

# SUCCESSFULLY APPEALING AN ASSESSMENT AND SHIFTING THE BURDEN OF PROOF

SCOTT COUNTY, IOWA ASSESSOR'S OFFICE

[WWW.SCOTTCOUNTYIOWA.GOV/ASSESSOR](http://WWW.SCOTTCOUNTYIOWA.GOV/ASSESSOR)

Time and time again, the Iowa Courts and the Iowa Property Assessment Appeal Board (PAAB) have ruled on what it takes for appellants to properly and legally overcome the burden of proof and win their case when appealing the assessment of their property.

To assist Iowa property owners, PAAB's website provides a list of the grounds available to formally protest an assessment, and as part of that list PAAB offers their stance (ie: Iowa law and past court rulings) on what it takes to successfully overcome the burden of proof for each appeal ground. Property owners wishing to formally appeal their assessment should take heed as these are what the Iowa law expects and allows, and more importantly, what those presiding over assessment appeals actually use to make their decisions.

<https://paab.iowa.gov/protest-and-appeal-grounds>

To further assist Scott County property owners, the Scott County Assessor's Office has put together the following information on what it takes to successfully appeal your assessment.

## BURDEN OF PROOF

**Iowa Code § 441.21(3)(b)(2).**

Generally, the party appealing the assessment bears the burden of proving the grounds for the appeal by a preponderance of the evidence. However, if the appealing party "offers competent evidence that the market value of the property is different than the market value determined by the assessor," then the burden of proof shifts to those seeking to uphold the assessment.

## INFORMAL ASSESSMENT REVIEW VERSUS FORMAL PROTEST

The informal assessment review process and the formal protest to the Board of Review are very different.

During the informal review process, the taxpayer/property owner can make a claim of just about any reason in regards to why the assessment of the property may be incorrect, and the assessor can consider just about any reason to make an adjustment to an assessment, if truly warranted. In short, its an informal process.

However, when a protest is filed with the local Board of Review, the appeal immediately becomes a formal protest and is guided by specific processes and a specific set of criteria found in Iowa law, and as has been ruled in Iowa Courts and PAAB over the years.

### **Advantages of an Informal Assessment Review versus a Formal Protest -**

If a property owner feels their assessment is incorrect, though not required to do so, they are strongly encouraged to at least make an attempt to work with their local assessor's office informally first. This not only gives the property owner a chance to discuss the assessment, the assessment process, and get all their questions answered informally, but also a chance to discuss directly with the office, and sometimes the actual person, that actually set the assessment of the property. This can be a huge advantage over going to formal appeal where board members or judges are likely not as familiar with the subject property and were not the ones who actually set the original assessment of the property.

The informal review process gives all parties a chance to handle any issues and correct any errors at the lowest possible level, and gives the assessor's office a chance to quickly and easily remedy any potential mistakes in the assessment. If an error is discovered and in need of correction, or if an assessment adjustment is warranted for any other reason, as long as both parties agree to the new adjusted assessment, then it is resolved immediately and informally and there is no need for a formal protest.

Basically, the informal assessment review process gives both the assessor and the property owners a lot of leeway in what can be discussed about the property or the property assessment, and if proven, how an assessment adjustment can be made.

## **FORMAL PROTEST - COMMON PROTEST ERRORS & MISCONCEPTIONS**

In the past, Iowa Courts have ruled that "a mere difference of opinion of the between the assessor and the taxpayer will not justify [an over-assessment claim]." In short, property owners may not like their assessment, and are free to disagree with it, but that alone doesn't make the assessor, or the property's assessment, wrong.

### **Protesting in April Only -**

Iowa law provides aggrieved property owners the opportunity to protest assessments both informally and formally in the month of April annually. However, the Scott County Assessor's Office allows property owners to informally discuss their property's assessment and have it reviewed any time of the year, most preferably between October and January when assessor staff is already doing their field work inspecting other properties around the county.

The difference in review or appeal timing is that in the month of April the property owner is challenging the current assessment immediately after the fact, usually after being notified of the new assessment in late March or early April. After the month of April, the current assessment is 'set' for that year and no changes can legally be made to it.

If challenging an assessment after the month of April, property owners can 'review and discuss' the current year's assessment with the assessor's office, but no further adjustments can legally be made by the assessor.

Any assessment changes or adjustments made to a property after April would be effective for the next upcoming Jan 1 assessment.

### **Protesting the Amount or Percent of Change -**

Often, property owners attempt to dispute the dollar amount increase or the percentage amount increase of the prior year's value to the current year's value. There is nothing in Iowa Code that would make this a valid and legal argument for assessment or taxation purposes. Quite the contrary actually. Iowa Code mandates the assessor to set all properties to fair market value on Jan 1 annually.

Essentially, what the Code is saying is that once the assessor discovers that a property is being under-assessed (in relation to what is thought to be its current and fair market value) or incorrectly assessed for any reason, on any January 1 of any year, the assessor can [is legally obligated to] make any relative and reasonable adjustments necessary to set the property's value to fair market value no matter how much it changes the value of the property from the year prior (increase or decrease). The ONLY goal of the assessor is to attempt to set the value of the property, and all property in the county, at current, reasonable, fair market value in accordance with Iowa assessment laws.

### **Protesting Only the Land Value Portion or Only the Improvement Value Portion of an Assessment -**

Iowa Courts have concluded that the "ultimate issue... [is] whether the total value affixed by the assessment roll was excessive or inequitable." The Courts have ruled that only the total assessed value can be considered. Meaning, only the total assessed value as a whole can be protested to determine whether that total value is reasonable and fair. Iowa law does not allow for arguments of the correctness of only a portion of the total assessed value, such as only the land value portion or only the improvement value portion. Protestors must argue the entire total assessed value. The allocation or proration of the components of the total value do not matter.

### **Disputing an Assessment Verbally Only -**

Often, property owners attempt to dispute their assessment verbally only without any actual data or documentation of any kind backing their claim. If occurs during an informal assessment review, this is acceptable, and actually expected, unless or until more data or documentation is requested by the assessor's office.

In a formal protest, factual data and documented evidence is the norm and is expected. It would be extremely rare that that a verbal argument only would overcome the burden of proof for any of the five appeal grounds available in a formal protest.

Although not required, to help the assessor or board of review make a timely and informed decision, it is helpful when actual data and/or documented proof is provided along with the initial review or appeal, or immediately right after. Do not wait to provide any proof backing your claim. It will only strengthen your case.

### **Evidence -**

Iowa Code states that a party appealing their assessment must overcome their burden with a 'preponderance of evidence'. Preponderance being defined as the quality or fact of being greater in number, quantity, or importance.

In short, when appealing formally under any of the five legally available grounds, to shift the burden of proof, the protestor must have more evidence, relevant evidence, and/or better quality evidence than the assessor or the board of review.

**Preponderance of the evidence** is one type of evidentiary standard used in a burden of proof analysis. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

### **Evidence and Market Value -**

Further, when specifically arguing the market value of a property, Iowa Code states that if the appealing party offers 'competent evidence' that the market value of the property is different than the value determined by the assessor, the burden of proof is shifted back to the assessor or board of review.

In short, when the assessed value of a property is under appeal, to be successful in an appeal, the actual true and fair market value of the property must be proven (not just making the 'claim' that it is incorrect). And, to shift the burden of proof the protestor must provide actual competent and relevant evidence proving the actual and true fair market value of the subject property (ie: an appraisal, or property data that would be used in an appraisal).

**Competent evidence** is evidence that is appropriate and necessary to prove the issue that a party alleges exists or the matter in dispute. Competent evidence is also known as proper evidence, admissible evidence, relevant evidence, or legal evidence.

### **Future Assessed Values -**

Even if an appeal is successful, informally or formally, and the property receives a reduction in value, the assessment is not 'set' in any way for future years. The new adjusted value is only applicable for that one year and is not impervious to future property changes or market fluctuations. Future assessments will still be susceptible to adjustments by the assessor's office, either with market adjustments, or if there is actual improvements done to the property. So, a property owner could win their appeal, get their value reduced, and the following year, depending on the market, the value could go right back up to where it was prior to the appeal, or possibly even higher. Assessed values are never stagnant. They continue to follow the local real estate trends.

## **FORMAL APPEAL**

Per Iowa Code, in a formal assessment appeal, the protestor bears the burden of proof. Not the assessor, nor the Board of Review, unless or until the burden is actually shifted by the protestor (with a preponderance of competent and relevant evidence).

### **Assessment Appeal Grounds -**

In a formal protest, Iowa Code strictly limits arguments to only five grounds the Board of Review can legally consider and take action on. The same five grounds are used if the assessment is formally protested to higher appeal at PAAB or District Court. A protestor can choose one or more grounds when appealing their assessment formally. The five grounds allowed by law are:

**(a) Inequity** - That said assessment is not equitable as compared with assessments of other like property in the taxing district.

**(b) Over-Assessed** - That the property is assessed for more than the value authorized by law (ie: more than its fair market value).

**(c) Misclassified, Exempt, or Not Assessable** - That the property is misclassified, is exempt from property taxation, or is not assessable (ie: is not considered real property under Iowa).

**(d) Error** - That there is an error in the assessment.

**(e) Fraud** - That there is fraud or misconduct in the assessment which shall be specifically stated.

## **APPEAL GROUNDS & SHIFTING THE BURDEN OF PROOF**

### **GROUND A – INEQUITY**

To prove an inequity claim, the protestor must prove one of two things;

- The assessor did not apply an assessing or appraisal method uniformly to similarly situated or otherwise comparable properties, or alternatively,
- That the property is assessed higher proportionately than other like properties in the area

If the protestor believes that the assessor did something different in terms of the appraisal or assessment process applied to the subject property as compared to the appraisal or assessment process of other similar properties causing inequity with other properties, the protestor must provide evidence to show and support this claim.

Or, alternatively, if claiming highest assessment, essentially, the protestor is saying they are not concerned with the fact that the subject property may actually be assessed at fair market value, or even under-assessed, but believes the assessment is proportionately the highest of other similar properties in the neighborhood or taxing district, and therefore is not fairly and equitably assessed. Or, the subject property is not classified the same as other properties with very similar use.

In the past, Iowa Courts have ruled “Although the property of a taxpayer is assessed at less than its true value, nevertheless, if it is assessed higher proportionately than other similar property in the area, [the property owner] has a just cause of complaint.”

Iowa Courts have stipulated that if the protestor alleges that the subject property proportionately has the highest assessment in the neighborhood or of other similar properties, the protestor should use the criteria set forth in Iowa Court case “Maxwell v. Shivers” to help prove their claim.

The “Maxwell” test provides that inequity exists when, after considering the sales values and assessed values of comparable properties, the subject property is assessed at a higher proportion of its actual value. The assessments of a representative number of comparable properties in the same tax/assessing district should be used for this claim. In the past, Iowa Courts have ruled that more than one comparable is required.

#### **The “Maxwell” test uses six criteria when determining inequity in the assessment:**

- (1) that there are several other properties within a reasonable area similar and comparable [to the subject],

- to consider a property's comparability to the subject property certain criteria is considered such as; location, use, lot size, structure size, age, condition, quality, and any other relevant property characteristics and amenities.

- (2) the amount of the assessments on those properties,
- (3) the actual value of the comparable properties,
- (4) the actual value of [the subject] property,
- (5) the assessment complained of, and
- (6) that by a comparison [the subject] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.

## **GROUND B – OVER-ASSESSED – (most common claim)**

To prove an over-assessment claim, the protestor must prove both of two things to overcome their burden:

- 1) that the subject property's assessment is excessive, AND ALSO
- 2) the subject property's actual fair market value.

Essentially, when this claim is used, the property owner believes the property is assessed for more than it is worth or more than it would sell for [in its condition as Jan 1 of the assessment year in question]. Iowa's definition of market value is found under Iowa Code section 441.21. If this claim is used, the protestor should specify the amount believed to be fair market value of the subject property on the petition.

To overcome the burden of proof for this claim, competent evidence might include:

- A recent sale of subject property [only typical, normal, arms-length transactions are considered]
- A recent appraisal of subject property [typically < 3 years old, but < 1 year old preferred]
- A recent for sale listing of the subject property
- A realtor's analysis of the subject property
- Recent sales of properties considered to be similar and comparable to the subject
  - o Per Iowa Courts, must use more than one comp
  - o Can use assessor's website to run a comparable property search.
- Photos of subject property deficiencies
- Inspection reports and/or repair cost estimates of subject property deficiencies (multiple preferred)
- Any other evidence the protestor deems relevant to prove the current assessment exceeds the fair market value of the subject property as defined under Iowa Code section 441.21.

## **Using Sales of Comparable Properties to Prove an Over-Assessment Claim -**

Certain factors must be considered to help determine if other properties are truly comparable to a subject property such as; location, use, lot size, structure type, structure size, architecture, age, condition, quality (of craftsmanship and materials used), number of bedrooms, number of bathrooms, basement finish, attic finish, type of hvac, garage type and size, and any other relevant property characteristics and amenities. Then, adjustments should be made to the comparable properties in relation to the subject to offset any differences in value attributable to these characteristics, and also with respect to the sale's nature and timing. Because sales of comparable properties are required to be used to prove over-assessment, parts of the "Maxwell" test from appeal ground (a) may also be used to help prove an over-assessment claim.

## **GROUND C – MISCLASSIFICATION, TAX EXEMPT, OR NOT ASSESSABLE**

To prove one or all of these claims, the protestor must prove:

- the subject property is misclassified by law either under **Iowa Code section 441**, under the Iowa Department of Revenue classification rules found in the **Iowa Admin. Code 701-71.1**, or under any other applicable Iowa law, or
- the subject property is exempt from assessment and property taxation under Iowa law, or
- the subject property is not considered real property and therefore not assessable for property taxation purposes under Iowa law.

Essentially, real estate in Iowa is classified for property taxation purposes by its present and primary use (as of Jan 1 annually). Therefore, the protestor would be claiming the classification of the property is incorrect due to its present and primary use, or a change thereof since the last assessment.

Or, the protestor is claiming the manner in which the property is used (not by its ownership) makes it exempt from property taxation.

NOTE: Most exemptions have to be applied for by the property owner, timely filed, qualified for, and approved by proper authority. Therefore, this claim is typically used when an exemption request has been denied by the Assessor's Office.

Or, the protestor is claiming that all or a portion of the property's assessment includes value attributable to something that is not actually considered real property under Iowa law and therefore should not be paying property taxes in it.

## **GROUND D – ERROR IN THE ASSESSMENT**

Most of the time, assessment errors do not need to become formal protests, as they can usually be easily remedied by simply contacting the Assessor's Office and requesting an informal assessment review. A quick property inspection by assessor staff may be required to quickly and informally remedy an assessment error.

To prove an error exists in the assessment of the property, the protestor must provide evidence showing or demonstrating the error and how or why it is believed that it has caused an error in the assessment of the property.

Essentially, errors in the assessment would likely result in an incorrect assessed value. Typically, assessment errors are limited to only include; clerical errors such as typos, erroneous mathematical calculations, or incorrect property data found on the property record card or on the assessors website.

An error in the assessment can also include over-assessment in the value of the subject property – ie: all or part of lot improvements, buildings, or additions have been removed from the property. Or, conversely, an error in the assessment can also include under-assessment in the value of the subject property – ie: discovery of new buildings, new additions, or other building or lot improvements.

This is the only ground that allows the protestor to also protest the previous [one] year's assessment, but only if it can be proven that the error existed the previous year Jan 1 and the error caused an incorrect assessment for the previous year. Iowa law does not provide for the correction of errors beyond one prior year.

Failure to inform the assessor that an error existed would not be a valid argument to correct a prior year assessment. In this case, if appealed in April, the error(s) would be corrected for the current assessment only. Or, if after April, the error(s) would be corrected for the future upcoming Jan 1 assessment only.

The assessor's judgement or opinion used in appraising the property is not considered an error in the assessment.

Protestor must state or describe the alleged error.

Common errors include:

- number of bedrooms [this may not result in an incorrect assessment]
- number of bathrooms
- incorrect measurements resulting in size/area errors
- basement finish when there is none or incorrect basement finish area size
- porches and decks that have been removed or significantly changed
- buildings or outbuildings that have been removed and no longer exist
- change in use [of subject property, of part of property, of a structure, of part of a structure]

## **GROUND E – FRAUD OR MISCONDUCT**

To prove an assessment is fraudulent or that misconduct exists in the assessment of the property, the protestor must:

- specifically state the alleged fraud or misconduct, and
- be able to show or demonstrate the fraud or misconduct, and
- be able to prove that the assessors' office knowingly engaged in assessment methods, practices, or conduct that contravene any applicable law, administrative rule, court order, or government authority.

If the Board of Review, PAAB, or District Court decides in favor of the property owner or aggrieved taxpayer and finds that there was fraud or misconduct in the assessment, the property owner's or aggrieved taxpayer's reasonable costs incurred in bringing the protest or appeal shall be paid [by the Assessor or Board of Review]. Costs include but are not limited to legal fees, appraisal fees, and witness fees.