IN THE COURT OF APPEALS OF IOWA

No. 0-508 / 90-109

FILED
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CLERK SUPREME COURT

ROBE, INC., and **ROSE M.A. JENSEN**,

Appellants,

vs.

BOARD OF REVIEW OF THE CITY OF CLINTON, IOWA,

Appellee.

Appeal from the Iowa District Court for Clinton County, James R. Havercamp, Judge.

Property owners appeal a district court decision finding they failed to prove the assessments of their property inequitable compared to like property. **AFFIRMED.**

John Frey, Jr. of Jurgemeyer, Frey & Haufe, Clinton, for appellants.

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

In 1988 the Clinton County Assessor's Office assessed two properties owned by Robe and Jensen. The property owned by Robe, Inc., located at 3221 McKinley, was assessed at $116,736. The property located at 3309 McKinley, owned by Rose Jensen, was assessed at $114,589. The owners filed a protest with the Board of Review. The Board did not change the valuation. The owners appealed to the district court. They contended that the assessments were not equitable as compared with assessments of other like property and that the properties were assessed for more than their fair market value.

Following trial, the district court found that the properties were assessed at more than their fair market value. The court reduced the assessment on 3221 McKinley to $105,000, and reduced the assessment on 3309 McKinley to $110,000. The court also found that the owners failed to prove that the assessments were inequitable compared to other properties.

The owners appeal. They contend that they presented sufficient evidence to establish that their properties were inequitably assessed in comparison to similar properties. We affirm.

Tax valuation appeals are heard in equity. Iowa Code § 441.39 (1989). Our review is de novo. Iowa R. App. P. 4. While we give weight to the trial court's factual

findings, we are not bound by them. Iowa R. App. P. 14 (f)(7).

Iowa Code section 441.37 sets forth the grounds for protest to the Board of Review. Section 441.37(1)(a) provides that a taxpayer may file a protest with the Board on the grounds "[t]hat said assessment is not equitable as compared with assessments of other like property in the taxing district." In order to obtain relief upon this ground, it is essential that a taxpayer prove: (1) that there are several other properties within a reasonable area similar and comparable to his or hers; (2) the amount of the assessments on those properties; (3) the actual value of the comparable properties; (4) the actual value of his or her property; (5) the assessment complained of; and (6) that by a comparison his or her 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. Maxwell v. Shivers, 257 Iowa 575, 579-80, 133 N.W.2d 709, 711 (1965). The gist of this ground is essentially that the property at issue is assessed higher proportionately than similar property in the area. Riso v. Pottawattamie Bd. of Review, 362 N.W.2d 513, 517 (Iowa 1985).

Pursuant to section 441.21(3), the burden of proof shall be upon the complainant attacking such valuation.

Under this section, when a complainant produces competent evidence by two disinterested witnesses that the market is too high because it is inequitable, the burden shifts to the board of review. Riso, 362 N.W.2d at 517-18.

Turning to the facts of the present case, Robe and Jensen introduced evidence of a number of homes in the Clinton area which they deemed comparable to the properties in question. In order to show the fair market value of the homes, the sale price of the other properties and their assessed values, Robe and Jensen introduced the assessor's card and a multiple listing sheet describing the properties in question. The record reveals that these properties were given a fair market value in excess of $80,000. However, no evidence was presented by Jensen as to how these properties were comparable to the properties in question. Jensen at trial admitted on cross-examination these figures were introduced only to show the difference between the sale price of the other properties and their assessed value. Jensen stated she had been through many of properties listed in her exhibits, but did not offer any testimony as to how these other properties physically compared to the properties in question other than to introduce the listing sheet with the descriptions.

The properties described in the listing sheets appear to be of varying size and amenities. None of the properties listed are located on the river as are the

McKinley properties. Though it would appear these properties are in the same community as the McKinley properties, Jensen's testimony at trial reveals no independent market analysis was done regarding adjustments; i.e. dates of sale, depreciation, appreciation, location, size of buildings, and other amenities. Don Jacobs, the Board's expert, testified that when the net adjustments of these comparable properties is over 15%, comparisons with the subject properties is rendered meaningless. See also Wunschel v. Bd. of Review, Carroll County, 217 N.W.2d 576, 579 Iowa 1974)(noting that a significant percentage of adjustment makes a comparison of other properties to the subject properties meaningless.)

Robe and Jensen point out that they also introduced evidence of three properties located on the river in the nearby City of Camanche. The Board introduced evidence of the valuation and assessment of these properties as well. However, we note that for purposes of an appeal on the grounds set forth in section 421,37(1)(a), only those properties in the same taxing district may be used in comparison.

Robe and Jensen also make much of the fact that the properties in question are located in a distressed area of Clinton, located only 150 feet from a busy railroad track, and surrounded by areas of substandard housing and industrial buildings. Yet Jensen testified at trial that

the property at 3221 McKinley was sold by her to John Frey at an agreed upon price of $122,000, after having placed the home on the market at $132,000, with carpet and fixture allowance. Using Robe's and Jensen's own method outlined in their brief, the difference in the sale price compared to the assessed valuation of $110,000 is not so highly disproportionate as to make the assessment suspect. Using their formula, the difference in the sale price and assessment of the property at 3221 McKinley is approximately $12,000. Given their assertion that the average assessed value of the other comparable homes is $14,208 less than fair market value, we cannot say the assessment of the properties in question is disproportionately high.

Based upon our de novo review of all the evidence, we conclude that Robe and Jensen did not prove the assessed valuations were inequitable.

AFFIRMED.