

IN THE COURT OF APPEALS OF IOWA

No. 4-174 / 93-1310

SUNRISE MANOR,

Appellee,

vs.

CITY ASSESSOR OF THE CITY OF SIOUX CITY, IOWA; BOARD OF REVIEW OF THE CITY OF SIOUX CITY, IOWA; WOODBURY COUNTY, IOWA; COUNTY TREASURER OF WOODBURY COUNTY, IOWA; and COUNTY AUDITOR OF WOODBURY COUNTY, IOWA,

Appellants.

Appeal from the Iowa District Court for Woodbury County, Terry L. Huitink, Judge.

The defendants appeal a ruling of the district court in a declaratory judgment action holding the notice mailed by the Board of Review revoking plaintiff's charitable exemption for real estate taxes was inadequate. **AFFIRMED.**

Jack A. Faith, Sioux City, for appellants City Assessor and Board of Review.

Brigit M. Barnes, Assistant County Attorney, for appellants Woodbury County, County Treasurer, and County Auditor.

Charles L. Corbett of Corbett, Anderson, Corbett, Poulson, Flom & Vellinga, Sioux City, for appellee.

Heard by Donielson, C.J., and Hayden and Habhab, JJ. Huitink, J., takes no part.

HAYDEN, J.

The plaintiff, Sunrise Manor, an Iowa corporation, originally filed for tax-exempt status on its property in 1983. The property consisted of fifty apartments of subsidized federally-assisted housing, assisted living units, nursing facilities, and an Alzheimer's facility. The property also included five duplex units constructed in the Sunrise Hills addition. The claim for exemption was granted.

Between 1985 and 1990, Sunrise Manor constructed twenty-two condominium and duplex units. Prior to July 1991, the City Assessor conducted a reevaluation of the real estate and improvements made to Sunrise Hills. During this reevaluation, the City Assessor had a discussion with John Gerwulf, the executive director of Sunrise Manor. According to Gerwulf he discussed with the Assessor the valuation of the buildings but did not discuss the possibility of losing the tax-exempt status. The City Assessor, Mel Obink, testified he did inform Gerwulf there was a possibility the property would be taxed.

On July 3, 1991, a notice was forwarded to Gerwulf, allegedly notifying Sunrise Manor the tax-exempt status for the real estate and improvements of the Sunrise Hills units had been removed and the property revalued. Gerwulf received this notice on July 8, 1991. The notice, on a form approved by the department of revenue and finance, listed the previous years' values, the exempt status of the

property, and land class. Absent from the notice was the exempt code "12" from the 1991 classification. Following this notice, an alphabetized list of property added to the tax roles was posted in the lobby of the Woodbury County Courthouse. The Woodbury County Board of Review filed notice of a meeting to be held regarding the reevaluation and tax consequences one day before the meeting scheduled for July 15, 1991. The Board adopted the actions of the City Assessor.

Sunrise Manor filed the present application for declaratory judgment, arguing the notice sent by the Board was inadequate and therefore the revocation of its tax-exempt status was unlawful. The district court held the notice was inadequate, holding while the text of the notice may fairly inform a property owner of a change in valuation, it failed to sufficiently inform the property owner that his or her property would no longer maintain tax-exempt status. The district court ruled the Board did not comply with the requirements of Iowa Code section 441.36 (1993). The Board and all other defendants appeal.

The Board argues Gerwulf knew there was a possibility the property would lose its tax-exempt status when Gerwulf met with Obink, the City Assessor. The Board maintains, given this knowledge, the notice sent to Sunrise Manor was sufficient. The Board further points out Sunrise Manor did not seek an administrative appeal from its actions and is thus barred from any relief pursuant to section 441.38.

The Board further argues Sunrise Manor is not an exempt organization and has suffered no prejudice as a result of the Board's actions. The Board additionally asserts Sunrise Manor has not given any concessions on fees charged by the corporation and those who live in the development but are later unable to pay are evicted. None of the nursing home services or medical costs are included in the housing agreements. There are no lifetime care contracts available from Sunrise Manor. Thus, the Board argues, Sunrise Manor has suffered no prejudice.

The main issue to be determined by this court is whether the notice mailed to Sunrise Manor by the Board of Review provided adequate notice of the loss of exempt status.

John Gerwulf, executive director of Sunrise Manor, received documentation from the County Assessor's office regarding the valuation of the property. However, he believed the document only reflected the revised valuations of the Sunrise Manor property. He further believed the property had exempt status and therefore the revised valuations were of no concern. In reviewing the document, it is easy to see why Gerwulf was unable to discern the loss of tax-exempt status on the Sunrise Manor property. The only part of the notice which related to the loss of exempt status is a number "12" appearing under "1990 previous values" and unnoticably absent under "1991 Current Values". Below these listings, the following appeared:

"Ex. Cd. - EXEMPT CODING

12 CHARITABLE OR BENEVOLENT NURSING HOMES

In viewing the document, there is no indication it deals with the loss of exempt status. To the contrary, the document specifically states, "The Board of Review has changed the value of your above described property. If you object to said valuation change you have (5) five days from the above dated action in which you shall file a written appeal with the Board of Review." While this document clearly indicates a change in value of the property, this change in value would not be of significance to the property owner if the property was tax-exempt.

The Board of Review also contends the district court was without jurisdiction because the proper entity with which to file the appeal was the Board of Review. However, if Sunrise Manor had appealed directly to the Board of Review it would have waived the right to argue inadequate notice. We determine the district court was the proper jurisdiction to handle this declaratory judgment action.

In addition to the inadequacy of the mailed notice, the posted notice was also inadequate. In addition to the requirement to give immediate notice, section 441.36 Iowa Code (1993) requires a posting of "an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board." The document which was intended to comply with this requirement was posted in the lobby of the

courthouse. It was posted in the lobby in spite of the fact the Board of Review meetings are held in the basement of the courthouse. Additionally, there is nothing on the list to suggest Sun Manor's exempt status was in jeopardy. Clearly, the notice given to Sun Manor was inadequate. The failure of an assessor to give timely notice will not standing alone, invalidate a tax. Good Dev. Co. v. Horner, 260 N.W.2d 524, 530 (Iowa 1977). However, the failure of an assessor to give timely notice coupled with actual prejudice to the taxpayer will invalidate the additional amount of tax brought about by the increased valuation. Id.

To establish actual prejudice caused by an assessor's untimely notice, a taxpayer must show (a) the assessor overvalued the property and (b) as a result of the delay in notification the taxpayer was unable to file a protest with the Board of Review. Horner, 260 N.W.2d at 530. The evidence indicates Sun Manor has many plausible arguments in support of its exempt status. Because the notice was inadequate, Sun Manor was unable to present its case. We determine prejudice does exist. The ruling of the district court is affirmed.

AFFIRMED.