

**IN THE COURT OF APPEALS OF IOWA**

No. 3-150 / 12-1450  
Filed May 15, 2013

**WHITE ENTERPRISES, LTD.,**  
Plaintiff-Appellant,

**vs.**

**THE BOARD OF REVIEW OF THE  
CITY OF DAVENPORT, SCOTT  
COUNTY, IOWA,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County, Paul L. Macek,  
Judge.

White Enterprises, Ltd.'s tax-assessment protests in 2010 and 2011 were rejected by the board of review. White Enterprises appeals from the district court's dismissal of its consolidated appeals of the assessment protests.

**AFFIRMED.**

John T. Flynn of Brubaker, Flynn & Darland, P.C., Davenport, for  
appellant.

Brian Heyer, Assistant City Attorney, Davenport, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**DANILSON, J.**

White Enterprises, Ltd. protested valuations of its real estate for tax assessment purposes in 2010 and 2011, which protests were rejected by the board of review. White Enterprises appeals from the district court's dismissal of its consolidated petitions protesting the assessments. Because the taxpayer failed to prove the assessments were excessive or inequitable, we affirm.

**I. Scope and Standards of Review.**

Appeals from tax assessments are triable in equity. Iowa Code § 441.39;<sup>1</sup> *Krupp Place 1 Co-op, Inc. v. Bd. of Review of Jasper County*, 801 N.W.2d 9, 13 (Iowa 2011). Therefore, this court's review is de novo. Iowa R. App. P. 6.907; *Krupp Place*, 801 N.W.2d at 13; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 395 (Iowa 2009). We give weight to the district court's fact-findings, especially with regard to witness credibility, but are not bound by them. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009). We hold "no presumption as to the correctness of the valuation of assessment appealed from." Iowa Code § 441.39.

**II. General Principles Applicable to Property Tax Assessments.**

A taxpayer may protest a county's property assessment by filing a petition alleging one or more of the statutory grounds for appeal with the board of review. *Id.* § 441.37. The challenger may then appeal the board's decision to the district court, which sits in equity to determine the assessment issues previously before

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<sup>1</sup> The 2009 Iowa Code is applicable to the 2010 assessment protest and the 2011 Iowa Code is applicable to the 2011 protest. Because there are no substantive differences in the two, all references herein will be to the 2011 Iowa Code.

the board. *Id.* § 441.38–.39. The appealing taxpayer bears the burden of proving by a preponderance of the evidence that at least one statutory ground exists for its protest. *Compiano*, 771 N.W.2d at 396.

If the property owner “offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor,” the burden shifts to the board of review to uphold the assessed value.” *Boekeloo v. Bd. of Review*, 529 N.W.2d 275, 277 (Iowa 1995) (quoting Iowa Code § 441.21(3)). If the taxpayer fails to offer competent evidence of two disinterested witnesses, then the burden of persuasion remains with the taxpayer to establish that the assessed valuation was excessive. *Id.* at 279; *Soifer*, 759 N.W.2d at 780. “When a property owner claims the valuation was excessive, in addition to proving the excessiveness of the board’s valuation, the property owner must establish the correct valuation.” *Soifer*, 759 N.W.2d at 780; see Iowa Code § 441.21(3).

### **III. Background Facts and Proceedings.**

White Enterprises, Inc. is an Iowa limited liability corporation owning certain real estate located in Davenport, Iowa, commonly referred to as 5725 Brady Street. White Enterprises is a family-owned corporation and Robert White is its registered agent and president. The White Enterprises property consists of approximately 40.3 acres accessed by a frontage road off of Brady Street. There are two main structures on the property: closest to and visible from Brady Street is a 3582 square foot retail/commercial building that was built in 1948 from which Robert White operated a veterinary clinic for many years; in 1954, a residential

structure of 2930 square feet was built on the property more distant from Brady Street. On the property is also a 26' x 42' shed. An asphalt driveway extends from the frontage road past the commercial building and ends near the residential structure. Approximately 30.59 acres of the property are predominantly wooded, having been planted with evergreens and being granted a forest reservation exemption in the early 1960s pursuant to Iowa Code chapter 427C. Rent for the veterinary clinic was last paid in September 2010. At the time of the December 2011 trial, both the clinic and residential structure were vacant.

The city assessor classified the property as commercial, and determined the assessed value was \$781,400 as of January 1, 2010, and January 1, 2011. The assessor determined the value of the forest reserve exemption was \$352,250 for both assessment years. The resulting taxable value was \$429,150.

White Enterprises timely appealed the assessments to the board of review asserting (1) the assessment was not equitable, (2) the assessment was more than authorized by law, (3) the property was not assessable, was exempt, or was misclassified, (4) there was an error in the assessment, (5) there was fraud in the assessment, and (6) there has been a downward change in value. It asserted the actual value of the property was \$120,600 ("Land \$45,500—1.3 acres[,] Building \$75,100—clinic"). The board did not change either value at the conclusion of appeal hearings.

White Enterprises filed appeal petitions in the district court, which were consolidated for trial. At trial, White Enterprises offered the testimony of Richard Koestner, a certified general real property appraiser, whose opinion was that the highest and best use of the property was as single family development property and he calculated the fair market value at to be \$765,800. Koestner opined the property warranted a market value of \$28,000 per acre for 27.35 acres of developable land: his identified comparable properties were all unimproved, undeveloped land. From the resulting figure he subtracted \$21,800.00, which was his estimated cost of demolishing the two buildings on the property, arriving at an overall fair market value of \$744,000.

In his appraisal report Koestner notes that the owner had listed the property for sale for \$991,500. Koestner also noted that the thirteen acres of flood plain cannot be developed. He did not offer any opinion or testimony concerning the value of the forest preserve exemption.

Robert White testified on behalf of White Enterprises that he concurred “with the previous gentleman who testified, Mr. Richard Koestner, that the value and the sellable portion of the property is somewhere in the neighborhood of \$750,000 to perhaps \$781,000 that the assessor has established as their valuation.”

#### **IV. Analysis.**

The taxpayer did not present the evidence of two disinterested witnesses and the burden of persuasion thus remained with White Enterprises. Upon our de novo review, we concur with the district court that the taxpayer failed to meet

its burden that the assessment was excessive or inequitable. The district court found the Koestner appraisal of little assistance because its premise was that the property's "highest and best use" was in transition to single family development ground. However, property is to be classified "*according to its present use and not according to its highest or best use.*" Iowa Admin. Code r. 701-71.1(1) (emphasis added). The property was being leased as late as September 2010 and thus the classification as commercial was not in error. Koestner's testimony did not establish that the property was over-assessed or inequitable and Robert White's testimony, if anything, was that the assessor's value was fair.

Further discussion would be of little jurisprudential value. See Iowa Ct. R. 21.26(a), (c), (d) (renumbered May 3, 2013). We affirm the district court.

**AFFIRMED.**