

**IN THE COURT OF APPEALS OF IOWA**

No. 7-743 / 06-1448  
Filed November 29, 2007

**BLACK HAWK VILLAGE LIMITED  
PARTNERSHIP,**  
Plaintiff-Appellant,

**vs.**

**DES MOINES COUNTY ASSESSOR  
and DES MOINES COUNTY BOARD  
OF REVIEW,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Des Moines County, John G. Linn,  
Judge.

Plaintiff claims the district court erred when it dismissed Plaintiff's property  
tax assessment challenge on jurisdictional grounds. **AFFIRMED.**

James E. Nervig of Brick Gentry P.C., West Des Moines, for appellant.

Patrick C. Jackson, County Attorney, Amy K. Beavers, Assistant County  
Attorney, and Jeffrey S. Lavalley, Des Moines, for appellees.

Heard by Vogel, P.J., and Mahan and Zimmer, JJ.

**MAHAN, J.**

Black Hawk Village Limited Partnership (BHV) is a limited partnership registered in Iowa, but owned by Gandolf Group, L.L.C., a limited liability company registered in Minnesota. In June 2002 BHV purchased property in Burlington with the intent to build a low-income section 42 apartment complex.<sup>1</sup> The recorded deed stated that tax statements were to be sent to BHV at a specific address in Minnesota. BHV moved its business address three times in a span of eighteen months, but failed to notify the Des Moines County Assessor that it wanted its tax statements sent to a different address. BHV also neglected to complete a section 42 reporting form issued by the Iowa Department of Revenue. Because this form was not completed, the assessor did not use a unique assessment formula set forth in Iowa Code section 441.21(2) (2003) to value section 42 property. If the assessor had used the special assessment formula, BHV's tax bill would have been reduced by approximately \$100,000.

A 2004 assessment notice listing the adjustment and noting the appropriate method to protest the assessment was mailed to BHV via the address listed on the deed. BHV did not receive the assessment notice and only learned of the adjustment when it called the assessor to inquire about its tax liability. By this time, BHV had missed its opportunity to file a protest with the Board of Review.

One year later in February 2005, BHV mailed the assessor the appropriate section 42 reporting form for the property. The assessor did not receive the form.

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<sup>1</sup> This new housing project was designed to be a "section 42" project, whereby BHV would receive certain federal tax credits in exchange for building low-income housing. The details of this credit are set forth in section 42 of the Internal Revenue Code.

Once BHV learned the assessor had not received the letter, BHV re-sent the form by certified mail. The assessor received the form thirteen days after the deadline listed on the form. The assessor deemed the form untimely and refused to use the information contained to assess the property under the method set forth in Iowa Code section 441.21(2). BHV protested this assessment with the Board of Review, claiming the assessor erred when he did not value the 2005 assessment using the special valuation for section 42 properties. The Board of Review denied the protest and affirmed the value set by the assessor.

BHV filed two petitions with the district court. The first challenged the 2004 assessment and asked the court to determine anew the 2004 assessment for the property. The second petition was an appeal from the decision of the 2005 Board of Review.

The Des Moines County Assessor and Board of Review filed a motion to dismiss the petition concerning the 2004 assessment on jurisdictional grounds for BHV's failure to file a protest with the Board of Review. The district court denied the pre-answer motion to dismiss on the grounds that it could not consider facts not alleged in the petition. The court eventually consolidated both petitions for a single trial.

At trial BHV claimed the assessor failed to provide proper notice of the 2004 assessment adjustment and the underlying assessment was "illegal." BHV pointed to a letter sent to the assessor in August 2002 whereby Gandolf Group, BHV's parent company, provided estimated rental income information for the proposed section 42 project and asked the assessor to estimate BHV's future tax bill. The assessor denied this request, stating that it was his policy not to

estimate future tax bills for property owners. At trial BHV argued that the information contained in this 2002 letter was sufficient to satisfy most of the information required for the 2004 section 42 assessment. BHV contended the assessor had a duty to use this information and make further inquiries of BHV as necessary. BHV also pointed out that the Gandolf Group letterhead contained a different address than the one listed on the deed and therefore argued that the assessor had sufficient notice BHV had changed its address.

The district court, after a comprehensive review of the appropriate statutory requirements and a detailed analysis of the applicable facts, dismissed the 2004 assessment claim on the same jurisdictional grounds set forth in the Board's pre-answer motion to dismiss. However, the court granted BHV's claim as to the 2005 assessment, noting the assessor had the necessary information far ahead of the time it was needed to actually do the 2005 assessment.

BHV now appeals the court's decision as to the 2004 assessment, raising the same arguments set forth before the district court.

After our de novo review of the record and arguments of the parties, we agree with the district court's decision to dismiss the 2004 claim on jurisdictional grounds. The district court decision is well written and thoroughly covers the issues in this case. Any further discussion of those issues by this court would add little to the disposition of this case. Accordingly, we adopt the district court's decision as our own and affirm.

**AFFIRMED.**