

**IN THE COURT OF APPEALS OF IOWA**

No. 6-556 / 05-1662  
Filed August 23, 2006

**DARYL DINKLA,**  
Petitioner-Appellee,

**vs.**

**GUTHRIE COUNTY BOARD OF REVIEW,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Guthrie County, Gary G. Kimes,  
Judge.

The Board appeals the district court's order reducing the assessed value of Dinkla's property, which is classified as residential property under the Horizontal Property Act, Iowa Code Chapter 499B (2003). **REVERSED AND REMANDED.**

Bruce B. Green, Frank W. Pechacek, Jr., and Brett Ryan of Willson & Pechacek, P.L.C., Council Bluffs, for appellant.

Stephanie Brick-Drey of Brick, Gentry, Bowers, Swartz, Stoltze & Levis, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

The Guthrie County Board of Review (Board) substantially increased the assessed value of an apartment complex after the owner sought to have the parcel reclassified as residential condominium property. The district court reversed the Board's decision and reduced the assessed value. We reverse and remand.

***I. Background Facts and Proceedings***

Daryl Dinkla owns a parcel of land in Guthrie Center, which contains an apartment complex with six living units and a separate parcel of garages. Until 2003, the property was classified as commercial. In 2004, Dinkla filed a declaration reflecting his intent to have the property reclassified as residential pursuant to Iowa Code chapter 499B (2003)<sup>1</sup>. The reason was clear: Dinkla wished to avail himself of a 47.96 percent "roll back" in the assessed value of residential property. See *Sperflsage v. Ames City Bd. Of Review*, 480 N.W.2d 47, 48 (Iowa 1992) (explaining "rollback" concept).

The property was reclassified as requested but the reclassification resulted in an increase of the assessed value from \$254,295 to \$484,836. Dinkla protested the increase, and the Guthrie County Board of Review reduced the valuation to \$446,023. Dinkla appealed to the district court.

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<sup>1</sup> Despite the reclassification, the units were not actually converted to condominiums. In fact, Dinkla testified the operation of the complex did not change and the tenants continued to rent the units as they did prior to the conversion. Dinkla does not raise this as an issue.

The district court considered the testimony of several witnesses including three valuation experts. The court ultimately adopted Dinkla's valuation of \$350,000. This appeal followed.

## **II. Analysis**

The Board argues that the district court ignored Iowa Code section 499B.11(1) which states, in pertinent part, "All real property taxes . . . shall be assessed . . . on each apartment . . . and not on the entire horizontal property regime." Dinkla counters that the Board's argument was not preserved for our review. We disagree. Much of the testimony before the district court related to whether the property should be valued as seven separate parcels (the six apartments and the garage unit) or as a whole unit. The district court expressly addressed this issue and concluded that the property was to be valued as a whole unit. Therefore, the issue was preserved and we proceed to the merits, reviewing the record de novo. Iowa R. App. P. 6.4.

Examining the pertinent law first, we agree with the Board that Iowa Code section 499B.11(1) requires the six apartments and the garage unit to be valued separately. See *also* § 499B.10 (stating in relevant part, "When real property containing a building is committed to a horizontal property regime, each individual apartment located in the building . . . *shall constitute for all purposes a separate parcel of real property . . .*") (emphasis added).

Turning to the valuation of the property, the complainant has the burden of proof to show the valuation was "excessive, inadequate, inequitable or capricious." Iowa Code § 441.21(3). However, "when the complainant 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 of proof shifts to the Board to uphold the valuation. *Id.*

Dinkla did not make the showing required to shift the burden of proof to the Board. He presented two witnesses: himself and expert Fred Lock. Dinkla was clearly not disinterested. *See Richards v. Hardin County Bd. Of Review*, 393 N.W.2d 148, 150 (Iowa 1986). Therefore, the burden of persuasion remained with Dinkla. *See Sears, Roebuck & Co. v. Sieren*, 460 N.W.2d 887, 889 (Iowa Ct. App. 1990).

Dinkla did not satisfy his burden to show the valuation was “excessive, inadequate, inequitable or capricious.” Both he and Lock only presented valuations for the property as a whole, rather than valuations for the separate parcels. Dinkla stated he advertised the property, including the apartment complex and garage unit, for \$350,000. Lock testified he valued the property at \$301,000. Neither presented any evidence as to the market value of each apartment or of the garage unit. Having failed to present any evidence challenging the county assessor’s valuation of each unit, Dinkla’s protest of the valuation failed. *Cf. Riso v. Pottawattamie Bd. of Review*, 362 N.W.2d 513, 518 (Iowa 1985) (noting plaintiffs failed to establish inequity of assessments either through disinterested witnesses or through other evidence).

This brings us to the Board’s valuation. The Board notified Dinkla that the assessed value of the property was \$446,023. This is the total for the entire property. The assessor’s property cards reflect that the total was established by valuing each apartment separately at \$64,178 and valuing the garage unit at

\$60,955. We reverse the district court's ruling and remand for an order establishing the tax assessment at these values.

**REVERSED AND REMANDED.**