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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EMMET REALTY COMPANY,	)	
Plaintiff-Appellee,	)	Filed March 24, 1981
vs.	)	
THE EMMET COUNTY BOARD OF REVIEW,	)	0-332 2-64524
Defendant-Appellant.	)	

Appeal from Emmet District Court - J. H. Andreasen, Judge.

Defendant county board of review appeals and plaintiff taxpayer cross-appeals from district court order reducing the property tax assessment value of a golf course owned by the plaintiff. AFFIRMED.

Ruth Fillenwarth and Julie Fillenwarth, Estherville, for plaintiff-appellant.

Leo E. Fitzgibbons and Joseph L. Fitzgibbons, of Fitzgibbons Brothers, Estherville, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant Emmet County Board of Review appeals and plaintiff Emmet Realty Company cross-appeals from the district court's order reducing the 1978 property tax assessment value of a golf course. We affirm.

This matter comes before us following plaintiff taxpayer's protest to the board of review and subsequent appeal of the board's affirmance to the district court. Our review of this equitable matter is de novo. Bartlett & Co. Grain v. Board of Review of City of Sioux City, 253 N.W.2d 86, 89 (Iowa 1977); Iowa R. App. P. 4.

I.

In September, 1978, plaintiff filed a petition on appeal in equity with the district court to challenge a decision of the defendant county board of review upholding the county assessor's valuation of a golf course owned by the plaintiff. The matter was tried to the district court in September of 1979. At the close of the evidence, defendant amended its answer to request that the valuation of the golf course be raised from $271,973 (the assessed valuation) to $300,000. In its ruling filed on November 16, 1979, the district court found that the assessed valuation was excessive and reduced the valuation to $223,223.

II.

Defendant board of review contends on appeal that the district court erred in reducing the assessed valuation from $271,973 to $223,233; plaintiff taxpayer cross-appeals, asserting that the district court should have reduced the assessed valuation from $271,973 to $175,700, the previous valuation figure. We affirm the valuation as determined by the district court.

In proceedings to protest a valuation of property, the burden of proof is upon the complainant attacking the valuation as excessive, inadequate, inequitable, or capricious. § 441.21(3), The Code 1979. Section 441.21(3) further provides that once the complainant has introduced competent evidence by at least two disinterested witnesses that the property's market value is less than the market value determined by the assessor, the burden of proof shifts to persons seeking to uphold the valuation. Id. We are not concerned with whether evidence sufficient to shift the burden of proof was presented, however, since we find that the taxpayer sustained its burden of proof to show that the valuation was inequitable and capricious. Specifically, we conclude that the plaintiff has met its burden by establishing that the county assessor had relied almost exclusively

on appraisal manual guidelines in valuing the property and that he had essentially substituted those guidelines for his own judgment.

The primary focus of this dispute is the valuation of the golf course greens. Their value was assessed at $13,750 per green for a total of $123,750. This figure represents improvement value above and beyond the raw land value, which was assessed at $900 per acre.

When asked to explain how he arrived at the $123,750 figure as the value of the greens, the county assessor testified that he consulted the appraisal manual, found the suggested replacement cost for greens at this particular type of course, and cut that figure in half. He further testified that he did not substitute the appraisal manual figures for his own judgment in determining the value of the greens; however, it seems obvious to us that that was in effect what happened and that therefore the assessment was capricious. If the assessor exercised his own judgment at all, it was only to an insignificant degree. He valued each green at one-half the appraisal manual figure, regardless of the size, age, or composition of the particular green involved. He exercised his own judgment only in deciding to cut the suggested value in half. He had no personal knowledge as to the replacement cost or construction cost of any greens; nor did he know how the age of a green would affect its value. In fact, when asked the extent of his experience in valuing greens, he replied that he used the state manual as a guideline. Whether or not he possessed sufficient experience to exercise his own judgment as to the value of these greens, we think his own testimony reveals that he failed to exercise that judgment in a meaningful way. We therefore hold that the plaintiff presented evidence sufficient to establish a capricious assessment and, pursuant to the authority granted by section 441.43, The Code 1979, we affirm the district court's order reducing the assessed value to $223,223. We find no merit in plaintiff's contention that the valuation should have been further reduced to $175,700.

III.

Defendant also alleges on appeal that the district court should have increased the assessed valuation of plaintiff's golf course from $271,973 to $300,000. In the original protest proceeding before the board, however, the board affirmed the assessed valuation. It would appear that the board is now estopped from seeking a higher assessment value on appeal, since this court may hear and determine only those questions that arose before the board when it took action in the original protest

proceeding. § 441.39, The Code 1979. Although our de novo review of this equity matter enables us to make new findings and conclusions, we are nonetheless bound by the provisions of chapter 441. Furthermore, even if section 441.39 does not operate to estop defendant from arguing on appeal that the assessed value is too low, defendant is subject to the same burden of proof that is imposed on any complainant by section 441.21(3), The Code 1979. We find that the board has failed to present competent evidence to sustain this burden.

We therefore affirm the district court's order establishing the valuation of the golf course at $223,223.

AFFIRMED.

All judges concur except Oxberger, C.J., and Carter, J., who dissent.

OXBERGER, C.J., (Dissenting)

Initially, the majority, as well as the plaintiff, concerns itself with the value of only a small portion of what the county assessor encompassed in his "green" valuation. The stress on replacement and construction costs of the putting surface are of little relevance to the valuation in question.

Secondly, the assessor did not substitute the manual guidelines for his judgment. He utilized his judgment when he decided the greens were one-half the value specified in the guidelines. The guidelines stated there are various factors to consider in valuing improvements of a golf course which include special problems which may exist. The figures stated in the guidelines are based on normal conditions. The assessor testified in his examination of the golf course he took into consideration the condition of the greens and fairways. His assessment was based not only upon the guidelines but the various factors and problems involved and the condition of the improved area.

Finally, the trial court concluded $75,000 constituted an appropriate valuation for the green improvement above and beyond the $900 per acre raw land valuation. I find no support in the evidence for this improvement figure.

I would reverse the trial court and re-instate the board of review's assessment.

Carter, J., joins in dissent.