support his claims.

Order

PAAB HEREBY AFFIRMS the Dubuque 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 section 441.37B and Chapter 17A (2019).



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

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