

FILED

MAY 31 1978

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CEDAR VALLEY APARTMENTS
LIMITED PARTNERSHIP,

Appellee,

Filed May 31, 1978

vs.

BOARD OF REVIEW OF THE CITY
OF CEDAR RAPIDS, IOWA, and LEO
C. PEIFFER, CHAIRMAN OF THE
BOARD OF REVIEW OF THE CITY
OF CEDAR RAPIDS, IOWA,

Appellants.

453
2-58993

Appeal from Linn District Court - Robert Osmundson, Judge.

Defendant Board of Review appeals the trial court's reduction in property tax valuation for the 1971 assessment year granted to plaintiff apartment complex which had sought relief under § 421.17(10), The Code, after the plaintiff's grantor failed to timely protest under § 441.37, The Code. - Reversed in part and affirmed in part.

David F. McGuire, Cedar Rapids, and James A. Piersall and Lynda E. Thomsen,
of White, Wenzel & Piersall, Cedar Rapids, for Appellants.

William H. Ryan, Cedar Rapids, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell and Oxberger, JJ. Carter, J.,
takes no part.

PER CURIAM

The Cedar Rapids Board of Review appeals the reduction in property tax valuation for the 1971 assessment year granted to Cedar Valley Apartments. Cedar Valley contends the 1971 reduction should have been carried forward to valuations for 1972 and 1973. We reverse the reduction of 1971 taxes and affirm denial of relief for 1972 and 1973.

Cedar Valley's grantor failed to protest the real estate taxes in the assessment year 1971 as provided in § 441.37, The Code. Appearing before the board of review in July, 1972, Cedar Valley claimed it was arbitrary and capricious for the board to allow protesting apartment owners in 1971 reductions for economic obsolescence, previously granted to protesting apartment owners including Cedar Valley's grantor in 1970, without also allowing all apartment owners, whether protesting or not, the same relief in 1971. Acknowledging the failure to timely file § 441.37 protests against the 1971 assessment, Cedar Valley urged the board to grant it relief via a § 421.17(10), The Code, recommendation to the Director of Revenue.

Section 421.17(10) allows the director to correct "errors or obvious injustices in the assessment of any individual property..." upon the recommendation of the local board of review. The trial court ruled such a recommendation was withheld because the vote was not unanimous and that the recommendation should have been forwarded to the director. We need not reach the question of the propriety of the director-imposed requirement of unanimity since the minutes of the board's meeting indicate the apartment buildings described in the motion did not include Cedar Valley. The recommendation which was suggested contained an exception excluding "...those apartment buildings that have sold for more than the appraised value placed on them by the Assessor's Office..." Cedar Valley acquired the apartment complex in the spring of 1972 when its actual value for taxation purposes was recorded as \$2,654,819. The purchase agreement introduced by Cedar Valley shows assumption of a \$2,775,355 FHA mortgage and note and \$18,656 mortgage arrearage payments as partial consideration for the sale. These figures alone establish that Cedar Valley would not have been recommended for a reduction in valuation had the board requested the director to act. The sale for

more than the appraised value occurred prior to Cedar Valley's appearance before the board of review. Cedar Valley has raised no claim that it was error for the board to exclude properties selling for more than their appraised valuations from the proposed recommendation. It was error for the trial court to grant Cedar Valley the requested relief for the 1971 assessment year. This ruling makes it unnecessary for us to reach the board's contention that a timely protest under § 441.37 is a prerequisite to seeking relief under § 421.17(10).

Cedar Valley's claim for reduction in 1972 and 1973 taxes rested on its contention that the assessed value of 1971 once reduced should carry forward to taxes assessed January 1, 1972, and January 1, 1973. It filed no cross-appeal urging the trial court erred in its finding that Cedar Valley "... has not carried its burden of proving the valuation was excessive, inadequate, inequitable or capricious for the year 1972 and 1973."

Accordingly, we reverse the trial court ruling reducing the assessed valuations for the 1971 taxes and we affirm the denial of relief for the years of 1972 and 1973.