

**IN THE COURT OF APPEALS OF IOWA**

No. 6-322 / 05-1422

Filed June 28, 2006

**DEDHAM COOPERATIVE ASSOCIATION,**  
**A Cooperative Association of the State of Iowa,**  
Plaintiff-Appellant,

**vs.**

**CARROLL COUNTY BOARD OF REVIEW,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Carroll County, Joel E. Swanson,  
Judge.

Dedham Cooperative Association appeals from the district court's  
dismissal of its appeal from Carroll County Board of Review's real property  
assessment. **REVERSED AND REMANDED.**

Christopher O'Donohoe of Elwood, O'Donohoe, Stochl, Braun &  
Churbuck, New Hampton, for appellant.

John Werden, Carroll County Attorney, for appellee.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

**HECHT, J.**

Dedham Cooperative Association appeals from the district court's dismissal of its appeal from Carroll County Board of Review's real property assessment. We reverse and remand for proceedings consistent with this opinion.

**I. Background Facts and Proceedings.**

Effective January 1, 2005, the Carroll County Board of Review [Board] assessed certain commercial real property owned by the Dedham Cooperative Association [Coop] at a value of \$1,726,400. On May 4, 2005, the Coop filed a petition with the Board protesting the assessment. The petition was prepared on a pre-printed form provided by the Board. The form listed a menu of six reasons on which taxpayers may base their protests. The form instructed the taxpayer to (1) strike through any reason that did not apply to his protest, and (2) provide explanations in support of any reasons for the protest. The Coop's petition struck through the first five reasons and indicated that the protest filed in this case was based on "a change downward in the value of the assessment." The petition further explained "[t]he industry has consolidated greatly over the last twenty years. Fair market value of this property is \$1,100,000."

The Board, however, refused to adjust its prior assessment of the commercial property in its final action and instead assessed the value of the property at \$1,726,400. The Board stated its reason for refusing the petition as

follows: “Invalid grounds – Downward change only applicable in non-assessment year.”<sup>1</sup>

The Coop appealed, asserting “the [Board’s] assessment exceeds the fair and reasonable market value of the property by \$626,400.” In response, the Board filed a motion to dismiss for failure to state a claim upon which relief may be granted. In support of its motion, the Board contended the plain language of Iowa Code section 441.35 (2005) prohibits reliance upon “downward change in value” as a reason to protest a property assessment in any year in which the assessment or reassessment has been made. Because the Coop’s petition did not allege any other valid reason why the reassessment was in error, the Board contended no legally cognizable claim was presented for the district court’s review.

The district court agreed and granted the Board’s motion to dismiss. It concluded that (1) the Coop’s original protest was invalid for a reassessment year, and (2) the subsequent claim on appeal pursuant to section 441.37(1)(b) that the reassessment was “for more than the value authorized by law,” was not raised in the petition, and therefore the Coop failed to state a proper claim for relief under the law. See Iowa Code § 441.38(1).

The Coop now appeals, contending its petition to the Board met the statutory requirements of chapter 447.

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<sup>1</sup> While the pre-printed form provided by the Board does direct the taxpayer to Iowa Code section 441.35 (2005), the form does not convey the Board’s understanding that a “downward change in value” cannot provide the basis for a protest lodged in an assessment year like 2005.

## II. Scope and Standard of Review.

Our review of a district court ruling on a motion to dismiss for failure to state a claim upon which relief may be granted is for correction of errors at law. *Kingsway Cathedral v. Iowa Dept. Of Transp.*, 711 N.W.2d 6, 7-8 (Iowa 2006). A motion to dismiss a petition should only be granted if there is no state of facts conceivable under which a plaintiff might show a right of recovery. Iowa R. Civ. P. 1.421(1)(f); *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). We therefore view the petition, and resolve all ambiguities therein, favorably to the petitioner. *Schreiner v. Scoville*, 410 N.W.2d 679, 680 (Iowa 1987).

## III. Discussion.

Iowa Code section 441.37 (2005) lists five reasons which an aggrieved taxpayer may assert in protesting the Board's assessment of property values: (1) that the property has been inequitably assessed when compared to "other like property in the taxing district, (2) "that the property is assessed for more than the value authorized by law," (3) that the property is not assessable, misclassified or is otherwise exempt from taxation, (4) that an error was made in the assessment, or (5) that the assessment is the product of fraud. Under this section, the aggrieved taxpayer is instructed to confine his protest to one or more of the above mentioned grounds, and file his protest with the Board "on or after April 16, to and including May 5, of the year of the assessment." Iowa Code § 441.37(1) (emphasis supplied).

In Iowa, property assessments remain in force for two years. See Iowa Code § 428.4. Protests of assessments are not exclusively confined, however, to assessment years. In interim years, the taxpayer may be granted relief "where

[the Board] finds [the property] has changed in value” since the previous assessment was made. Iowa Code § 441.35. This interim year protest may be made annually, but must be made “in the same manner and upon the same terms” as prescribed for protests made in an assessment year. Iowa Code § 441.37(e); *Security Mut. Ins. Ass'n of Iowa v. Board of Review of City of Fort Dodge*, 467 N.W.2d 301, 305 (Iowa Ct. App. 1991) (noting that interim-year protests must allege one or more of the five reasons listed in § 441.37). If the Board decides that the property has changed in value during an interim year, the Board has a duty to increase or decrease the applicable assessment for that year, “but no reduction or increase shall be made for prior years.” Iowa Code § 441.35. It is the interplay between sections 441.35 and 441.37 that gives rise to the “downward change in value” reason; the sixth reason for protest included on the Board’s preprinted petition form.

The *Security Mutual* court concluded that tax protests made in assessment years and those made in interim years are identical with “only the dates on which the same grounds may be urged and on which a revaluation may go into effect that differ.” *Security Mutual*, 467 N.W.2d at 305. As noted above, the Coop’s manager marked the “downward change in value” option on the Coop’s petition to the Board’s 2005 assessment. While the Board’s belief that this “downward change in value” protest should be made in an interim year is supported by the statutory language, its refusal to entertain the Coop’s petition is nevertheless untenable under the circumstances presented here.

Iowa follows a liberal notice pleading rule where only the rare case will fail to survive a motion to dismiss. *Kingsway Cathedral*, 711 N.W.2d at 8; see also

Iowa R. Civ. P. 1.402 (noting that no technical forms of pleadings are required so long as the pleadings contain a short and concise statement of the nature of the claim and the legal theories supporting recovery). Although the Coop's petition marked the "downward change in value" reason as the basis for its protest on the Board's preprinted form, the Coop further expressly alleged "[t]he industry has consolidated greatly over the last twenty years. Fair market value of this property is \$1,100,000.00." We note that under Iowa Code section 441.37(1)(b), a tax protest may be made in an assessment year if the property is assessed "more than the value authorized by law." This is a somewhat obtuse way of expressing a claim that the assessment exceeds the fair market value of the property. The Coop presented the Board with a petition that in essence alleged an over-valuation of property. By simple subtraction, the Board was able to discern from the face of the petition the amount by which the Coop claimed its property was over-assessed.<sup>2</sup> See Iowa Code section 441.37(1)(b) (requiring the taxpayer's petition to also state the "specific amount which the protesting party believes the property to be over-assessed"). The Board, whose expertise in all matters pertaining to real estate assessment is presumed by statute, cannot plausibly argue that it did not understand the nature of the Coop's protest from the face of the petition.<sup>3</sup>

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<sup>2</sup> As we have noted above, the petition specifically alleged the Coop's valuation of the property at \$1,100,000.

<sup>3</sup> An almost identical fact pattern was presented in *Security Mutual*, where the taxpayer, protesting in an assessment year, also indicated the "downward change in value" option on the same boilerplate petition form. *Security Mutual*, 467 N.W.2d at 303. The only difference in *Security Mutual* was the board of review entertained the petition as if the second, "more than is authorized by law" reason had been chosen. *Id.* at 305. When the taxpayer appealed the board of review's assessment reduction, the board of review

Because we conclude the Coop's petition did state a legally cognizable claim for relief, the district court erred in granting the Board's motion to dismiss. We therefore reverse its ruling on the motion and remand for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**

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similarly contended that the taxpayer's initial "downward change in value" protest was invalid when raised in an assessment year. *Id.* at 303. While the *Security Mutual* court rejected the board of review's challenge on appeal in part because the board had acquiesced to the taxpayer's apparent pleading error, the court also rested its holding on the fact that a "downward change in value" protest in interim years is identical from a pleading standpoint to an assessment year protest raised under Iowa Code section 441.37(b). *Id.* at 305. As such, we believe the holding in *Security Mutual* is strong persuasive authority in support of the Coop's present appeal.