FILED
MAY 3 1 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STORY COUNTY BANK & TRUST COMPANY,	)	
Plaintiff-Appellee,	)	Filed May 31, 1988 321
vs.	)	
BOARD OF REVIEW OF THE COUNTY OF STORY, IOWA, and RALPH VASEY, its Chairman,	)	8-24 87-849
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Story County (32596), Newt Draheim, Judge.

Defendants appeal a district court decision finding in favor of plaintiff in its tax assessment appeal from the valuation assigned its property. **AFFIRMED.**

Mary E. Richards, Story County Attorney, Ames, for defendants-appellants.

Curtis A. Ward of Brooks, Ward & Trout, Marshalltown, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

The defendants appeal a district court decision finding in favor of the plaintiff in its tax assessment appeal of the valuation assigned its property. The defendants claim: (1) the district court improperly considered prior assessments in making its determinations in this case; (2) the district court erred in finding that the burden had shifted to the Board of Review; (3) the district court erred in finding that the 1985 sale of the property was a normal transaction; (4) the plaintiff's evidence on the value of the property was incomplete; and (5) the district court erred in finding that the assessed value was reasonable. We affirm.

The plaintiff, Story County Bank and Trust Company, operates a banking business on certain real estate. The bank purchased the assets of the business, including the real estate, from an FDIC receivership on May 9, 1985, for a price of $981,150. Subsequent to the sale, an appraiser hired by the buyer and seller assigned a value to the real estate of $218,000 on the basis of an in-use valuation. On January 1, 1986, the Story County Assessor valued the property at $401,600. On May 16, 1986, the Story County Board of Review revised the assessment to $267,500. The bank appealed to the district court, asserting that the value of the property on the date of sale from the FDIC receivership (May 9, 1985), $218,000, was the proper valuation of the property as of January 1, 1986. The district court found in favor of the bank and the Board of Review appealed.

Our scope of review in a tax assessment case is de novo. See Dowden v. Dickinson Co. Bd. of Review, 338 N.W.2d 719, 721 (Iowa App. 1983). The Board of Review's first contention is that the district court erred by improperly considering the tax assessment valuations of the property for years prior to 1986. The Board contends that only the value for the present year should be

considered. After reviewing the district court's order and decree, we believe that the Board of Review has failed to establish that the district court's decision was guided by the prior year tax assessments. Rather, the district court's decision appears to have been based on the testimony of witnesses who appraised the property.

The Board of Review's second argument is that the district court erred in finding that the burden of proof had shifted to the Board to uphold its valuation of the subject property. Iowa Code section 441.21(3) states in part that:

> The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings 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 thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

The Board alleges that while the bank may have had two disinterested witnesses, only one was competent to give evidence, and thus, the burden of proof should not have been shifted. We find that the district court did not err in shifting the burden of proof to the Board of Review. One of the bank's witnesses, John Polland, is an architect with experience in determining building replacement costs of financial institutions. Mr. Polland's credentials and competency as a witness were never questioned by the Board at trial, and thus, any error is not preserved and will not be considered for the first time on appeal. See Local Bd. of Health v. Wood, 243 N.W.2d 862, 868 (Iowa 1976). We do not address whether Mr. Polland was competent to testify regarding the value of the subject property, and we do not find that the district court erred in shifting the burden of proof to the Board of Review.

The Board of Review's next contention is that the district court erred in finding the May 9, 1985, sale of the subject property to be a normal trans-

action or a sale price in an abnormal transaction not reflecting market value, but adjusted to eliminate the effect of factors which distort market value. Iowa Code section 441.21(1)(b) provides as follows:

> 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. (Emphasis added.)

The Board claims that the May 9, 1985, sale of the property was not a normal transaction because the bank bought the property from the FDIC after the predecessor bank went into receivership. As noted by the Board's brief, the Code specifically cites foreclosure sales as abnormal transactions. Whereas the transfer from the predecessor bank to the FDIC was a foreclosure and could not be considered a normal market transaction, the subsequent sale by the FDIC as receiver to the Story County Bank and Trust was not a "forced sale" under section 441.21(1)(b). The FDIC and the Story County Bank and Trust made efforts to arrive at a fair market value of the property being sold. Such efforts are evidenced by their choice of an independent appraiser to value the property after the parties had agreed to the sale. Thus, the transaction was not tainted by any compulsion on the part of either party. Accordingly, it was not a "forced sale" as contemplated by Iowa Code section 441.21(1(b).

The Board of Review's fourth argument is that the bank's evidence on the value of the property was incomplete because there was no valuation of the computer facilities or the vault doors. We do not believe that the bank's tax assessment challenge fails because of incomplete evidence. Regarding the vault doors, the executive vice president of the bank testified as to the appraised values of the doors. The Board did not object to the competency or admissibility of such testimony. Thus, any error now alleged by the Board cannot be considered by this court because where error has not been preserved at the trial level, we do not consider it on appeal. See Local Board of Health, 243 N.W.2d at 868. Regarding the computer facilities, the Board again argues that the bank's appeal to the trial court must fail because of the omission of valuation evidence. Having reviewed the record, we do not believe that it sufficiently describes what is meant by "computer facilities." We therefore cannot adequately determine if such equipment is part of the property which should be assessed for tax purposes or if it should not be part of the tax assessment pursuant to Iowa Code section 427A.1(3) (personal property tax credit). Because the record is not clear on this point, we are unable to find error by the district court in its assessment determination.

The Board of Review's final contention is that the district court erred in failing to find that the assessed value of the property at issue falls within the bounds of what can be considered reasonable. We do not believe that the district court's determination was improper or unreasonable. The court, after reviewing the evidence presented, found the valuation of $218,000, which was established by the impartial appraiser hired by both the FDIC and the bank, to be most credible and the best indication of the market value of the property. In addition, the court stated that the Board of Review failed to carry its burden of proof to uphold the assessed valuation. In light of the evidence and arguments

presented, we are inclined to agree with the district court. The appraiser who rendered the $218,000 figure was impartial. In contrast, the expert that the Board of Review urges us to follow was hired by Story County to assist in supporting an assessed value which had already been determined by the county assessor. In addition, the Board's expert relied most heavily on the direct sales comparison method of evaluation. This expert acknowledged that a direct sales comparison is unreliable unless the adjusted value is at least sixty percent of the actual value. However, none of the market comparisons in the expert's appraisal met that criterion. We therefore believe that, on the whole, the appraisal evidence presented by the impartial appraiser is more credible. The district court is affirmed.

AFFIRMED.