FILED
OCT 07 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THELMA RUTH ERHARDT,	)	
Plaintiff-Appellee,	)	Filed October 7, 1977
vs.	)	
BOARD OF REVIEW OF CITY OF OTTUMWA, IOWA,	)	265 / 2-59183
Defendant-Appellant.	)	

Appeal from Wapello District Court - Ira F. Morrison, Judge.

Defendant Board of Review appeals trial court reduction in property tax valuation of plaintiff's property. Reversed and remanded with instructions.

William R. Dew, of Ottumwa, for Defendant-Appellant.

D.W. Harris & C.K. Pettit, of Bloomfield, for Plaintiff-Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Board of Review of Ottumwa appeals the trial court determination that plaintiff Thelma Ruth Erhardt's property has an actual and fair market value of $32,846 and its order that the $42,500 assessment for such property be reduced to this amount. We reverse.

The city assessor initially reassessed the property at the $32 846 valuation Upon Erhardt's appeal to the Board of Review, the valuation was set at $42,500. The trial court rejected both Erhardt's urgings that the actual fair market value should remain at $27,500 and the Board of Review's ruling that the valuation was $42,500. It chose to fix valuation upon the assessor's original reassessment amount of $32,846.

Under § 441.21, The Code 1975, the burden of proof was initially upon Erhardt to show the valuation was excessive, inequitable or capricious. Upon Erhardt's proffer of competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof would shift to the Board of Review to prove the valuation assessed was its actual value.

Erhardt's witnesses were a plumber who was not examined regarding market value; Samuel O.Erhardt. who as husband of Erhardt cannot satisfy the disinterested status required by the statute; Elmo Bailey who did testify to a lesser valuation of the property; and C. L. Cornelius. On direct examination Cornelius's statement consisted of little more than a judgmental conclusory observation of what the equities should be -- why Sam is not "justified" in an increase. It is not the kind of opinion testimony envisioned by the provision of § 441.21 for a proffer of competent evidence sufficient to shift the burden of proof to the Board of Review. On cross examination Cornelius said he could not say whether $42,500 was higher or lower than market value. He refused to place a market value on the Erhardt property stating he would have to go back to the last arm's length transaction and that he did not know when that occurred.

On the threshold question whether Erhardt produced competent evidence by two disinterested witnesses as contemplated by § 441.21, The Code, we are bound by the ruling upon a similar question in Milroy v. Board of Review of County of Benton, 226 N.W.2d 814, 817-18 (Iowa 1975). The **Milroy** plaintiff produced two disinterested witnesses "the sum total of whose evidence was that the property was 'wasteland' and 'without value.'" There was uncontradicted evidence that the **Milroy** plaintiff received an average annual income of $11,000 and that it contained valuable deposits of sand and rock for commercial use. The supreme court observed ". . . because a zero market value is indubitably less than that fixed by the assessor, such lip service to § 441.21 is of no help to a court attempting to discharge its duty in reaching a proper valuation. (citations) It is competent; but it is completely lacking in credibility when weighed against the evidence to the contrary." 226 N.W.2d 818. We cannot find in the Cornelius testimony even the **Milroy** lip service to § 441.21. The burden remained upon Erhardt to prove the valuation was excessive.

Our review of the valuation testimony is de novo. **Milroy**, 226 N.W.2d at 816; Power v. Regis, 220 N.W.2d 587 (Iowa 1974). Balanced against the taxpayer s evidence, the board established that in determining its valuation it considered the probable availability of persons interested in purchasing the property, inspected the Erhardt property, considered its physical and functional depreciation and obsolescence, the neighborhood in which it was located, the possibility of sale in the existing market in Ottumwa, and the use to which the property was devoted. § 441.21 authorizes the assessing body to consider all such factors when arriving at a fair and reasonable market value for property which cannot be readily valued by a willing buyer --willing seller approach.

From our review of the evidence, we conclude the Board of Review correctly established the value of plaintiff's property. Accordingly, the judgment of the trial court is reversed. The case is remanded for entry of a decree affirming the action of the Board of Review setting the Erhardt assessment at $42,500.

Reversed and remanded with instructions.