FILED
SEP 02 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-240 / 92-927

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COUNTRY STORES OF CARROLL, LTD.,

Appellant,

vs.

CARROLL COUNTY BOARD OF REVIEW, RONALD VOGL, Chairperson,

Appellee.

JOHN C. ZIMMERMAN and **LOIS J. ZIMMERMAN,**

Appellants,

vs.

CARROLL COUNTY BOARD OF REVIEW, RONALD VOGL, Chairperson,

Appellee.

Appeal from the Iowa District Court for Carroll County, Carl Peterson, Judge.

The plaintiffs appeal from the district court's ruling affirming the board of review's 1990 interim property tax assessments on their property subject to environmental contamination. **AFFIRMED.**

Arthur A. Neu of Neu, Minnich, Comito & Hall, P.C., Carroll, for appellants.

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Charles D. Hunter and Margaret C. Callahan of Belin, Harris, Lamson, McCormick, A Professional Corporation, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

MCCARTNEY, S.J. 000129

The appellants, Country Stores of Carroll, Ltd., and John C. Zimmerman and Lois J. Zimmerman, appeal from the decision of the district court which in turn affirmed the action of the appellee, the Carroll County Board of Review, in rejecting the appellants' protests of certain assessments made against their respective properties by the county assessor. The two separate protests and consequent appeals have been consolidated for appeal purposes.

We affirm, upholding the actions of the appellee in rejecting such protests.

The appellant Country Stores of Carroll, Ltd. (Country Stores) owns three parcels of commercial property in Carroll County, Iowa. The appellants John C. Zimmerman and Lois J. Zimmerman (Zimmerman) own two other parcels of commercial real estate situated in the same county.

The Carroll County Assessor, as of January 1, 1989, assessed these properties at certain values, each valuation or assessment being distinct from every other valuation. These assessments were not challenged by the taxpayers.

The assessments made for 1989 were made in the "regular" assessment year. Assessments are made every other year, and the alternate year is considered an "interim" year. Iowa Code sections 441.35, 441.37.

Again, as of January 1, 1990, the "interim" year, the Carroll County Assessor increased the assessed value of one parcel belonging to Zimmerman because of an improvement

made upon that particular parcel, but the assessor did not vary or reduce the remaining assessments on the other parcels owned by the appellant but in fact left them the same as established by him on January 1, 1989.

Thereafter, during the forepart of May 1990, the appellants protested the January 1, 1990, assessment asserting that the values of those parcels had decreased.

The root of their protests was that these parcels became environmentally contaminated, primarily because of leakage from gas or oil storage tanks upon the respective properties.

The board rejected these protests, and the appellants appealed to the district court.

After an extensive evidentiary hearing, the district court dismissed the appeals and affirmed the action of the board of review. In so doing, the district court determined that the appellants had failed to show a downward change in the valuations of their respective parcels which occurred between January 1, 1989, when the regular year assessments were made and January 1, 1990, the beginning of the interim year.

The only ground available to a taxpayer for a change in the assessment during the interim year is a downward change in value. Montgomery Ward Dev. Corp. v. Cedar Rapids Bd. of Review, 488 N.W.2d 436 (Iowa 1992). These were the grounds asserted by the appellants, both before the board of review and on appeal to the district court. The cause

of the downward change in value asserted by them was environmental contamination.

The burden is upon the taxpayer to show a downward change in value during the year, which in this matter would be during the calendar year 1989. Equitable Life Ins. Co. v. Bd. of Review, 252 N.W.2d 449 (Iowa 1977).

This in turn necessitates an evidentiary showing that the assessments made January 1, 1989, were correct and therefore higher than the property value at the end of the calendar year 1989, and in so doing, the taxpayer may not assume that the prior assessments of January 1, 1989, were correct. Id.

The record reflects that the taxpayer relied upon the testimony of their experts that during the year 1989 the environmental contamination caused a lessening of the values of their respective parcels, but the taxpayers did not show that the beginning valuations were correct. Instead they relied upon the January 1, 1989, assessments as being correct. This factual situation is strikingly similar to the the factual situation in Equitable Life Ins. Co. inasmuch as the experts testifying for Equitable opined that the valuation of the property owned by Equitable was substantially less than the prior year assessment but did not opine as to whether the prior assessment was correct. The supreme court in Equitable Life Ins. Co. pointed out that in dealing with an interim year assessment, the experts might have testified that the prior year assessment

was in fact too high. In other words, prior year assessments may not be presumed to be a benchmark as being proper and correct assessments.

In Powers v. Regis, 220 N.W.2d 587 (Iowa 1974), the supreme court determined that a protesting taxpayer must show with particularity when the event causing the downward change in value occurred. Here there is substantial testimony that the environmental contamination occurred prior to January 1, 1989, on all parcels.

Our review is de novo. We affirm if there is a proper basis for affirmance even though different from the grounds upon which the district court relied. Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143 (Iowa 1983); see also Ross v. Bd. of Review, 417 N.W.2d 462 (Iowa 1988).

The record amply supports the district court in its rulings that taxpayers failed to show downward changes in values during the year 1989 and in finding that the contamination was known prior to January 1, 1989.

The appellants argue that the passage of the Underground Storage Tank Fund Act in 1989 by the Iowa General Assembly, now Chap. 4556, Code of Iowa, occasioned a reduction in value of their contaminated parcels. We do not pass on that question because there is nothing in the record to reflect that such act caused the values to decline.

We therefore do not find it necessary to consider whether contamination in and of itself reduces property valuation.

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Accordingly, we affirm the district court in its findings and consequent rulings.

Costs of the appeal are taxed to the appellant.

AFFIRMED.