**IN THE COURT OF APPEALS OF IOWA**

No. 8-890 / 08-0721
Filed February 4, 2009

**R.J. WETLAUFER and MARY WETLAUFER,**
Plaintiffs-Appellees,

**vs.**

**FAYETTE COUNTY BOARD OF REVIEW,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Fayette County, George C. Stigler, Judge.

The Fayette County Board of Review appeals from the district court order reducing its assessment of the Wetlaufers' property. **REVERSED.**

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

Patrick J. O'Connell of Lynch Dallas P.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**EISENHAUER, J.**

R.J. and Mary Wetlaufer own property in Fayette County that they use as an industrial laundry facility. The Board of Review of Fayette County assessed the property at $919,250 in 2005 and $1,063,000 in 2006. The Wetlaufers appealed, contending the property tax assessments were excessive. The board denied the appeal. The Wetlaufers appealed to the district court, which found the Wetlaufers' property had a value of $690,000 as of January 1, 2005, and of $800,000 as of January 1, 2006. The board appeals.

An appeal of the board's decision to the district court is heard in equity and issues before the board are triable anew. *Payton Apartments, Ltd. v. Bd. of Review*, 358 N.W.2d 325, 327 (Iowa Ct. App. 1984). Review of the district court decision by this court is de novo. *Id.* While we are not bound by the findings of the district court, we do give weight to them, especially where the credibility of witnesses is involved. *Id.*

The Wetlaufers have the burden of proving the board's assessment is excessive. *See id.* However, the burden shifts to the board if the Wetlaufers offer 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. *See id.* Here, there is no dispute the Wetlaufers offered evidence by two disinterested appraisers that the appraised value was excessive. The question posed by the board is whether the appraisers offered "competent" evidence.

"We have interpreted [the] requirement of competence to mean that the testimony of the disinterested witnesses must comply with the statutory scheme

for property valuation for tax assessment purposes." *Boekeloo v. Bd. of Review*, 529 N.W.2d 275, 279 (Iowa 1995). All property subject to taxation shall be valued at is actual value, which is the "fair and reasonable market value of such property." Iowa Code § 441.21(1)(a), (b) (2005).

The board complains that the Wetlaufers' appraisers utilized foreclosure sales and sales of distressed properties as comparable sales. The statutory scheme for property valuation specifically excludes the utilization of foreclosure sales and sales of distressed properties in arriving at market value unless adjustments are made. *See id.* § 441.21(1)(b) ("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 purchased transactions of purchase of adjoining land or other land to be operated as a unit."). In appraising the Wetlaufers' property, one of their experts used a property that was sold in foreclosure as a comparable sale without making an adjustment. Of the four other properties utilized as "comparable sales," the expert had misinformation as to the condition, features, usage or age of the buildings. The other expert used two properties that had been sold in foreclosure as comparable sales without making any adjustment. Of the remaining two properties utilized, the expert was unaware of repairs made to one building or a change in usage of the other building. The experts did not comply with the statutory scheme outlined in section 441.21.

Upon our de novo review, we conclude the Wetlaufers' have failed to provide competent evidence from two disinterested witnesses that the property is valued at less than its assessed value. Because they have failed in their burden of proving the assessed value is excessive, we reverse the district court order assessing the Wetlaufers' property at $690,000 as of January 1, 2005, and $800,000 as of January 1, 2006, and reinstate the board's original assessment.

**REVERSED.**