

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CLAMPET CORNER, LLC,

Petitioner,

v.

PROPERTY ASSESSMENT APPEAL
BOARD,

Respondent,

And

G-F FOUR INVESTMENTS, INC.,

Intervenor.

Case No. CVCV046765

**RULING ON PETITION FOR JUDICIAL
REVIEW**

Introduction

Petitioner's Petition for Judicial Review now comes before the Court without oral arguments, the Court having previously determined that the issues were adequately and sufficiently briefed. Having reviewed the court file, the certified record, the applicable law, briefs, and being otherwise fully advised of the premises, the Court now for the reasons below **REVERSES** the decision of the Property Assessment Appeal Board and **REMANDS** for consideration of Intervenor's alternative arguments.

Background

This dispute concerns the assessed value on the real estate property ("Property") located at 2601 Adventureland Drive, Altoona, Iowa. Intervenor is the current owner of the Property. Petitioner currently leases the Property and operates the Jethro 'n Jake's Smokehouse Steaks restaurant thereon. PAAB Order 2. Prior to Petitioner leasing the property it was owner-occupied and operated as a Godfather's Pizza. *Id.*

In September 2008, the Property was vacated and advertised for sale. *Id.* The initial asking price was \$14.00 per square foot. *Id.* The price was reduced to \$8.00 per square foot in December 2009. *Id.* In June 2010, Petitioner and Intervenor entered into a lease agreement in June 2010. *Id.* The Property was leased at \$8.00 per square foot and the lease contained the following option for purchase:

Landlord hereby extends an option to the Tenant to purchase said property upon the following terms and conditions: From the period of time June 1, 2010, through August 31, 2012, the purchase price shall be \$715,000 and for the period of time from September 1, 2012 through August 31, 2015, the purchase price shall be the assessed value of the Polk County Assessor of the property.

Pet'r Ex. 2, p. 11.

In 2010, the assessed value of the property was \$714,000. PAAB Order 2. Prior to the 2011 assessment, Bruce Gerleman, sole owner of Petitioner, contacted the Assessor's Office and requested that the assessment be lowered. *Id.* at 3. The Polk County Assessor's Office subsequently determined the 2011 assessed value of the property to be \$323,000. *Id.* The property was assessed again in 2012 and valued at \$461,000. *Id.*

Petitioner and Intervenor each protested the 2012 assessment. *Id.* Intervenor argued the property was under-assessed, inequitably assessed, or affected by an error in the assessment. *Id.* Intervenor provided two separate appraisals in support of its assertion that the proper valuation was \$800,000. *Id.* Petitioner also had the property appraised in order to support its assertion that the property was over-assessed and should be valued at \$335,066. *Id.* The Board of Review conducted two hearings and ultimately concluded the assessed value of the land to be \$582,000. *Id.*

Both parties appealed the Board of Review's decision to the Property Assessment Appeal Board (PAAB). *Id.* Petitioner again argued the property was assessed for more than its value. Cert. Rec. 001. Intervenor likewise appealed on the same grounds asserted before the Board of

Review. *Id.* at 007. Following a hearing, Respondent modified the prior assessment, setting the value of the property at \$800,000. PAAB Order 39. Petitioner now seeks judicial review.

Standard of Review

Iowa Code section 441.38B provides for judicial review of a PAAB decision as outlined in chapter 17A and section 441.38.¹ Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court “may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A.19(10)(a) through (n).” *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)). The “standard of review [on appeal] depends on the aspect of the agency’s decision that forms the basis of the petition for judicial review”—that is, whether it involves an issue of 1) findings of fact, 2) interpretation of law, or 3) application of law to fact. *Burton*, 813 N.W.2d at 256.

When an agency’s interpretation of law has been challenged, the level of deference accorded depends on “whether the authority to interpret that law has ‘clearly been vested by a provision of law in the discretion of the agency.’” *Id.* (citation omitted). If the agency has not been clearly vested with interpretive authority, the Court will reverse the agency’s interpretation if it is erroneous. *Id.* If the agency has been clearly vested with interpretive authority, the Court will reverse if the interpretation is “‘irrational, illogical, or wholly unjustifiable.’” *Id.* (citation omitted).

¹ This appeal concerns an assessment made in 2012. The statutes found in the 2011 Iowa Code governed at the time and citations to the Iowa Code in this Ruling are in reference to the 2011 Iowa Code unless otherwise indicated.

In deciding the level of deference owed, the Court will not make “broad articulations of an agency’s authority,” and must consider each particular word or phrase at issue. *Id.* 256–57. Even if an agency has been granted rule-making authority, it does not give the agency the power to interpret all statutory language. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 37 (Iowa 2012). If the legislature has not made an express grant of interpretive authority, the Court looks at “the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved.” *The Sherwin-Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 423 (Iowa 2010). “Indications that an agency has interpretive authority include rule-making authority, decision-making or enforcement authority that requires the agency to interpret the statutory language, and the agency’s expertise on the subject or on the term to be interpreted.” *Id.*

Discussion

Intervenor raised three separate grounds for appeal before the Respondent. However, Respondent based its decision solely on Intervenor’s argument that there was an error in the assessment. *See* PAAB Order 32 (showing the PAAB did not address the other two grounds for protest raised by Intervenor). Petitioner argues Respondent committed an error of law when it interpreted Iowa Code section 441.37(1)(d) to allow for a protest by asserting the property is undervalued. Pet’r Br. 20. Since the issue raised involves an interpretation of law, it must be determined whether Respondent has been clearly vested with interpretive authority.

Although the legislature provided Respondent with the authority to adopt rules necessary for the administration and implementation of its powers, the Respondent has not been clearly vested with the authority to interpret Iowa Code section 441.37(1)(d). *See* Iowa Code § 421.1A(4)(e) (discussing the PAAB’s rule-making authority). Section 421.1A does not provide

Respondent with the explicit authority to interpret the statute at issue. Neither party contends Respondent has implicit authority to interpret the statute. Further, nothing in section 441.37(1)(d) requires specialized or esoteric agency knowledge in order to be interpreted. In similar circumstances, the Iowa Supreme Court has found the agency not to be clearly vested with interpretive authority. *See Naumann v. Iowa Prop. Assessment Appeal Bd.*, 791 N.W.2d 258, 260 (Iowa 2010) (concluding the agency was not clearly vested with interpretive authority when it was not explicitly granted and neither party argued it was implicitly granted). Therefore, Respondent has not been clearly vested with interpretive authority and the Court will reverse if its interpretation was erroneous.

Iowa Code section 441.37(1)(d) allows an assessment to be challenged when the protest asserts “there is an error in the assessment” and states “the specific alleged error.” Petitioner alleges the error in assessment claim was not properly raised before the Board of Review and therefore was not preserved for review. Pet’r Br. 21. Additionally, Petitioner proffers two reasons why Respondent erred in interpreting the statute to allow for a protest on the grounds that the purported error was the property was undervalued. First, the protest does not comply with the plain language of the statute because no specific error was alleged. *Id.* Second, interpreting the statute in this manner would render other portions of the statute superfluous. *Id.*

Iowa Code section 441.37A(1)(b) states “[n]o new grounds in addition to those set out in the protest to the local board of review as provided in section 441.37 can be pleaded....” Contrary to Petitioner’s assertion, the “error in the assessment” claim was raised before the Board of Review and preserved on appeal. The Petition to the Board of Review asked the party to state all applicable grounds of protest. Cert. Rec. 14. Under the line stating “there is an error in the assessment,” Intervenor wrote “it is under valued.” *Id.* In its Order, Respondent noted this

ground for protest had been raised before the Board of Review. PAAB Order 32. On appeal to Respondent, Intervenor again stated “that there is an error in the assessment.” Cert. Rec. 7. No new grounds for appeal to this court have been pleaded.

Petitioner argues Respondent committed an error of law when it interpreted the statute to permit a protest by simply stating the property is undervalued. In its prior Order, Respondent cited *Groenendyk* in support of allowing a protest on this basis. PAAB Order 32 (citing *Groenendyk v. Mahaska Cnty. Bd. of Review*, No. 02-1568, 2003 WL 22806589 (Iowa Ct. App. Nov. 26, 2003)). In *Groenendyk*, the court explained that discounts in valuation are applied to farmland based on its soil type and corn suitability rating (CSR), as well as its proneness to flooding. *Groenendyk*, 2003 WL 22806589 at *1. In its petition to the Board, the petitioner there alleged the following specific errors in the assessment:

(1) “There is not enough deduction taken for the soils that relate to productivity compared to hill or ridge ground”; (2) “There is not enough deduction taken for the soils that relate to productivity compared to upper soils”; (3) “This farm had coal dug up in the 1960’s and has been reclaimed and 20A still [is] an open pit. You are using the CSR before the coal was dug up”; and (4) “You are comparing the CSR on river bottom that [floods] and ponds to ground by Cedar and Fremont that is probably forty feet higher in elevation and only allowing twenty-five percent reduction on the CSR which should be forty-five to fifty percent.”

Id.

The errors outlined in the protest in *Groenendyk* distinguish that case from the facts at hand. In *Groenendyk*, as in any other case where the basis for protest is an error in the assessment, the alleged errors ultimately led to the land being assessed for an incorrect value. However, the difference between Intervenor’s appeal here and the appeal in *Groenendyk* is that Intervenor did not allege any particular errors that led to the assessment arriving at the wrong conclusion. *See also White v. Bd. of Review of Polk Cnty.*, 244 N.W.2d 765, 769 (Iowa 1976) (showing another example of an error in the assessment is the inclusion of nonexistent property

in the assessment). The parties have not cited, and the Court has been unable to find, any case where the reasons for an error based protest in the assessment was that the property was either undervalued or arrived at the wrong valuation and the protester never stated any reasons in support of the assertion. Indeed, the statute requires a protestor to state the *specific* alleged error. Iowa Code § 441.37(1)(d) (emphasis added).

No specific error was alleged in the matter now before the court. Stating that the assessor simply arrived at the wrong valuation is extremely general and does not provide the vaguest of ideas as to what alleged errors led to the wrong valuation. Respondent argues the overarching purpose of the statutory scheme is to “ascertain the fair market value of a property and assess it at 100% of that value.” Resp’t Br. 14. However, challenges still must be made in accordance with the language of the statute. The Court must accept the law as enacted by the legislature and “not decide what the legislature might have said, or what it should have said in the light of the public interest to be served, but only what it did say; and this we must gather from the language actually used.” *Holland v. State*, 115 N.W.2d 161, 164 (Iowa 1962). The protest ran afoul of the plain language of the statute and Respondent committed an error of law in interpreting Iowa Code section 441.37(1)(d) to permit a protest when no specific error was alleged.

Respondent’s interpretation of section 441.37(1)(d) would also render other parts of the statute superfluous. Iowa Code section 441.37(1)(b) provides grounds for protest when “the property is assessed for more than the value authorized by law....” If arriving at the wrong valuation constituted an error in the assessment under section 441.37(1)(d), there would be no need for section 441.37(1)(b) because the error in the assessment could be that the property was overvalued. *See Am. Legion, Hanford Post 5 v. Cedar Rapids Bd. of Review*, 646 N.W.2d 433, 439 (Iowa 2002) (“To adopt such an expansive interpretation of the statutory term ‘clerical error’

would, however, effectively nullify section 441.37(1), as virtually all protests could be brought under section 441.37(2). We will not interpret a statute so as to render a part of it superfluous.” (citing *Miller v. Westfield Ins. Co.*, 606 N.W.2d 301, 305 (Iowa 2000))). Respondent committed an error of law in interpreting the statute in a manner that renders other portions superfluous.

Respondent argues the protest substantially complied with the statutory requirements. Resp’t Br. 11–13. Substantial compliance requires three things: 1) the protest must be written; 2) the protest must be signed by the protester or protester’s agent; and 3) the protest must be “confined to one or more of five specified grounds to protest an assessment.” *MC Holdings, L.L.C. v. Davis Cnty. Bd. of Review*, 830 N.W.2d 325, 330 (Iowa 2013). Substantial compliance status seeks to ensure “compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.” *Metropolitan Jacobson Dev. Venture v. Bd. of Review of Des Moines*, 476 N.W.2d 726, 729 (Iowa 1991).

One reasonable objective of the statute is to provide the assessor’s office with the specific errors alleged to have been made in the assessment. If no specific errors are alleged, then the entire assessment must be reevaluated in order to determine the cause of the incorrect valuation. This results in inefficiency and wasted resources. Failing to provide any specific errors falls far short of substantially complying with the statute and does not constitute a “mistake” or “inadvertence.” *See id.* (stating mistakes and inadvertence ordinarily do not prevent a dispute from being resolved on the merits). Respondent further argues “the purpose is to provide the assessor’s office with reasonable notice of the basis of the taxpayer’s protest.” Resp’t Br. 11. While this may be true, the taxpayer’s protest still must have a legitimate basis in the law.

As noted above, Respondent did not address all of Intervenor’s arguments on appeal. On Remand, Respondent should consider the alternative grounds for protest raised by Intervenor.

Order

IT IS THEREFORE ORDERED that the decision of the Property Assessment Appeal Board is **REVERSED and REMANDED** for further proceedings consistent with this Ruling.

Dated this 26th day of February, 2015.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV046765
Case Title CLAMPET CORNER, LLC V. PROPERTY ASSESSMENT APPEAL

So Ordered

A handwritten signature in black ink, appearing to read "D. Stovall".

Dennis J. Stovall, District Court Judge,
Fifth Judicial District of Iowa