FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

107

ROBERT L PASSER, ALVIN L. PASSER, THELMA REUBEN AND ELEANOR SLOSBURG,

Plaintiffs-Appellees,

vs

BOARD OF REVIEW OF POTTAWATTAMIE COUNTY, IOWA,

Defendant-Appellant.

Filed January 24, 1984

3-351
83-192

Appeal from the Iowa District Court for Pottawattamie County—Glen M. McGee and J.C. Irvin, Judges.

Defendant board of review appeals from the district court decision reducing plaintiffs' property assessment. REVERSED AND REMANDED.

Frank W. Pechacek Jr., and Randy R. Ewing of Smith, Peterson, Beckman & Wilson, Council Bluffs, for defendant-appellant.

Jack W. Peters of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

OXBERGER, C.J.

Plaintiff property owners appealed to the district court from the decision of defendant board of review assessing the value of their property at $124,456. We vacate the decision of the district court.

I. Scope of Review

On appeal this court shall hear the case in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof. Iowa Code § 441.39

II. Subject Matter Jurisdiction

The jurisdiction of appeals from the board of review is wholly statutory and depends for its existence upon substantial compliance with statutory prerequisites set out in Iowa Code section 441.38. Economy Forms Corp. v. Potts, 259 N.W.2d 787, 788 (Iowa 1977). There are three requirements for a valid notice of appeal under section 441.38: (1) written notice, (2) addressed to the chairman of the Board of Review by his proper name, and (3) served on that individual as an original notice. Resthaven Cementery Assoc. v. Bd. of Review of Polk County, 249 N.W.2d 618, 620-21 (Iowa 1977). A copy of the petition was attached to a written notice of appeal which was served on the chairman of the board by his proper name. Section 441.38 requires no more than this. The special appearance was properly overruled.

III. Assessment of Property

The burden of proof in the case at bar was on Passer who was attacking the valuation of the property as inequitable. See Iowa Code § 441.21(3). In a protest or appeal proceeding, the burden of proof will shift to the board if the complainant offers competent evidence from two disinterested witnesses that the market value of the property is less than the market value as determined by the assessor. Id. Passer called only one expert valuation witness in his case in chief.

Therefore, the burden of proof remained with him throughout the case to prove that the assessment of the subject property was not equitable as compared with assessments of similar property. See Bartlett and Co. Grain v. Bd. of Review of City of Sioux City, 253 N.W.2d 86, 88 (Iowa 1977). Also, it is a question of whether the assessments as a whole are sustainable, not whether the assessment of certain constitutent elements are just and equitable. See White v. Bd. of Review of Polk County, 244 N.W.2d 765, 769 (Iowa 1976). We find that Passer did not meet his burden.

If a taxpayer attacks the assessor's valuation on the ground that the property was assessed inequitably as compared to other property, as was done here, it is essential the taxpayer prove the following:

> "(1) that there are several other properties within a reasonable area similar and comparable to his; (2) the amount of the assessments on those properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by a comparison his 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."

Power v. Regis, 220 N.W.2d 587, 590 (Iowa 1974).

In our de novo review, we find that there was no evidence that the other properties likened to the subject property were similar and comparable. Even though the compared properties were located within the same vicinity, there were no properties of similar configuration. Neither was there any evidence of the actual values of the compared properties. Passer's expert testified that he was not able to find any sales of comparable properties within a short period of time prior to the assessment. He had to go back several years to get that information. He also testified that he based his square-footage valuation on those sale properties, even though such properties did not have configurations similar to the subject property. Passer's expert indicated that by his valuation method, the

square footage valuation the land should be valued at $54,300. However, the assessor testified that a square-foot valuation is not appropriate because such valuation does not allow for the adjustment of the irregular size and shape of such a property. The assessor further testified that a front-footage valuation is better adapted to the properties within this vicinity, as that method takes account of differences in size and depth. Evidence indicates that the front-footage valuation of the subject property conformed to the front-footage valuations of the other compared properties: values higher to the east of the subject property and lower to the west. The assessor also testified that he had considered the square-footage valuation; the record shows that if the subject property was squared off into a comparable rectangular lot, the square-footage valuation would conform to the square-footage valuation of the other parcels: values higher to the east and values lower to the west. Therefore, we fail to see the unjustness of the original assessment.

For the foregoing reasons, we find that Passer did not carry his burden of showing that his property was inequitably assessed as compared to other property. In our de novo review, the evidence convinces us that the assessment of the subject property was equitable as compared with assessments of similar property. Therefore, we reverse the district court ruling and reinstate the assessment approved by the Board of Review.

We do not reach the merits of the issue concerning the defendant's expert. Since we have reversed the district court ruling on other grounds, the issue has become moot.

REVERSED AND REMANDED.