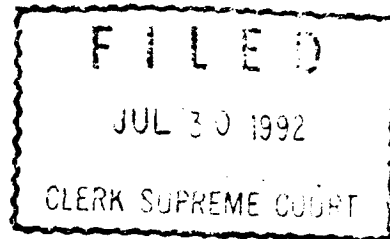


IN THE COURT OF APPEALS OF IOWA

No. 2-168 / 91-1067

**LOYEL SCHUTTERLE,**

Appellant/Cross-Appellee,

vs.**IOWA COUNTY BOARD OF REVIEW, and LYNN M. KOLOSIK,
JEFFREY A. DENZLER, and LESTER OCHELTREE, Members of Said
Board,**

Appellees/Cross-Appellants,

Appeal from the Iowa District Court for Iowa County,
August F. Honsell, Judge.

Schutterle appeals and the Board of Review cross
appeals the district court's ruling which reduced the Board
of Review's tax assessment of forty acres of farmland.
AFFIRMED.

Marlyn S. Jensen, Osceola, for appellant.

Kenneth R. Martens, County Attorney, Marengo, for
appellees.

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

HAYDEN, J.

For the third time, Loyel Schutterle has appealed an Iowa County Board of Review (Board) tax assessment on forty acres of his agricultural property in Iowa County. In each appeal Schutterle has challenged the method used to value the same tract of land.

In 1987 the Iowa County Assessor set the value of Schutterle's forty-acre tract at \$22,307. The assessor determined this value by using the corn suitability rating (CSR), which relates to the productivity of the soil. The soils are also mapped and surveyed. The modern soil survey for Iowa County was published in 1967 based upon work performed by the Soil Conservation Service division of the United States Department of Agriculture (USDA). Pursuant to Iowa Code chapter 441, the Iowa County Assessor uses the modern soil survey to arrive at the corn suitability rating for an acre and then multiplies the numerical rating by the number of acres.

Schutterle appealed the 1987 assessment to the Board. The Board reduced the value of the land to \$17,845 because the Board believed Schutterle's property had not been adjusted for topography. Schutterle appealed the Board decision to the district court contending the value of the land was only \$5628. While Schutterle's appeal was pending, the Iowa County Assessor reassessed the property for 1989 by increasing its valuation back to \$22,307. The assessor believed the CSR already included a topography

adjustment. Schutterle appealed to the Board, which adjusted the assessment to \$21,518 by finding the assessor had miscalculated the total CSRs for the forty acres. The 1987 assessment was ultimately affirmed by the Iowa Court of Appeals in an unpublished opinion. Schutterle v. Iowa County Bd. of Review, 9-523/88-1667 (Iowa App. Dec. 21, 1989). The Honorable Judge Schlegel wrote the opinion. Judges Hayden and Sackett were also on the three-judge panel.

Schutterle appealed the 1989 assessment, as modified by the Board, to the district court. At trial, Schutterle presented evidence from two soil scientists, one of whom, Wayne D. Frederick, assisted in the preparation of the original Iowa County modern soil survey. Frederick viewed the actual site, took samples, and concluded there were errors on the modern soil survey. Schutterle's other expert agreed with Frederick. Schutterle also attempted to call as a witness USDA Soil Conservation Service (SCS) employee Steve Johnston. Johnston's superiors refused to allow Johnston to testify pursuant to 7 CFR sections 1, 1.214(b) (1990). That regulation provides department of agriculture employees may be permitted to testify only if authorized by the chief of SCS and the USDA general counsel.

The district court reduced the value of the forty acres to \$17,845. Schutterle appealed. The Board of Review filed a cross-appeal, asking the land be valued at \$21,518.

Tax valuation appeals are heard in equity. Iowa Code § 441.39 (1991). Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of facts, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). We consider all of the evidence and grant no presumption as to the correctness of the valuation of the assessment from which a party appeals. Iowa Code § 441.39 (1991).

Prior to trial at the district court level, the district court ruled on a motion for adjudication of law points. The court barred Schutterle from relitigating the issues of applicability of the productivity formula and the use of CSRs in determining valuation with regard to these forty acres. Schutterle v. Iowa County Bd. of Review, 89-523/88-1667 (Iowa App. Dec. 21, 1989). Schutterle contends the issue in this appeal differs from those of prior actions. He contends the assessor should not rely on the soil survey because the CSR is inaccurately portrayed in the survey and the application of the productivity formula is in error due to this inaccuracy. We disagree with Schutterle's arguments. The issue in this case is merely another attempt to attack the property assessment and valuation from a different approach. Schutterle is attempting to relitigate the same issue by attacking the modern soil survey.

The doctrine of issue preclusion bars a party to a prior action from relitigating in a subsequent action issues raised and resolved in a prior action. Selchert v. State, 420 N.W.2d 816, 818 (Iowa 1988) (citing Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981)). Before litigation on an issue is barred, the party relying on collateral estoppel must satisfy the following prerequisites:

1. The issue concluded must be identical;
2. The issue must have been raised and litigated in the prior action;
3. The issue must have been material and relevant to the disposition of the prior action; and
4. The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Selchert, 420 N.W.2d at 818 (quoting Hunter, 300 N.W.2d at 123)). The issue is identical because each action involved the assessment and valuation of the same property. In all three cases, Schutterle complained the valuation and assessment were inaccurately determined and demanded the assessed value be substantially lowered. The issue was litigated in the prior actions, and it was material and relevant to the disposition of the prior actions. Finally, the determination of the issue of valuation and assessment was necessary and essential to the resulting judgment.

The only aspect of this action that is different from the other actions is the theory of recovery. The three theories upon which Schutterle has attempted to succeed are: (1) productivity formula, (2) CSR, and (3) modern soil

survey. In the context of the evidence and testimony, we find the three theories to be identical so as to trigger the doctrine of res judicata. The productivity formula is used in conjunction with the soil survey and CSR to calculate the value of land. A soil survey is a mapping and identification procedure that indicates the differences in the soil's producing ability. The basic components of a soil survey are soil type, slope, and erosion phase. The identification of a soil type is a prerequisite to determining the CSR of the land. The CSR is an index procedure used to rate different soils based upon potential productivity. The numerical rating system places a scientifically analyzed comparative corn producing ability on each soil identifying unit. Both procedures are obviously closely related to the productivity issue. In fact, the present procedure for the calculation of an average productivity on a county-by-county basis requires the use of the soil survey and CSR. Appellant could have advanced all theories in the first action, but he failed to do so. Schutterle is barred by the defense of res judicata from seeking to argue error in the soil survey in this action.

The plaintiff raises two issues which are specific to a soil survey. We address these issues because they were not adjudicated in the prior actions.

I. A. Actions of the County Assessor.

Schutterle contends the Iowa County Assessor acted arbitrarily and capriciously in using the modern soil s

urvey to value his property. We disagree. The Iowa Administrative Code provides the county assessor shall consider the results of a modern soil survey in determining valuations for agricultural property. Iowa Admin. Code 701-71.3. Similarly, Iowa Code section 441.21(1)(f) provides "the assessor shall place emphasis upon the results of the survey." Iowa Code § 441.21(1)(f) (1991). The assessor acted pursuant to the statutes. We hold she did not act arbitrarily and/or capriciously by considering results of the modern soil survey. We affirm on this issue.

I. B. Rights of the County Assessor.

Schutterle also contends the Iowa County Assessor has only the same rights as a taxpayer and therefore must appeal an adverse tax valuation of the Board of Review. Iowa Code 441.38 (1991). Statutory law does grant the assessor the right of appeal; however, another statutory provision grants the assessor further rights:

[I]n any year, after the year in which the assessment has been made of all the real estate in an assessing jurisdiction, the assessor shall value and assess or revalue and reassess, as the case may require, any real estate that the assessor finds was incorrectly valued or assessed.

Iowa Code § 428.4 (1991). We find the assessor complied with the statutes governing her duties and affirm on this issue.

II. Constitutional Claims.

Schutterle further complains (1) the State has no duty to follow the soil survey because the power to value, a

ssess, and tax real property is reserved to the states; and (2) the use of the soil survey does not adequately protect the right to appeal and correct error in the survey. We will not address these issues because it does not appear they were raised or preserved in the trial court. We usually do not consider issues raised for the first time on appeal. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 434 (Iowa 1984).

III. Shifting of the Burden of Proof.

The district court found Schutterle offered competent evidence by two disinterested witnesses, pursuant to Iowa Code section 441.21(3), that the market value of the forty acres (i.e. the actual value as contemplated by section 441.21(1)(e)) is less than the market value determined by the taxing body. Therefore, the burden of proof shifted to the Board to uphold the assessed value of the land. Wayne Frederick, Kermit Voy, and Paul Brown testified for the appellant at trial. These witnesses are disinterested. They have no interest in the outcome of this litigation, and they are not related to the appellant. We affirm the district court on this issue.

We find the assessed value of the forty acres should not be increased or decreased. Section 441.43 of the Iowa Code provides:

Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease, or affirm the amount of the assessment appealed from.

Iowa Code § 441.43 (1991). We also find the appellee's cross appeal to be without merit. We affirm the district court's determination of the value of the land at \$17,845.

We have considered all other claims of the appellant and found them to be without merit. We deny the appellant's request for expenses. The costs on appeal are taxed to the appellant.

AFFIRMED.