FILED
DEC 21 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-523 / 88-1667

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LOYEL SCHUTTERLE and MILDRED SCHUTTERLE,

Plaintiffs-Appellants,

vs.

IOWA COUNTY BOARD OF REVIEW; and EVERETT JOSEPH, ALAN GRIMM, and LESTER OCHELTREE, Members of the Board;

Defendants-Appellees.

Appeal from the Iowa District Court for Iowa County, L. Vern Robinson, Judge.

Plaintiffs appealed the increased assessed value of their farmland by the county assessor to the Iowa County Board of Review. The board made some minor adjustments, but primarily affirmed the county assessor. Plaintiffs appealed to the district court. The court affirmed the board's valuation. Plaintiffs now appeal. **AFFIRMED.**

Loyel Schutterle and Mildred Schutterle, Norway, plaintiffs-appellants, pro se.

Kenneth R. Martens, County Attorney, for defendants-appellees.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, P.J.

The Iowa County Assessor increased the assessed value of plaintiffs' farmland due to the use of a modern soil survey and corn suitability ratings. Plaintiffs appealed to the Iowa County Board of Review (Board). The Board made some minor adjustments, but primarily affirmed the county assessor. Plaintiffs appealed to the district court. The court affirmed the Board's valuation and the plaintiffs appeal from that ruling.

In the 1987 assessment of agricultural land in Iowa County, the county assessor used a modern soil survey and applied corn suitability ratings. This increased the assessed value of farmland owned by Loyel Schutterle and Mildred Schutterle. The Schutterles appealed the assessment to the Iowa County Board of Review. After viewing the land, the Board reduced the value of one forty-acre parcel by twenty percent because of its topography and reduced the value of another tract because of a pond which was not on the soil survey map. The Board valued the 218.3 acres of farmland at $135,149, or $619 per acre. The Board adjourned on June 1, 1987. The Schutterles filed an appeal in district court on June 22, 1987. The court found the appeal was timely. The court affirmed the decision of the Board.

The Schutterles believe the assessment was discriminatory because it was in excess of market value.

They state the assessment is unconstitutional as a discriminatory tax. They also contend the use of the modern soil survey is unconstitutional under article I, section 6, and article III, section 30, of the Iowa Constitution and the fourteenth amendment of the United States Constitution because it is not applied in an equal and uniform manner. Furthermore, the Schutterles feel that the Board acted in an arbitrary and capricious manner.

Plaintiffs contend that the court should have considered the productivity and net earning capacity of their land, which would have decreased their assessment. They ask that adjustments also be made to the corn suitability rating based on the topography of their land. Section 441.21(1)(e) also provides that a method used to determine productivity should be adopted by rule. Plaintiffs assert that because no state administrative rule has been promulgated for the use of modern soil surveys, counties should not be able to use the surveys for assessment purposes. Plaintiffs recognize that section 441.21(1)(f) provides that a modern soil survey should be given emphasis in valuations. They believe sections 441.21(1)(e) and (f) are unconstitutionally vague.

The Schutterles also argue that the court should have given more consideration to the their testimony and that of their witnesses. Plaintiffs state that section 441.21(3), which allows the burden of proof to be shifted when a

complainant offers the competent evidence of two disinterested witnesses, should be applied here.

Plaintiffs claim that three acres of a neighbor's land was included in their assessment. They ask that this land not be included in the assessment.

Plaintiffs note that under section 441.21(1)(d) property in one assessing jurisdiction should be equalized with property in adjoining assessing jurisdictions. If there is a variation of five percent or more between the actual values of similar, closely-adjacent property, then the assessors must determine whether adequate reasons exist for the variation. The Board admits there is more than a five percent variation between plaintiffs' land and land in the adjoining county. Plaintiffs argue the court erred in not applying this section. The Board contends there was adequate reason for the difference because the adjoining county was not correctly applying the corn suitability ratings.

In the district court plaintiffs asked for a permanent injunction because the taxes are now due and a penalty is accumulating. The court denied their request. Plaintiffs feel the court erred on this issue.

The assessment of plaintiffs' land included a machine shed. The shed was assessed in 1987 for almost $1,100 more than it was in 1983. Plaintiffs believe the shed depreciated in value, not increased in value. The court ruled that the appeal on this issue was not timely.

Section 441.38 provides an appeal to the district court must be made within twenty days of the adjournment of the Board. Plaintiffs' appeal was served on the twenty-second day after the adjournment, which was a Monday. The court specifically found the notice of appeal to the district court was timely. The county again raises the issue of timeliness, arguing that the notice should be served within twenty days, whether or not the last day falls on a weekend.

Our scope of review was well set out in Henry v. Iowa Dep't of Transp., M.V.D., 426 N.W.2d 383, 385 (Iowa 1988):

> In reviewing a district court decision on the validity of an agency action, we decide only whether the district court has correctly applied the law. The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. When we review such action by the district court, we merely apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. If the conclusions are the same, we affirm; otherwise we reverse. (Citations omitted.)

The first contention that must be addressed is whether the Schutterles' appeal from the Iowa County Board of Review was timely filed. The appellee contends that the appeal must be made within twenty days after the adjournment of the Board, regardless of whether the twentieth day falls on a weekend or holiday. In this instance the twentieth day fell on a Sunday and the appeal was not filed until Monday, the 21st day. Section 4.1(22) of the Iowa Code determines how time is computed relating

to legal procedures. In computing time, the first day is excluded and the last day included. Therefore, June 21 would have been the last day for the Schutterles to serve the presiding member of the Board of Review. Section 4.1(22) further provides:

> [W]henever by the provision of any statute or rule prescribed under authority of a statute, the last day for the commencement of any action or proceeding, the filing of any pleadings or motion in a pending action or proceedings or the perfecting or filing of any appeal from the decision or award of any court, board, commission or official falls on a Saturday, a Sunday, . . . or (certain holidays), the time shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday named in this subsection.

In this case, the Schutterles were required to perfect their appeal by serving a member of the Board of Review. Under the provisions of section 4.1(22) of the Iowa Code, the service of the notice on the presiding member of the Board on June 22, 1987 (Monday), perfected their appeal. We hold that the appeal was timely.

The burden of proof in this action is upon the plaintiff unless he can present two disinterested witnesses who will testify that the market value of the property is less than the market value determined by the assessor. Upon the presentation of two disinterested witnesses as to the value, the burden of proof shifts to the assessor. In this case, the witnesses were not disinterested. They were close friends and neighbors of the plaintiffs. They were also farmers who may have had an interest in lowering the

valuation. The trial court was correct in finding that the burden of proof did not shift to the defendant.

The Schutterles contend that the corn suitability ratings were not applied uniformly and therefore their use violated the Iowa and United States Constitutions. The corn suitability ratings were applied uniformly in this instance. Tax assessment is not an exact science. The Iowa Code clearly requires an assessment and allows for the use of soil surveys. This is exactly what was done here and there is nothing to suggest the plaintiffs were not treated equally. The trial court was correct in affirming the Board of Review.

The Board made all the adjustments to the corn suitability rating that were necessary. There is substantial evidence to support the Board's finding on this issue.

The remaining issues raised by plaintiffs are without merit. There is substantial evidence to support the Board's findings and there is no evidence of constitutional violations. Therefore, we affirm the district court in toto.

AFFIRMED.