

# In the United States Bankruptcy Court

## for the Northern District of Iowa

ROBERT IVAN BRECUNIER  
EVELYN FAYE BRECUNIER  
dba Car-Vets Sales & Service  
*Debtor(s).*

Bankruptcy No. L89-01142W

Chapter 13

### ORDER

On June 8, 1994, the above-captioned matter came on for hearing pursuant to assignment. Debtors appeared with Attorney Wallace Parrish. Attorney Peter Burk, representing Black Hawk County, and Chapter 13 Trustee Carol Dunbar were also present. Evidence was presented and the Court took the matter under advisement.

The matter at issue is Debtors' Application to Amend Plan and Application for Hearing on Bankruptcy Estate's Interest. The Application is filed in two counts and the subject of these motions relate to Debtors' real estate located in Waterloo, Iowa. The Debtors have a confirmed Chapter 13 Plan, a part of which addresses payment of validly assessed property taxes on this real estate. The Application alleges that the property is overvalued for assessment purposes. Debtors assert that they have attempted to negotiate payment of these taxes. However, the County has refused to negotiate an acceptable plan of payment. Debtors' attorney, Mr. Parrish, asks the Court to value this property for assessment purposes. Debtors claim that the market value is considerably less than the assessed value and that upon recomputation by this Court, the tax obligation would be lowered.

The record establishes that Debtors filed a Chapter 13 Petition on September 15, 1989. At that time, Debtors owned business property located on 114 Edwards Street in Waterloo, Iowa. Debtors operate a car repair and sales business at that location. Included in the original schedules was a statement of liabilities owing to Black Hawk County for taxes in the approximate amount of \$5,928.50. After several failed confirmation attempts and several amendments to the Plan, the Chapter 13 Plan was confirmed on May 25, 1990. Subsequent to confirmation, the Debtors filed their first amendment to Chapter 13 Plan on December 6, 1991. This amendment was confirmed on January 27, 1992. Plan payments were to run for a period of 60 months from that date. Debtors have made substantial payments toward the Plan. However, they allege Court involvement is required to liquidate the property tax debt in an equitable manner.

Debtors owe delinquent property taxes from 1986 through 1994 on their business property. At the time of the filing, the parties owed approximately \$5,800. Since then, they have paid no property taxes and their present property tax obligation is \$23,621.32. This includes taxes as well as interest and penalties. The basic tax obligations are:

a. 1986-87	\$ 887.00

b. 1987-88	1,928.00
c. 1988-89	2,078.00
d. 1989-90	2,154.00
e. 1990-91	2,230.00
f. 1991-92	2,316.00
g. 1992-93	2,392.00
h. 1993-94	2,498.00

Debtors' business property is located in an area classified as commercial. Debtors have operated an automobile repair and used car dealership at this location for some time. This property was appraised at \$53,380 in 1986. By 1994, the appraised value had been reduced to \$50,340. Debtors state that they have listed this property for sale periodically since filing the petition but have had no success in selling it. The property has been most recently listed for two years and is still on the market without an offer. No written offers have been made for this property since 1989. One person did express interest, if it could be sold on contract at \$25,000 or less. Mr. Brecunier testified that the entire property now is not worth over \$35,000. He stated that in 1986 the total value may have exceeded \$50,000. He testified that the property has decreased in value most dramatically in the last three years. The neighborhood has deteriorated and there is significant drug trafficking nearby. In the evenings, it is unsafe to be in the area of his business and people desiring to have their automobiles repaired will not leave them at this location because of the risk of loss or damage. On several occasions in the last several years, guns have been fired nearby, even during daylight hours. His building has sustained damage from gunfire.

Valentina Martin testified for Debtors. She has been a realtor in excess of 41 years. She testified that she is familiar with this property. She stated that the location is undesirable. She feels there has been no significant market for this type of property in the last several years and only one person has shown interest in the property. This interest was based on a sale price of \$25,000 or less on contract. Her opinion is that the present value is \$25,000 or less. She stated she was not familiar with this property in 1986 and the value she places upon the property is 1994 value.

The property has been assessed yearly since 1986. The complete records are not in evidence, however, the property was assessed at slightly in excess of \$53,000 in 1986. The value has dropped to \$50,340 in 1994. Iowa law provides an appeal process to contest assessments. Initially, a challenge is made to the assessment with the Board of Review. If no relief is granted by the Board of Review, a statutory right of appeal exists to State District Court. The District Court must review the assessment and make a determination of the fair market value. The Debtors have never challenged the assessments through the Board of Review or through the State District Court. The Debtors have approached the County in an attempt to compromise these taxes. While there have been discussions as to compromise, the nature or extent of these discussions was not made part of the record.

In summary, Debtors feel that the present assessment is excessive. The Deputy Black Hawk County Treasurer and the Deputy Assessor both testified that, in their opinion, the assessments, as made, are fair and reasonable.

At trial, it was concluded that the Court would be only addressing those property taxes assessed prepetition. These are for the three years 1986-87; 1987-88; and 1988-89. The taxes assessed for those years are approximately \$5,000. This approximates the amount of taxes stated by the Debtors in their original Petition. The post-petition property taxes are not part of this case and no determination is made as to them.

The issue for the Court's determination is to determine the fair market value of the property in question for the relevant years.

In so doing, the Court must first determine if it has the authority to redetermine value. The Bankruptcy Code provides such authority under § 505(a) to determine the amount of any tax under appropriate circumstances. This requires an evidentiary hearing to determine the actual values of the property. The determination of property values must be based upon application of State law. In re Fairchild Aircraft Corp., 124 B.R. 488, 492 (Bankr. W.D. Tex. 1991).

In summary, the valuation of property under § 505(a) must be consistent with State law principles. The Court may abstain from making a § 505(a) valuation, if in the course of determination, the impact of abstention on the general administration of the estate, and on the Debtor, is minimal or nonexistent. In re American Motor Club, Inc., 139 B.R. 578, 581 (Bankr. E.D.N.Y. 1992). While the Court has the authority to abstain from making a revaluation, the evidence has been presented. Revaluation of this property could have some impact upon the administration of this estate as well as on the Debtors. The Court will, therefore, proceed to determine the evidentiary impact on the property assessments.

Assessment and valuation of property is controlled under State law by Chapter 441 of the Iowa Code. The procedural mechanism for hearing an assessment case is set forth in Sec. 441.38 and 441.39 of the Iowa Code. These sections provide that the Court shall hear the appeal in equity and determine all questions relating to the liability of the property to assessment. It is the obligation of the Court to consider all of the evidence with no presumption in favor of the County as to the correctness of its valuation. Utilizing those procedures, the Court is mandated to determine the actual, assessed and taxable value. These terms are defined in Sec. 441.21 of the Iowa Code. Sec. 441.21 of the Iowa Code states:

1.a. All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving

at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The foregoing Code Section has been thoroughly examined by Iowa case law. One of the most recent in-depth analyses of assessment procedure is found in Heritage Cablevision v. Board of Review, 457 N.W.2d 594 (Iowa 1990). There, the Iowa Supreme Court stated at 598 that:

An appealing party's attack on an assessment confirmed by the board of review is a two-stage process. In the first stage, the party challenging the assessment is required to show that the Board of Review's valuation is excessive, inadequate, inequitable, or capricious. (Citations deleted.) In the second stage, that party must establish what the correct valuation should be.

The Court has applied the foregoing statutory and case law in evaluating the evidence presented at trial. As earlier indicated, the Court's focus in this case is upon the property values as they existed in 1986 through 1989. Therefore, the foregoing legal principles are applied to the evidence as it impacts these assessment years.

Mr. Brecunier stated that in 1986, the value of the property exceeded \$50,000. The property has dropped dramatically in value only in the last three years. Debtors' realtor, Ms. Martin, testified that she had no familiarity with this property as it existed in 1986. Her first contact with the property occurred when she listed it for sale in 1989. Her testimony is based upon opinion and is not presented as a formal appraisal, either as to current value or the value which existed in 1986. Both Sharon Winberg, Deputy Black Hawk County Treasurer, and Gary Heronimus, Deputy Assessor, testified that in their opinion the assessments made in 1986 through 1989 were fair and reasonable.

Debtors assert the present value is substantially less than the present assessed value of \$50,000. Debtors presented dramatic evidence as to the deterioration of the neighborhood and the consequent decrease in the value of their property. From present circumstances, Debtors project that the property has been overassessed since 1986. This assumption is flawed, however, because conditions created in the last three years have no relevance to pre-existing value. The record is devoid of valuation evidence during the times in question. Debtor himself states that the value of the property in 1986 was close to, if not identical to, the assessed value of \$53,000. It is the conclusion of this Court that the methodology used by the Debtors to determine the present value and then project the same backwards in time is an inappropriate method of determining market value of the property eight years ago. This is particularly true in light of the reasons for the alleged deterioration of property values. This is not a gradual drop in values but is a sudden and steep decline in market value.

In conclusion, applying the appropriate State law standards, it is the conclusion of this Court that Debtors have failed to present sufficient evidence in this record to warrant a reassessment of the property values for the relevant years. Debtors have failed to establish that the assessments for the relevant years was excessive, inadequate, inequitable or capricious. Secondly, Debtors have failed to prove what the correct valuation should be during these years. As Debtors have failed to establish that the assessments for 1986 through 1989 are incorrect, Debtors' motion for reassessment and revaluation of this property must be denied.

**WHEREFORE**, for the reasons set forth herein, it is the conclusion of this Court that the assessments made between 1986 and 1989 reflect fair market value at that time.

**FURTHER**, as the Debtors have failed to carry their burden of proof, the Debtors' motion to have this property reassessed must be and is hereby **DENIED**.

**SO ORDERED** this 13th day of June, 1994.

Paul J. Kilburg  
U.S. Bankruptcy Judge