IN THE COURT OF APPEALS OF IOWA

No. 3-586 / 12-2097
Filed October 2, 2013

THOMAS L. DROST and CYNTHIA M. DROST,
Plaintiffs-Appellants,

vs.

MAHASKA COUNTY BOARD OF REVIEW and JANET MASTERSON, CLERK,
Defendants-Appellees.

Appeal from the Iowa District Court for Mahaska County, Daniel P. Wilson, Judge.

Landowners appeal the county's assessment of their agricultural property.

AFFIRMED.

Dustin D. Hite and Garold F. Heslinga of Heslinga, Dixon, Moore & Hite, Oskaloosa, for appellants.

Brett Ryan of Watson & Ryan, P.L.C., Council Bluffs, for appellees.

Heard by Vaitheswaran, P.J., and Doyle, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

VAITHESWARAN, P.J.

In this appeal of a property tax assessment, we must decide whether a wetlands easement encumbering a substantial portion of agricultural property should reduce the value of the property for tax purposes.

I. Background Facts and Proceedings

Thomas and Cynthia Drost own a 369.5 acre tract of land classified as "Agricultural." In 2010, they sold a wetlands easement encompassing 282.95 acres of the tract to the federal government for $1,228,219. The contract creating the easement required the Drosts to pay all property taxes on the encumbered land.

The Mahaska County Assessor assessed the entire tract at $410,480 for the 2011 tax year. The Drosts appealed the assessment to the Mahaska County Board of Review, claiming the property's actual value was $75,000.[1] The board of review upheld the assessment.

The Drosts filed an appeal with the district court. *See* Iowa Code § 441.38(1) (2011). Following a de novo trial, the court upheld the board of review's assessment. After the court denied the Drosts' motion to reconsider, they appealed.

II. Analysis

Iowa Code section 441.21(1)(a) requires all property subject to taxation to be valued at its actual value. The actual value of agricultural property "shall be determined on the basis of productivity and net earning capacity of the property

[1] The Drosts concede the portions of their property not encumbered by the easement, or that includes buildings, have some value.

determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property." Iowa Code § 441.21(1)(e); *see also* § 441.21(g) ("[T]he actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph 'e' of this subsection.").

County assessors are directed to determine the actual value of property pursuant to rules adopted by the Iowa Department of Revenue and "in accordance with forms and guidelines contained in the real property appraisal manual prepared by the department." *Id*. § 441.21(h); *see also id.* § 441.21(1)(e) ("Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule."). The department has adopted such a rule. *See* Iowa Admin. Code r. 701-71.3.[2] The manual it references directs the assessor to consider the land's corn suitability rating (CSR) and yield potential in determining its productivity and earning capacity. The manual also sets forth "special considerations," which may require the exercise of judgment as well as further investigation.

The Drosts contend their real estate "has no productivity as agricultural land due to the [e]asment." Based on that premise, they assert "[t]he current statute [Iowa Code section 441.21] requires that the Court adopt [their] proposal,

[2] The rule was recently amended. *See* Iowa Admin. Code r. 701-71.3(1)(b)-(d). The amendment explicitly authorizes the assessor to "assess non-cropland" and allows a taxpayer to apply for such an adjustment beginning with the 2014 assessment. Iowa Admin. Code r. 701-71.3(1)(b), (c). The parties agree the amendment does not apply to this case.

and assess the land encumbered by the [e]asement with a value of $0.00, and all other land at the previously assessed value [$90,920.37]."

The Drosts' argument focuses on "productivity" to the exclusion of "net earning capacity." Iowa Code § 441.21(1)(e). As the Mahaska County assessor succinctly explained, the term "capacity" encompasses potential productivity as well as actual productivity:

> I actually go by what the Code says when it says productivity as far as its capacity.
>
> And we use the modern soil survey to do that, and the CSRs to distribute that.
>
> So we—the CSRs themselves are a potential productivity system. And that's how we are told to do it from [the] department of revenue.

The assessor opined that the CSRs accounted for "special considerations" such as areas subject to overflow by streams. In her words, "downward adjustment [for] these things [is] actually built into the CSR system."

The assessor's testimony finds support in the manual, which details "the steps and processes of developing a CSR based valuation" and requires consideration of such factors as erosion, precipitation, "wet spots," and "drainage pattern." The Drosts bore the burden of proving that the assessment was excessive,[3] and they presented scant, if, any evidence to counter the assessor's testimony that her value accounted for their easement.

Notably, the board did not rest its case with the assessor's testimony. The board also proffered evidence from a certified appraiser, who evaluated sales of comparable agricultural properties encumbered by wetland easements. While the Drosts contend that comparable sales are of limited value in assessing

[3] *See Carlon Co. v. Bd of Review*, 572 N.W.2d 146, 150 (Iowa 1997).

agricultural land, and their contention finds some scholarly support,[4] the manual characterizes this approach as "the most accurate" and does not limit use of the method to non-agricultural property.

Accordingly, we give weight to those comparable sales and, specifically, three properties encumbered by wetlands easements. Those properties sold for $983.25, $982, and $996 per acre, respectively. A fourth property adjacent to the Drosts' land sold for $932 per acre. In contrast, an unencumbered property "upland" from the Drosts' sold for $4300 per acre. Based on a comparison of these properties, the certified appraiser concluded that properties with wetland easements were "routinely selling for $1,000 per acre." He valued the Drost property at $1376 per acre or $509,000 for the entire property, significantly more than the $410,480 figure assigned by the assessor. Again, the Drosts did not counter this evidence.

On our de novo review, we conclude the Drosts failed to prove that the assessor's valuation of their property for tax purposes was excessive. Accordingly, we affirm the assessment for the 2011 tax year.

AFFIRMED.

[4] *See* Brad Hopkins, *Iowa's Property Tax System and the Agricultural Tie: Effect on Local Government Revenue Generation*, 17 Drake J. Agric. L. 449, 450 (2012) (stating sales comparison approach has less value for agricultural property because such property is to be assessed "using a productivity formula," as opposed to other types of property in Iowa that are to be assessed "based upon . . . market value").