

IN THE SUPREME COURT OF IOWA

No. 20-1290

NATIONWIDE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v.

POLK COUNTY BOARD OF REVIEW,

Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE PAUL D. SCOTT, PRESIDING

APPELLEE'S FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT CORRECTLY CONCLUDED THE BOARD OF REVIEW PROVIDED COMPETENT EVIDENCE UNDER THE SALES COMPARISON APPROACH IN SUPPORT OF ITS VALUATION OF 1100 AND 1200 LOCUST STREET AS REQUIRED BY *WELLMARK V. BOARD OF REVIEW*.

Cases

Boekeloo v. Board of Review, 529 N.W.2d 275 (Iowa 1995).

Compiano v. Board of Review of Polk County, 771 N.W.2d 392 (Iowa 2009).

Homemakers Plaza, Inc. v. Polk County Board of Review, 828 N.W.2d 326 (Table) 2013 W.L. 105220 (IA. Ct. of App. 2013), an unpublished decision.

Soifer v. Floyd County Bd. of Review, 759 N.W.2d 775 (Iowa 2009).

Wellmark v. Bd. of Review, 875 N.W.2d 667 (Iowa 2016).

Rules/Statutes

Iowa R. App. P. 6.904(3)(g).

Iowa Code Section 441.21(1)(b)(1).

- II. THE DISTRICT COURT CORRECTLY CONCLUDED THAT NEITHER NATIONWIDE NOR THE BOARD OF REVIEW PROVIDED CREDIBLE AND PERSUASIVE EVIDENCE OF MARKET VALUE UNDER THE SALES COMPARISON APPROACH.

Cases

Bartlett & Co. Grain v. Bd. of Review, 253 N.W.2d 86 (Iowa 1977).

Boekeloo v. Bd. of Review, 529 N.W.2d 275 (Iowa 1995).

Hy-Vee v. Dallas County Bd. of Review, 856 N.W.2d 383 (IA Ct of App. October 1 2014).

Lowe's Home Center, LLC v. Iowa Property Assessment Appeal Board, ___ N.W.2d ___, (Iowa Ct. of App. Feb. 17, 2021) 2021 WL 610105.

Post-Newsweek Cable, Inc. v. Board of Review of Woodbury County, 497 N.W.2d 810 (Iowa 1993).

Soifer v. Floyd County Board of Review, 759 N.W.2d 775 (Iowa 2009).

Wellmark v. Bd. of Review, 875 N.W.2d 667 (Iowa 2016).

Rules/Statutes

Iowa R. App. P. 6.904(3)(g).

Iowa Code Section 441.21(1)(a).

Iowa Code Section 441.21(1)(b)(1).

Iowa Code Section 441.21(3)(b).

III. THE DISTRICT COURT CORRECTLY CONCLUDED THE POLK COUNTY BOARD OF REVIEW OFFERED COMPETENT, CREDIBLE AND PERSUASIVE EVIDENCE OF MARKET VALUE UNDER THE COST APPROACH.

Cases

Boekeloo v. Bd. of Review, 529 N.W.2d 275 (Iowa 1995).

Clark v. Lucas County Board of Review, 44 N.W.2d 748 (Iowa 1950).

Metropolitan Jacobson Development Venture v. Board of Review of City of Des Moines, 524 N.W.2d 189 (Iowa 1994).

Wellmark v. Bd. of Review, 875 N.W.2d 667 (Iowa 2016).

Rules/Statutes

Iowa R. App. P. 6.904(3)(g).

Iowa Code Section 441.21(2).

Treatise

16 Eugene McQuillin, the Law of Municipal Corporations, Section 44:148-"Valuation Generally-Prior Valuations." (3rd Ed. July 2019 update).

ROUTING STATEMENT

1100 and 1200 Locust Street are large, single-tenant, owner occupied, corporate headquarters buildings located in the Western Gateway Area of the Central Business District of Des Moines, like the Wellmark building. The District Court decided this case based on the “other factors” approach since neither party offered credible and persuasive evidence of market value under the sales comparison approach, just like in the *Wellmark* case. Because this case involves the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Appellant Nationwide Mutual Insurance Company (Nationwide) appeals the District Court Order affirming Polk County Board of Review's January 1, 2017 assessments of 1100 Locust Street of \$87,050,000 and 1200 Locust Street of \$44,910,000. The District Court correctly applied the holding of the Iowa Supreme Court case *Wellmark v. Polk County Board of Review*, 875 N.W.2d 667 (Iowa 2016) and upon finding neither side provided credible and persuasive evidence of market value under the sales comparison approach turned to the other factors approach. *Wellmark* at 682.

Under the Cost Approach, the District Court found "Polk County's evidence is more competent, more credible, and supports the assessed values for 1100 and 1200 Locust Street as of January 1, 2017." (App. 130). "Polk County's appraisers and supporting exhibits contain a reasonable range of values and proves by a preponderance of the evidence that 1100 and 1200 Locust Street are not over-assessed." (App. 130-131).

COURSE OF PROCEEDINGS

On July 12, 2017, Nationwide Mutual Insurance Company filed a petition in Polk County District Court contesting the Polk County Board of Review's decisions on parcel number 020/00144-002-000, locally known as 1100 Locust Street in Des Moines, and parcel number 020/00035-002-000, locally known as 1200 Locust Street in Des Moines. Nationwide only alleged over assessment as defined in Iowa Code Section 441.37(1)(a)(1)(b) in its petition to the Board of Review so the District Court was limited to only considering that ground in making this ruling. Iowa Code Section 441.38(1).

This case was before the District Court for trial beginning on February 18, 2020, and concluding February 20, 2020. The parties filed their final post trial briefs on May 4, 2020 and the District Court entered its Findings of Fact, Conclusions of Law, and Order on September 22, 2020. The District Court upheld and affirmed the Polk County Board of Review's assessment of \$87,050,000 for 1100 Locust Street and \$44,910,000 for 1200 Locust Street. Nationwide appealed.

The Court heard testimony from Don Vaske, Thomas Scaletty and Joseph Baughman on behalf of the Plaintiff. Russ Manternach, Mark Kenney and Bryon Tack testified on behalf of the Defendant. Each witness testified to a different assessed value and reasoning as reflected below.

STATEMENT OF THE FACTS

The Nationwide building located at 1100 Locust Street is a single-tenant, built to suit, owner-occupied, seven story and part one and two story with partial basement corporate headquarters office building. 1100 Locust Street has a gross building area of 798,696 square feet and above grade finished net rentable area of 765,674 square feet. This building has 22,050 square feet of unfinished mechanical equipment space and an unfinished basement area of 10,972 square feet. The eastern and central sections of this building were built in 2002 with partial remodels costing over \$4.2 million between 2011 and 2016. The eastern and central sections contain 489,119 square feet of gross building area and net rentable area. The western section was built in 2006 and contains 276,555 square

feet of gross building and net rentable area. Adding the gross building area of the eastern and central sections with the western section equals the above net rentable area of 765,647 square feet. (App. 822).

The Nationwide building located at 1200 Locust Street is a single tenant, built to suit, owner-occupied, five story and part four story with no basement corporate headquarters office building with a gross building area and above grade finished net rentable area of 371,920 square feet. 1200 Locust Street was built in 2007 with partial remodels costing \$160,000 between 2013 and 2015. (App. 822).

1100 Locust and 1200 Locust are Class A construction because both buildings have fireproofed structural steel frames with masonry or concrete, reinforced concrete floors, and fireproof concrete or steel deck roofs. (App. 888).

Joseph Baughman testified on behalf of the Plaintiff. Mr. Baughman has worked for Nationwide for 32 years and is currently an Associate Vice President for Corporate Real Estate at Nationwide.

Defendant's Exhibit T was the property record card showing the assessed values for 1100 Locust from 2002 to 2017. Mr. Baughman acknowledged that the 2015 assessed value of 1100 Locust based on Exhibit T was \$80.23 million and the Defendant did not appeal the 2015 assessment even though it was above the \$78.5 million minimum assessment agreement. (Transcript Vol I p. 45 L.19-25, p. 46 L.1-15, App.136-137). Mr. Baughman acknowledged Nationwide's Exhibit 4 showed the 2015 assessed value for 1200 Locust was \$41.39 million and the Plaintiff did not appeal the 2015 assessed value for 1200 Locust even though it was above the \$36 million minimum assessment agreement. (Transcript Vol I p. 48 L. 17-25, p. 49 L 1-10, App.138-139).

Mr. Baughman admitted that Defendant's Exhibit V correctly reflected that the Plaintiff has done about \$13 million in building updates at 1100 Locust Street between 2015 and 2019. (Transcript Vol I p. 56 L. 7-25, p. 57 L. 1-3, App.140-141).

All four appraisers testified both 1100 and 1200 Locust Street were built to suit, single-tenant, corporate headquarters buildings for Nationwide Mutual Insurance Company. They agreed the current use of the properties was single-tenant, owner occupied corporate headquarters or home office use and that they were functional for that use. The four appraisers differed on the highest and best use of 1100 and 1200 Locust Street, as improved, and differed on how to value 1100 and 1200 for property tax assessment purposes as of January 1, 2017.

SALES COMPARISON APPROACH FOR 1100 LOCUST

Plaintiff's witness, Thomas Scaletty, selected six comparable sales for 1100 Locust Street as noted in the sales adjustment grid on page 67 of Exhibit 7. (App. 300).

Comparable sales 1, 2, and 4 are multi-tenant office buildings with a different current use than 1100 Locust Street and therefore are not credible and persuasive evidence and should not be given any weight by the court based on *Wellmark*.

Comparable sale 1 is a multi-tenant building. Notable tenants include the Des Moines Register, Life Care Services, BH Equities and Iowa State University. Vacant space in this comparable sale are being offered at rates ranging from \$9.75 to \$12.00 per square foot on a net basis. (App. 336-337).

Comparable sale 2 is a multi-tenant building. The Federal Home Loan Building has six stories. The buyer plans to occupy half of the building and lease the remaining space. (App. 338-339).

Comparable sale 4 is a multi-tenant building. The buyer is renovating and leasing the building to multiple tenants. Lease offerings are \$7.50 per square foot net. This building was vacant at the time of sale. (App. 342-343).

Comparable sale 3 is located in a different market, was vacant at the time of the sale and was not built to suit the new buyer. It is a second-generation property and is 599,264 square feet smaller than 1100 Locust Street and therefore is not credible and persuasive evidence and should not be given any weight by the court.

Comparable sale 5 is similar in size, but is a second-generation property. It was built to suit for Kraft Foods who then sold the building for \$72.25 million in 2013 in a sale-leaseback agreement after making major renovations to the property. Kraft made one rent payment of \$25 million and then paid a \$22.2 million termination fee to end its lease. (App. 344-345). The property was vacant when it sold on February 1, 2016 for \$44.7 million, which was \$27.55 million less than what it sold for three years earlier. (App. 344-345). The property is located in suburban Chicago near an interstate. 1100 Locust Street is located in the Western Gateway area of Des Moines's Central Business District. It is easily accessible by bus or on foot. Employees are able to walk to a sculpture park, a library or several restaurants with ease, a luxury not shared in suburban Chicago. This comparable is too dissimilar to 1100 Locust Street to be credible and persuasive evidence of market value and should not be given any weight by the court.

Comparable sale 6 is 658,403 square feet smaller than 1100 Locust Street. (App. 300). It is a second-generation

property that was not built to suit the current buyer. It was 14% occupied at the time of sale. (App. 300). This sale is not credible and persuasive evidence of market value and should not be given any weight by the court.

After adjustments, Scaletty reconciled to a retrospective market value of \$50.00 per square foot. This equates to a January 1, 2017 market value for 1100 Locust Street of \$39,390,000. (App. 299).

Plaintiff's witness, Don Vaske, selected four properties in his sales comparison approach. These properties are included in his market adjustment table on page 65 of Exhibit 9. (App. 603).

Comparable sales 2 and 10 are multi-tenant office buildings with a different current use than 1100 Locust Street and therefore are not credible and persuasive evidence of market value and should not be given any weight by the court based on *Wellmark*. The sales were seven and 14 years older, respectively, than 1100 Locust Street. They were not built to suit for the buyers and were second-generation properties. Sale

2 is 540,020 square feet smaller than 1100 Locust and sale 10 is located in a different market and is 247,959 square feet smaller than 1100 Locust.

Comparable sale 2 is the Federal Home Loan Office Building appraiser Scaletty used as his comparable sale 2 as well. Buyer plans to owner occupy and potentially lease out excess space of approximately 20%. (App. 609).

Comparable sale 10 is a multi-tenant building. Buyer (Ecolab) will move into upper floors (13-17) by year-end 2015. Seller (Travelers) signed a two-year lease to remain in portions of this building. (App. 617).

Comparable sale 8 is seven years older than 1100 Locust Street and is a second-generation property that was not built to suit. It is 663,432 square feet smaller than the subject property and is not credible and persuasive evidence of market value.

Comparable sale 9 is the same as Mr. Scaletty's sale 5 and is not comparable for the reasons stated above.

After adjustments, Vaske reconciled to a retrospective market value of \$63.00 per square foot. This equates to a market value of \$48,237,000 for 1100 Locust Street under the sales comparison approach. (App. 605).

The Board of Review's witness, Mark Kenney, selected six comparable sales for his sales comparison approach. Those comparable sales are in his improved sales adjustment schedule on page 120 of Exhibit A. (App. 861).

All six comparable sales are located in bigger markets than the Central Business District of Des Moines. Three of the sales have more square feet than 1100 Locust Street and three have less. All six comparable sales were occupied at the time of sale. Mr. Kenney testified he gave his sales comparison approach less weight because of the larger markets where these six comparable sales are located. (Tran Vol. III p 26 L. 7-13, App. 184).

Mr. Kenney arrived at a market value for 1100 Locust Street of \$140.00 per square foot. This equates to a January 1,

2017 market value under the sales comparison approach of \$107,000,000. (App. 861).

Mr. Kenney offered competent evidence of comparable single-tenant corporate headquarters properties in his sales comparison approach, but that approach is given less weight because of the discrepancies between the markets.

Board of Review witness, Russ Manternach, selected four comparable sales for his sales comparison approach. Those sales are on his sales comparison adjustment table on page 62 of Exhibit B. (App. 1226).

Comparable sales 1, 2, and 3 are multi-tenant office buildings with a different current use than the subject property and therefore are not credible and persuasive evidence of market value and should not be given any weight by the court based on *Wellmark*.

Comparable sale 1 is Capital Square located at 400 Locust Street. Nationwide's Thomas Scaletty used this building as his comparable sale 1 as well.

Comparable sale 2 is the Federal Home Loan Bank Building located at 909 Locust Street. (App. 1226). Nationwide appraiser Scaletty used 909 Locust as his comparable sale 2. (App. 338-339).

Nationwide appraiser Vaske used 909 Locust Street as his comparable sale 2 as well. (App. 609).

Comparable sales 1, 2, 3 are at least eight years older than 1100 Locust Street and they all were smaller. Comparable sale 4 is single tenant like the subject property, but is 555,416 square feet smaller and in a different location. These sales selected by Manternach were competent evidence of value and should be admitted by the court, since he complied with the statutory scheme by completing the sales comparison approach and made the appropriate adjustments.

After adjustments, Manternach reconciled to a value of \$108.00 per square foot. This equates to a market value for 1100 Locust Street of \$81,300,000 under the sales comparison approach. (App. 1229).

SALES COMPARISON APPROACH FOR 1200 LOCUST

Nationwide's witness, Thomas Scaletty, used the same comparable sales for both properties with different adjustments due to the buildings' size differences. His six comparable sales are noted on his sales adjustment grid on page 78 of Exhibit 8. (App. 456).

Comparable sales 1, 2, and 4 are multi-tenant office buildings with a different current use than 1200 Locust Street and therefore are not credible and persuasive evidence of market value and should not be given any weight by the court based on *Wellmark*.

Comparable sale 3 is located in a different market, was vacant at the time of the sale, and was not built to suit the new buyer. It is a second-generation property and is 159,875 square feet smaller than 1200 Locust Street. This sale is not credible and persuasive evidence of market value for 1200 Locust Street.

Comparable sale 5 is larger than 1200 Locust Street, but is a second-generation property. It was built to suit for Kraft Foods who then sold the building for \$72.25 million in 2013 in

a sale-leaseback agreement after making major renovations to the property. Kraft made one rent payment of \$25 million and then paid a \$22.2 million termination fee to end its lease. (App. 500-501). The property was vacant when it sold on February 1, 2016 for \$44.7 million, which was \$27.55 million less than what it sold for three years earlier. (App. 500-501). The property is located in suburban Chicago near an interstate. 1200 Locust Street is located in the Western Gateway area of Des Moines's Central Business District. It is easily accessible by bus or on foot. Employees are able to walk to a sculpture park, a library or several restaurants with ease, a luxury not shared in suburban Chicago. This sale is not credible and persuasive evidence of market value for 1200 Locust Street.

Comparable sale 6 is 219,014 square feet smaller than 1200 Locust Street. (App. 450). It is a second-generation property that was not built to suit the current buyer. It was 14% occupied at the time of sale. (App. 456). This sale is not credible and persuasive evidence of market value for 1200 Locust Street.

After adjustments, Scaletty reconciled at a retrospective market value of \$65.00 per square foot. This equates to a market value for 1200 Locust Street of \$22,640,000 under the sales comparison approach. (App. 455).

Nationwide's witness, Don Vaske, used the same comparable sales for 1100 and 1200 Locust Street with different adjustments due to the buildings' size differences. His four comparable sales are noted in his market data adjustment table on page 61 of exhibit 10. (App. 699).

Comparable sales 2 and 10 are multi-tenant office buildings with a different current use than 1200 Locust Street and therefore are not credible and persuasive evidence of market value and should not be given any weight by the court based on *Wellmark*.

Comparable sale 8 is 11 years older than 1200 Locust Street and is a second-generation property that was not built to suit. It is 269,678 square feet smaller than the subject property and is not credible and persuasive evidence of market value for 1200 Locust Street.

Comparable sale 9 is the same as Mr. Scaletty's sale 5 and is not comparable for the reasons stated above.

After adjustments, Vaske reconciled to \$70.00 per square foot. This equates to a market value for 1200 Locust Street of \$26,034,000 under the sales comparison approach. (App. 701).

The Board of Review's witness, Mark Kenney, used the same six sales in his sales comparison approach for 1200 Locust Street as he did for 1100 Locust Street with adjustments for the size difference. The adjustments he made for these comparable sales are noted on page 122 of Exhibit A. (App. 863).

All six comparable sales are located in bigger markets than the Central Business District of Des Moines and they all have more square footage than 1200 Locust Street. All six of his comparable sales were single-tenant, corporate headquarters buildings that were all were occupied at the time of sale. Mr. Kenney testified he gave his sales comparison approach less weight because of the larger markets where these six comparable sales are located. (Tran Vol. III p 26 L. 7-13, App. 184).

After adjustments, Kenney concludes the market value of 1200 Locust Street is \$170.00 per square foot. (App. 863-864). This results in a market value for 1200 Locust Street of \$63,000,000 under the sales comparison approach as of January 1, 2017. (App. 863-864).

Board of Review's witness, Russ Manternach, used the same four comparable sales with adjusted values due to the size difference. Those four comparable sales are noted in his sales comparison adjustment table on page 61 of exhibit B (1200 Locust appraisal). (App. 1325).

Comparable sales 1, 2, and 3 are multi-tenant office buildings with a different current use than the subject property and therefore are not persuasive and credible evidence of market value and should not be given any weight by the court based on *Wellmark*.

Comparable sales 1, 2, 3 are more than eight years older than 1200 Locust Street and they all were smaller.

Comparable sale 4 is single tenant property, but is 555,416 square feet smaller than the subject property, is in a

different location, and is not credible and persuasive evidence of market value for 1200 Locust Street.

All four of Manternach's comparable sales were occupied at the time of sale.

Mr. Manternach offered competent evidence in his sales comparison approach, as is required in Iowa Code Section 441.2(1)(b)(1), but his comparable sales should be given less weight, since sale 1, 2 and 3 were multi-tenant buildings with a different current use than 1200 Locust. Sale 4 was a single tenant property like 1200 Locust, but smaller in a different location and not credible and persuasive evidence of market value.

After adjustments, Manternach reconciled to a value of \$115.00 per square foot. This equates to a market value for 1200 Locust Street of \$42,800,000 under the sales comparison approach. (App. 1328).

The District Court was correct to consider the "other factors" approach to value since neither Nationwide nor the

Board of Review offered credible and persuasive evidence of market value under the sales comparison approach.

“Under the cost approach, this Court finds Polk County’s appraisers have provided competent evidence of the assessed values of 1100 and 1200 Locust Street.” (App. 130).

INCOME APPROACH

The income approach performed by each party’s appraisers suffered from the same shortcomings as the sales comparison approach. Nationwide’s appraisers used multi-tenant office buildings for their comparable rental properties, which have a different current use than the subject properties. Mr. Scaletty used one single tenant property, but it was 716,296 square feet smaller than 1100 Locust Street and 276,907 square feet smaller than 1200 Locust Street. The Board of Review’s appraiser, Mr. Kenney, used single-tenant comparable rental properties from larger markets with rents that are not indicative of the smaller Des Moines rental market. The Board of Reviews other appraiser, Mr. Manternach, used multi-tenant office buildings which have a different current use. The single

tenant comparable rental properties used were between 406,469 and 629,450 square feet smaller than 1100 Locust Street and were between 34,786 and 257,767 square feet smaller than 1200 Locust Street. They were also older and located in different markets. They were not persuasive and credible evidence of market value for the subject properties.

The District Court correctly decided that the cost approach provides the best mechanism for determining market value. There is no dispute that 1100 and 1200 Locust Street are appropriate as corporate headquarters buildings for Nationwide Mutual Insurance Company. The Iowa Supreme Court held, "Courts have often applied the cost approach in determining the value of a single-tenant corporate headquarters property when comparable sales were not available." *Wellmark* at 683, quoting *Gen. Elec.*, 2005 WL 2081269 at 5; *Aetna Life Ins.*, 2002 WL 377147 at 8; *CPC Int'l*, 473 A.2d at 552; *Beneficial Facilities Corp.*, 11 N.J. Tax at 378; *Freedom Fed. Sav. & Loan*, 801 P.2d at 812-13.

COST APPROACH FOR 1100 LOCUST

Using the cost approach, Mr. Scaletty selected three vacant land sales in order to determine the land value of 1100 Locust Street. Mr. Scaletty's vacant land sales resulted in a rate of \$50 per square foot after adjustments. This resulted in a land value for the subject property of \$8,793,650, or a rounded value of \$8.79 million.

Mr. Scaletty testified to a replacement cost new on the subject property of \$175,848,992, or approximately \$223 per square foot. (Transcript Vol I p 124 L. 16-19, App. 153); (App. 283). He considered 1100 Locust Street to have external obsolescence because "the demand for this type of property is inadequate to justify the \$175 million construction price." (App. 284). He stated, "Current development of a single-tenant building is not feasible on a purely speculative basis." (App.284).

Mr. Scaletty calculated a total depreciation value for the subject property of 82.6% or \$145,168,992. (App. 285). He then subtracted the depreciation value from the replacement

cost new figure for a total value of \$30.68 million for the building. External obsolescence amounts to \$111,821,512 of the total depreciation value of \$145,168,992. (App. 285). He added the land value to the building value for a market value under the cost approach of \$39.47 million for January 1, 2017. (App. 285).

Mr. Scaletty's replacement cost new of \$175,848,992 would be the amount to replace 1100 Locust Street if it were destroyed by fire or a tornado. Mr. Scaletty calculated a short-lived depreciation value of \$2,520,717 and a long-lived item depreciation of \$30,826,764. He found no functional obsolescence for 1100 Locust Street and calculated \$111,821,512 in external obsolescence. He testified that the external obsolescence was caused by his highest and best use analysis where he opined that speculative development of 1100 Locust Street would not occur without government assistance to bridge the gap. (App. 284-285).

Mr. Scaletty's reasoning is questionable based on the testimony at trial. 1100 Locust Street was originally built in

2002. Construction was planned and completed in phases in order to meet Nationwide's expanding needs as the company grew. Exhibit I shows that the construction was planned and that plan was confirmed by other witnesses. The evidence presented demonstrates that the construction of 1100 Locust Street was not completed on a speculative basis.

The *Wellmark* decision requires Mr. Scaletty to value the property at its current use. The current use of 1100 Locust Street is a single tenant corporate headquarters building. Mr. Scaletty is to assume a hypothetical buyer at its current use. Mr. Scaletty is valuing 1100 Locust Street on his assumption this property will be sold as a multi-tenant property which is a different use. *Wellmark, 875 N.W.2d 667 at 683.*

Using the cost approach, Mr. Vaske selected four vacant land sales for his cost approach. (App. 588).

Mr. Vaske's indicated range after adjustments was between \$49.79 and \$71.92 per square foot. His estimated market value for the subject property was \$50 per square foot

resulting in a land value of \$8,793,650, which was rounded to \$8.794 million. (Tran Vol II p 36 L. 15-17, App. 167), (App. 589).

Mr. Vaske testified he determined a base cost to replace 1100 Locust Street of \$180.02 per square foot. (Tran Vol II p 82 L. 20-23, App. 172), (App.599). This resulted in a replacement cost new of \$137,852,835. (Tran Vol II p 94 L. 6-8, App. 173), (App. 599). Mr. Vaske testified he believes 1100 Locust had depreciated 67% from external obsolescence. (Tran Vol II p 94 L. 10-12, App. 173), (App. 599).

Mr. Vaske indicates 1100 Locust Street was built in two phases in years 2002 and 2006 and has a chronological age of 14 years and an economic life of 55 years. (App. 597). Mr. Vaske calculated the amount of depreciation for this building by increasing the effective age of this building from 14 years to 37 years to represent the amount of obsolescence from his sales comparable 2 and 8. He then divided 37 years by the 55 year economic life to get 67% depreciation. (App. 597 - 599).

Mr. Vaske calculated his external obsolescence of 67% based on his belief 1100 Locust Street will be sold as multi-

tenant office building and not at its current use as a single-tenant corporate headquarters building as is required in light of the *Wellmark* decision. Mr. Vaske stated:

“The subject was developed by its current owner for owner occupancy/single occupant and is of an average to good construction quality including finishes and floor plan design/layout common in owner occupied office buildings. The market rents do not appear to support the level of costs associated with the subject’s design and construction quality. There are a limited number of potential users requiring office properties the scale/size of the subject in this market. Consequently, the subject property suffers external obsolescence.” (App. 597).

The *Wellmark* decision requires Mr. Vaske to value the property at its current use. The current use of 1100 Locust Street is a single-tenant corporate headquarters building. Mr. Vaske is required to assume a hypothetical buyer at its current use. He should not value 1100 Locust Street to a potential buyer based on a different use. *Wellmark*, 875 N.W.2d 667 at 683.

Mr. Vaske calculated depreciation by taking the sales price of comparable sales 2 and 8 and dividing by the replacement cost new of those properties in the year they sold. The Board of Review has previously shown that Mr. Vaske’s sales comparison

approach was not credible and persuasive evidence of the market value for 1100 Locust Street including those same comparable sales.

Comparable sale 2 is a multi-tenant office building with a different current use than 1100 Locust Street and is not credible and persuasive evidence of market value and should be given no weight by the court based on the *Wellmark* decision.

Comparable sale 8 is a single-tenant office building, but is 663,442 square feet smaller than the subject property. Comparable sale 8 was built in 1996 and was seven years older than the subject property on January 1, 2017. It was not built to suit for the new buyer and is a second-generation property. This property sold in October of 2002. The sale was 15 years old as of January 1, 2017, which is not recent enough to use as an indication of the market value of a property in January of 2017, especially when it already suffers incomparability in a fashion previously discussed.

Mr. Vaske took his replacement cost new of \$137,852,835 multiplied by 67% depreciation resulting in \$92,361,399 of the

total depreciation of the subject property's building. (Tran Vol II p 94 L. 6-12, App.173), (App. 599). Subtracting \$92,361,399 total depreciation from the replacement cost new of \$137,852,835 results in the depreciated cost of \$45,491,436. (Tran Vol II p 94 L. 13-15, App. 173), (App. 599). He then depreciated the site improvements by 67% to get a site value of \$102,300. (App. 599). Adding the depreciated value of the building to the depreciated value of the site gives a total depreciated value of \$45,593,736. (App. 599).

Mr. Vaske added the land value to the building value for a market value under the cost approach of \$54.388 million for January 1, 2017. (App. 599).

Using the cost approach, Mr. Kenney selected four vacant land sales for comparison. (App. 881-882), (Tran Vol III, p.18 L. 16-17, App. 179). All four land sales were located in downtown Des Moines and were developed for commercial uses. (App. 886).

Mr. Kenney determined a land value of \$2.2 million per acre. 1100 Locust Street has 4.037 acres for a total value of

\$8,881,400, which rounds to \$8.9 million. Mr. Kenney's market value for 1100 Locust Street land under the cost approach as of January 1, 2017, is \$8.9 million. (Tran Vol III p 19 L. 9-11, App. 180), (App. 886).

Mr. Kenney arrives at a replacement cost new for 1100 Locust Street of \$165,060,669.

Mr. Kenney used the straight-line method to calculate physical deterioration of 1100 Locust Street. (App. 894). 1100 Locust Street has an effective age of 14 years and an economic life of 60 years. Dividing those two numbers results in physical depreciation of 23.33%. When multiplied by the replacement cost new, it resulted in \$38,514,156 in physical deterioration of 1100 Locust Street. (App. 894).

Mr. Kenney used the Marshall Valuation Services manual to arrive at a functional and external obsolescence for 1100 Locust Street of 22%. Mr. Kenney's functional and external obsolescence of 22% is more accurate than Nationwide's appraisers. This is true because he valued the properties for their continued current use as single-tenant corporate

headquarters buildings instead of valuing them as multi-tenant office buildings to a potential buyer in the future. Mr. Kenney's calculations comply with the requirements of the *Wellmark* decision to value property at its current use and not its potential use to a buyer in the future.

Multiplying the replacement cost new by the percentage of obsolescence gives a total of \$36,313,347 in functional and external obsolescence for 1100 Locust Street. (App. 894). Adding the physical deterioration value and the functional and external obsolescence values give a total accrued depreciation of \$74,827,503 for 1100 Locust Street. (App. 894). Subtracting the total accrued depreciation from the replacement cost new results in a total value of \$90,233,166 for the building. (App. 894). Adding the market value of the land to the value of the building gives a total market value of \$99,133,166, rounded to \$99 million. (App. 894).

Mr. Kenney calculated a functional and external obsolescence of 22% for each individual building (1100 and

1200 Locust) and testified, "That is why the way I did it seemed to be more logical." (Tran Vol IV p 46 L. 22-25, App. 194).

Board of Review witness, Russ Manternach, selected seven comparable land sales, which are listed on page 55 of Exhibit B (1100 Appraisal). (App. 1219).

His adjusted range was from \$24 to \$70 per square foot, which he reconciled to \$45 per square foot. 175,873 square feet multiplied by \$45 results in a land value of \$7,914,285, rounded to \$7.91 million. (Tran Vol IV p 107 L. 2-9, App. 204), (App. 1221).

Mr. Manternach testified he valued 1100 Locust Street as a Class A office building under the Marshall Valuation Service. He testified he arrived at a replacement cost new of 1100 Locust Street of \$141,582,478. Adding soft costs of \$2,831,650 resulted in a total replacement cost new of \$144,414,128. (Tran Vol IV p 111 L. 24-25, p 112 L. 1-2, App. 205-206), (App. 1516).

He calculated a 28% physical depreciation using the straight-line method. He took the effective age of 14 years and divided by the remaining economic life of 50 years. (App. 1516).

He then took his replacement cost new figure of \$141,582,478 multiplied by 28% to get a total of \$40,435,956 for physical depreciation. Mr. Manternach then subtracted the physical depreciation of the building from the replacement cost new to get a total of \$103,978,172. (App.1516). He then calculated 25% functional and external obsolescence and multiplied that by \$103,978,172 to get \$25,994,543. Adding the physical depreciation and the functional and external obsolescence results in \$66,430,499 of total accrued depreciation. Subtracting the total accrued depreciation of \$66,430,499 from the replacement cost new results in a depreciated cost of the improvement of \$77,983,629. He then added in the site improvements of \$200,000 and land value of \$7.91 million to get a value of \$86.1 million for 1100 Locust for the Cost Approach as of January 1, 2017. (App. 1516).

COST APPROACH FOR 1200 LOCUST

Mr. Scaletty used the same vacant land sales in 1200 Locust as he did for 1100 Locust. The main difference is the size of the site at 1200 Locust Street of 79,470 square feet compared

to 1100 Locust's 175,873 square feet. (App. 435 - 437). The three land sales for the cost approach are on page 59 of Exhibit 8. (App. 437).

Mr. Scaletty's adjusted range for his land sales was from \$44.55 to \$58.78 per square foot. He chose \$55 per square foot for the subject's land value, which resulted in a land value of \$4.37 million for the 79,470 square foot parcel. (App. 437).

Mr. Scaletty arrived at a replacement cost new for 1200 Locust Street of \$77,858,199. (Tran Vol I p 190 L.14-17, App. 161), (App. 441). He believed the subject property suffered from functional obsolescence because of the large size and single-tenant design are super-adequate and the demand for such property does not justify the development cost. (App. 440). Mr. Scaletty believed that 1200 Locust suffered external obsolescence. The "current development of a single-tenant property is not feasible on a purely speculative basis." (App.440). Mr. Scaletty agreed that 1200 Locust Street is functional at its current use as a regional headquarters building for Nationwide. (Tran Vol I p 191 L. 10-13, App. 162).

Mr. Scaletty calculated the external obsolescence at \$46,754,033. (App. 441). Adding this to the depreciated long-lived items gives a total depreciation of \$58,788,199, or 75.5% depreciation. (App. 441). Subtracting total depreciation from the replacement cost new results in a value for the 1200 Locust Street building of \$19.07 million. (App. 441).

Adding the building and land values gives a total value under the cost approach for 1200 Locust Street of \$23.44 million. (Tran Vol I p 193 L. 12-14, App. 164), (App. 441).

The same issues exist with Mr. Scaletty's testimony on 1200 Locust Street as they did for 1100 Locust Street. 1200 Locust Street was not built on a speculative basis. Nationwide chose to expand its corporate campus and received government incentives to help with the construction and as an incentive to create more jobs in the City of Des Moines. (App. 1378-1379). Mr. Scaletty's calculation for external obsolescence on 1200 Locust of 75.5% is not reasonable based on the above analysis for 1100 Locust Street.

Mr. Scaletty's conclusion of value for 1200 Locust Street is questionable. Mr. Scaletty is not valuing 1200 Locust Street at its current use as a single-tenant corporate headquarters building, but is valuing it as a multi-tenant office building to the potential buyer. Mr. Scaletty's conclusions of value for 1200 Locust Street are unreasonable and are not credible and persuasive evidence of value of 1200 Locust Street based on the *Wellmark* decision.

Mr. Vaske used the same four land sales he used in 1100 Locust Street for 1200 Locust Street with the same adjustments.

He concluded an estimated market value for the 1200 Locust Street land at \$50 per square foot. (Tran Vol II p 102 L. 15-17, App.175), (App. 684). Multiplying that by the 79,470 square feet gives a land value of \$3,973,500, rounded to \$3.974 million.

Mr. Vaske testified 1200 Locust Street was built in 2007 and has a chronological age of 10 years and an economic life of 55 years. (Tran Vol II p 102 L. 21-25, p 103 L. 1-2, App. 175-

176). Mr. Vaske testified he performed the same analysis on 1200 Locust Street as he did on 1100 Locust Street and calculated the amount of depreciation for this building by increasing the effective age of this building from 10 years to 34 years to represent the amount of obsolescence from his comparable sales 2 and 8. He then divides 34 years by the 55-year economic life to get 62% depreciation. (Tran Vol II p 103 L. 3-21, App. 176), (App. 692-694).

Mr. Vaske has a replacement cost new of 1200 Locust Street of \$59,622,495. (App. 695). Next, he took his replacement cost new of \$59,622,495 times his 62% depreciation and obtained \$36,965,947 in depreciation attributable to the building. (App. 695). He then subtracted \$36,965,974 from his replacement cost new of \$59,622,495 and got \$22,656,548 for the depreciated value of the building. (App. 695). He then added in the depreciated site improvement value of \$19,000 and gets a total depreciated cost of improvements (1200 Locust building and landscaping) of \$22,675,548. (Tran Vol II p 103 L. 22-25, p 104 L. 1-8, App. 176-177), (App. 695).

Mr. Vaske then added in his land value of \$3,974,000 and arrived at his indicated value under the cost approach for 1200 Locust Street of \$26,649,548 rounded to \$26,650,000. (App. 695).

Mr. Vaske calculated his 62% external obsolescence in the same manner as in 1100 Locust Street and that procedure will not be repeated here. Mr. Vaske is not valuing 1200 Locust Street based on its current use as a single-tenant, owner occupied Corporate Headquarters building as is required in the *Wellmark* case.

Mr. Kenney used the same four vacant land sales for 1200 Locust that he used for 1100 Locust Street to develop a land value for 1200 Locust Street as if they were vacant and ready for development. Those four land sales are located on page 140-141 of Exhibit A. (App. 881-882). All four land sales were located in downtown Des Moines and all were developed for commercial uses. (App. 886).

Mr. Kenney made fewer adjustments to the four land sales for 1200 Locust Street because, at 1.824 acres of land area, it

was more similar in size than 1100 Locust Street. He concluded a land value for 1200 Locust Street of \$3.2 million per acre. 1200 Locust Street has 1.824 acres, which results in a value of \$5,836,800, rounded to \$5.8 million. (App. 886).

Mr. Kenney testified he used the gross business area of both buildings and not the net rental area when calculating the value of the building under the cost approach. He identified 1200 Locust Street as having 371,920 square feet of gross business area. (Tran Vol III p 19 L. 19-25, p 20 L. 1-6, App. 180-181), (App. 887). Mr. Kenney testified he classified 1200 Locust Street as Class A average building when calculating construction costs under the Marshall Valuation Service manual. (Tran Vol III p 20 L. 23-24, App. 181), (App. 888). Mr. Kenney concluded a replacement cost new of 1200 Locust Street of \$58,967,324. (Tran Vol III p 24 L. 6-15, App. 182), (App. 894).

Mr. Kenney used the age life method to calculate physical depreciation for 1200 Locust Street. He divided the effective age of 10 years by the economic life of 55 years to get 18.18% physical depreciation. Multiplying the total depreciation by the

replacement cost new results in a total physical depreciation of \$10,721,332.

Mr. Kenney concluded a functional and external obsolescence for 1200 Locust Street of 22%. Multiplying that by the replacement cost new gives a functional and external obsolescence of \$12,972,811. (App. 894).

Adding the physical depreciation and the functional and external obsolescence gives a total accrued depreciation value of \$23,694,143. When subtracted from the replacement cost new, it results in a total depreciated value of 1200 Locust Street of \$35,273,181. (App. 894).

Mr. Kenney reached his final market value under the cost approach by adding the total depreciated value to the total land value for a value of \$41,073,181, rounded to \$41 million for 1200 Locust Street. (Tran Vol III p 25 L. 8-14, App. 183), (App. 894).

Mr. Kenney gave competent evidence of the market value of 1200 Locust Street under the cost approach and he followed

the law by valuing these properties as single-tenant, corporate headquarters building as is required under the *Wellmark case*.

Mr. Manternach used the same comparable land sales in 1200 Locust Street as he used for 1100 Locust Street. (App.1317).

Mr. Manternach made the same adjustments as he did for 1100 Locust Street and reconciled to \$45 a square foot. (Tran Vol IV p 125 L. 5-15, App. 207), (App. 1319). Mr. Manternach took the 79,470 square feet of land at \$45 per square foot to get a total land value for 1200 Locust Street as of January 1, 2017 of \$3,576,150, rounded to \$3.58 million. (App. 1319).

Mr. Manternach used the Marshall Valuation Service to obtain a base square foot cost for 1200 Locust Street of \$151.00. After adjustments, including local adjustments for Iowa's extreme weather, he arrived at an adjusted cost per square foot of \$147.93. (App. 1321). When multiplied by the gross building area of 371,920 square feet, it results in replacement cost new of \$55,018,126. He added site improvements of \$25,000 for a replacement cost of \$55.04

million. (App. 1321). Mr. Manternach testified that the actual cost to build 1200 Locust Street was \$58.56 million. (Tran Vol IV p 126 L. 4-18, App. 208), (App.1322). He averaged the final value of his calculation and the actual cost for a value of \$56 million. (Tran Vol IV p 126 L. 9-13, App. 208), (App. 1322). He added in soft costs and entrepreneurial profit for a total replacement cost of \$58.8 million. (Tran Vol IV p 126 L. 25 p 127 L. 1-3, App. 208-209), (App. 1323).

Mr. Manternach calculated physical depreciation by the straight-line method. He took the 7-year effective age of 1200 Locust divided by 50-year remaining economic life for 14% physical depreciation. When multiplied by the total replacement cost new, it gives a depreciation total of \$8.232 million. (App. 1323). Subtracting the physical depreciation from the replacement cost new gives a value of \$50.568 million. He calculated functional and external obsolescence by taking \$50.568 million times 20%, which resulted in a total of \$10,113,600. (App. 1323). Adding the physical depreciation value and the physical and external obsolescence results in a

total accrued depreciation of \$18,345,600. (App. 1323). Subtracting that from the replacement cost new gives a total depreciated value for 1200 Locust Street of \$40,454,400 (App. 1323). Adding the land and building values together gives an indicated value of \$44,034,400, rounded to \$44 million. (App. 1323).

Mr. Manternach gave competent evidence of the market value of 1200 Locust Street under the cost approach and he followed the law by valuing these properties as single-tenant, corporate headquarters building as is required under the *Wellmark case*.

The District Court correctly considered the testimony of Bryon Tack before making its final determination. (App. 129).

Mr. Tack has been employed by the Polk County Assessor's Office for 25 years and has been the Director of Commercial Real Estate for the last five years. Mr. Tack has an MAI designation from the Appraisal Institute and holds the highest distinction available of a Certified Assessment Evaluator by the

International Association of Assessment Officers. (Tran Vol. IV p 57 L. 13-25, p 58 L. 1-18, App. 195-196).

Mr. Tack testified 1100 and 1200 Locust Street were valued using mass appraisal techniques. He testified Exhibit S is the Polk County Assessor's Office executive summary of the commercial class revaluation for 2017. There are 8,426 improved parcels in the commercial class for Polk County. (App. 1508). The Polk County Assessor's Office reviewed 118 commercial class property sales transactions occurring from January 1, 2016 to December 31, 2016 in Polk County that satisfied the Iowa Department of Revenue guidelines for the sales ratio study that were considered in the analysis. (Tran Vol IV p 72 L. 4-12, App.____) (App. 1508). He testified the sales ratio study is completed by dividing the assessment for each property by the sales price. The result for the sales ratio study was a median ratio of 91.28%. (Tran Vol IV p 73 L. 18-24, App. __) (App. 1508). The Iowa Department of Revenue requires the median ratio to fall within 95% and 105%. (Tran Vol IV p 73 L. 25, p 74 L. 1-4, App.____). The median ratio of 91.28% showed

the Polk County Assessor's Office that the 8,426 commercial class properties in Polk County were under-assessed. The Polk County Assessor's Office was required to increase the assessments in order to come within the Iowa Department of Revenue's mandatory guidelines, or the State of Iowa would step in and increase the assessments. (Tran Vol IV p 74 L. 5-12, App.____). The Polk County Assessor's Office chose a target median sales ratio of 99%. In order to get all 8,426 commercial class properties into compliance, the Polk County Assessor's Office increased all commercial class properties 8.5%. Choosing a target median sales ratio of 99% rather than 105% meant more of the 8,426 commercial class properties in Polk County would be under-assessed rather than over-assessed. (Tran Vol IV p 76 L. 21-25, p 77 L. 1-14, App.____) (App. 1508).

The Polk County Assessor's Office increased the assessed value of all 8,426 commercial class properties in Polk County by 8.5%. (Tran Vol IV p 80 L. 5-9, App.____).

Mr. Tack testified the assessed value for 1100 Locust Street for January 1, 2015 was \$80.23 million, allocated at

\$7.03 million land value and \$73.2 million building value. (Tran Vol IV p 62 L. 16-22, App. 198), (App. 1363). The January 1, 2017 assessment for the commercial class properties was calculated by taking the 2015 assessment multiplied by .085 or \$6,819,550. That increase was added to the prior year's assessment giving the total of \$87,049,550, rounded to \$87.05 million. (Tran Vol IV p 80 L. 5-9, App.____), (App. 1362-1363).

Mr. Tack testified the assessed value for 1200 Locust Street for January 1, 2015 was \$41.39 million, allocated as \$1.7 million land value and \$39.69 million building value. (Tran Vol IV p 61 L. 8-20, App. 197), (App. 1369). Multiplying the 2015 assessment by .085 resulting in an increase of \$3,518,150. When added to the prior year's assessment, the result was a total of \$44,908,150, rounded to \$44.91 million. (Tran Vol IV p 80 L. 5-9, App.____), (App. 1369).

Mr. Tack testified that once Nationwide appealed the January 1, 2017 assessed value for 1100 and 1200 Locust Street, the Polk County Assessor's Office completed a cost approach on each property as a check to see if the assessed

values were correct or not. (Tran Vol IV p 67 L. 9-12, App. 201). The cost approach was developed using the Iowa Real Property Appraisal Manual and the Marshall and Swift Valuation Service to find the replacement costs for the properties. (Tran Vol IV p 62 L 23-25, p 63 L. 1-15, App. 198-199). The cost report for 1100 Locust Street had a total value of \$121,276,700, allocated as \$8,793,700 land value and \$112,483,000 building value. (Tran Vol IV p 66 L. 14-20, App. 200), (Ex. G, App.____). Mr. Tack testified with their cost approach value at \$121,276,700 and the assessment at only \$87.05 million, it indicated to them the assessed value for 1100 Locust Street was not excessive. (Tran Vol IV p 67 L 13-25, App. 201), (Ex. G, App.____).

The cost report for 1200 Locust Street had a value of \$61,158,500, allocated as \$3,165,300 land value and \$57,993,200 building value. (App. 1373-1374). The cost report value of \$61,158,500 was higher than the assessed value of \$44.91 million, indicating the assessment was not excessive. (App. 1373-1374).

The District Court was correct to consider the minimum assessment agreement mentioned in Exhibit I, which sets the minimum assessed value of 1100 Locust Street at \$78.5 million and of 1200 Locust Street at \$36 million. (App. 1388). The minimum assessment agreement was in effect from 2008 to 2018. The District Court correctly noted that Nationwide did not appeal the property tax assessment for 1100 and 1200 Locust Street in 2015, even though both assessed values were above the minimum assessment agreement. (App. 130).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONCLUDED THE BOARD OF REVIEW PROVIDED COMPETENT EVIDENCE UNDER THE SALES COMPARISON APPROACH IN SUPPORT OF ITS VALUATION OF 1100 AND 1200 LOCUST STREET AS REQUIRED BY *WELLMARK V. BOARD OF REVIEW*.

PRESERVATION OF ERROR

All issues raised in this appeal and in Appellee's argument herein were raised in Appellee's Proposed Findings of Fact and Conclusions of Law and supplemental briefing submitted to the District Court following trial. See App. 043-096 & 107-112.

STANDARD OF REVIEW

Appeals from decisions of a local Board of Review are triable in equity and this Court's review of a tax protest is *de novo*. *Wellmark v. Bd. of Review* 875, N.W.2d 667, 672 (Iowa 2016); *Boekeloo v. Bd. of Review*, 529, NW2d 275, 276 (Iowa 1995). Weight is given to the district court's findings of fact, but this court is not bound by them. *Iowa R. App. P. 6.904(3)(g)*; *Wellmark* at 672.

MERITS

Mr. Kenney and Mr. Manternach are both appraisers with decades of experience and each holds the MAI designation from the Appraisal Institute. Under Iowa Law, the sales comparison approach is the preferred method for determining actual value. *Wellmark*, 875 N.W.2d at 679 (Iowa 2016) and 441.21(1)(b)(1). Mr. Kenney and Mr. Manternach each complied with the statutory scheme for valuation of real estate for purposes of assessing taxes by completing the market value approach, based on "comparable sales of other properties." *Compiano v. Board of Review of Polk County*, 771 N.W.2d 392 at 398 (Iowa

2009). The Iowa Supreme Court has stated its reluctance to exclude evidence offered by appraisers on the ground that the appraisers have not performed competent appraisals or that they have chosen to rely on sales of property that are not comparable. *Homemakers Plaza, Inc. v. Polk County Board of Review*, 828 N.W.2d 326 (Table) 2013 W.L. 105220,*7-*8. (Iowa Ct. App. 2013), an unpublished decision. *Soifer*, 759 N.W.2d at 784. The Iowa Supreme Court prefers that the trial court admit the evidence, but consider whether it complies with the statute, whether it is a uniform and consistent application of an accepted appraisal methodology, or whether it is based upon comparable sales, as part of the analysis and determination of the weight and credibility to be given to the evidence. (*Soifer*, 759 N.W.2d at 784).

If the sales are deemed comparable, then it is within the sound discretion of the trial court to determine if the comparable sales are sufficiently similar, whether adjustments are within the range of reliability, and whether the analysis used by each appraiser is persuasive. *Soifer*, 759 N.W.2d at 783.

Based on the evidence of market value under the sales comparison approach presented at trial by Mr. Kenney and Mr. Manternach and the case law cited above, the Board of Review presented competent evidence of market value for 1100 and 1200 Locust Street in Des Moines, Iowa.

II. THE DISTRICT COURT CORRECTLY CONCLUDED THAT NEITHER NATIONWIDE NOR THE BOARD OF REVIEW PROVIDED CREDIBLE AND PERSUASIVE EVIDENCE OF MARKET VALUE UNDER THE SALES COMPARISON APPROACH.

PRESERVATION OF ERROR

All issues raised in this appeal and in Appellee's argument herein were raised in Appellee's Proposed Findings of Fact and Conclusions of Law and supplemental briefing submitted to the District Court following trial. See App. 043-096 & 107-112.

STANDARD OF REVIEW

Appeals from decisions of a local Board of Review are triable in equity and this Court's review of a tax protest is *de novo*. *Wellmark v. Bd. of Review* 875, N.W.2d 667, 672 (Iowa 2016); *Boekeloo v. Bd. of Review*, 529, NW2d 275, 276 (Iowa 1995). Weight is given to the district court's findings of fact, but

this court is not bound by them. *Iowa R. App. P. 6.904(3)(g)*; *Wellmark* at 672.

MERITS

The burden of proof is on Nationwide to show the assessment is excessive. *Iowa Code Section 441.21(3)(b)*. Nationwide must prove its case by a preponderance of the evidence. *Post-Newsweek Cable, Inc. v. Board of Review of Woodbury County*, 497 N.W.2d 810, 813 (Iowa 1993). Nationwide has a two-fold burden. First, it must prove that the assessment is excessive. If it proves that the assessment is excessive, it must next establish the subject property's correct value. *Boekeloo v. Board of Review of City of Clinton*, 529 N.W.2d 275, 276-277 (Iowa 1995).

However, if Nationwide 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 is on the Board of Review to uphold the valuations. *Iowa Code Section 441.21(3)(b)*. In that case, the appraisals of value by Nationwide and the

appraisals of value by the Board of Review's appraisers should all be considered. The Court must then determine which of the witnesses, and what part of the testimony is more credible and what evidence to give the most weight to in order to establish the assessed value of the property. *Iowa Code Section 441.21(1)(a), 441.21(1)(b)(1). Soifer v. Floyd County Board of Review, 759 N.W.2d 775, 784-786 (Iowa 2009).*

If the sales are deemed comparable, it is within the sound discretion of the trial court to determine if the comparable sales are sufficiently similar, whether adjustments are within the range of reliability, and whether the analysis used by each appraiser is persuasive. *Soifer, 759 N.W.2d at 783.*

The District Court found:

Nationwide produced two disinterested witnesses that indicated the market value of the property was less than the market value determined by the Assessor. The Court finds that Nationwide's appraisers utilized the appropriate methods for valuing property for tax purposes. The Court in making these determinations is not stating that it finds the testimony of Nationwide's appraisers to be more credible than the testimony of Polk County's appraisers. The Court's findings here simply mean that the burden now shifts to Polk County to uphold the assessed value. (App. 128).

Even though the District Court found Nationwide's comparable sales to be "admissible evidence" on the question of value, it does not mean that the District Court found that they are credible. *Soifer*, 759 N.W. 2d at 784. "Factors that bear on the competency of evidence of other sales include, with respect to the property, its size, use, location and character," and with respect to the sale, its nature and timing. *Soifer*, 759 N.W. 2d at 783.

Nationwide's appraisers used single-tenant office buildings as comparable sales that were converted to multi-tenant use after the sale. This is a different current use than 1100 and 1200 Locust Street properties. Nationwide's appraiser Thomas Scaletty's comparable sales 1, 2, and 4 are multi-tenant office buildings with a different current use than 1100 and 1200 Locust Street. Nationwide's appraiser Don Vaske's comparable sales 2 and 10 are multi-tenant office buildings with a different current use than 1100 and 1200 Locust Street. The Iowa Supreme Court in *Soifer* held a different current use

after the sale does “not completely capture the value of properties in their present use.” *Soifer*, 759 N.W.2d at 791.

Nationwide appraisers used comparable sales, which were vacant at the time of sale. Thomas Scaletty's comparable sale 4 was vacant at the time of sale. (Tran Vol I p. 154, L 14-17, App. 156). His comparable sale 5 was vacant at the time of sale. (Tran Vol I p 158 L 20-25, p 159, L 1-9, App. 157-158). Don Vaske originally listed ten comparable sales in his sales comparison approach. He ended up using sales 2, 8, 9 and 10 in his analysis. Comparable sale 9 was vacant for several years before the sale. Vaske's comparable sale 9 is the same as Scaletty's comparable sale 5. 1100 and 1200 Locust Street are owner occupied corporate headquarters buildings and were not vacant as of January 1, 2017. A property does not have to be vacant to be a fee simple sale. The Iowa Court of Appeals recently reaffirmed the requirement to value property based upon its current use and rejected the argument that fee simple valuation requires the property to be valued as though it is vacant. *Lowe's Home Center, LLC v. Iowa Property Assessment Appeal Board*,

___N.W.2d___, (Iowa Ct. of App. Feb. 17, 2021) 2021 WL 610105. In so doing, the Iowa Court of Appeals noted that Lowe's appraisal was "less persuasive for not adequately adjusting the property's valuation based on its present use or current conditions." *Lowe's*, at p. 11. The Iowa Court of Appeals further stated that the "use of multi-tenant or deed-restricted comparables that differed from Lowe's current single-tenant retail use, the decision not to, at minimum, estimate the subject's land value, and failing to make adjustments for post-sale expenditures in the comparable-sales approach" all supported the decision to reject Lowe's appraisal. *Id.*

Without adjustments, Lowe's "comparable sales prices essentially reflect the value of vacant buildings potentially in need of remodeling for retail use." *Id.* As such, they "do not reflect the current use of the subject property." *Id.* Mr. Scaletty was unaware of the amount of post-sale expenditures made by the buyer of comparable sale 5 to remodel this building for the buyer's use. (Tran Vol I p 162, L 19-21, p 163, L 1-18, App. 159-160). "A difference in use does affect the persuasiveness of such

evidence because as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced." *Hy-Vee v. Dallas County Bd. of Review*, 856 N.W.2d 383 (IA Ct of App. October 1 2014) *quoting Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 93 (Iowa 1977).

In addition, the appraisers for Nationwide selected comparable sales that were smaller than both 1100 Locust Street and 1200 Locust Street. The comparable sales were not built to suit for their current occupants like 1100 and 1200 Locust Street and are second-generation properties. Only a few are located in the Western Gateway of the Central Business District of Des Moines and quite frankly do not look like 1100 and 1200 Locust Street. "As differences increase the weight to be given the sales price of the other property must of course be correspondingly reduced." *Soifer*, 759 N.W.2d at 785.

Nationwide's appraisers opined a market value for 1100 and 1200 Locust Street that was half of the assessed value for each property and considerably lower than the minimum

assessment amounts previously agreed to by Nationwide. Nationwide's appraisers did not provide credible and persuasive evidence of market value for 1100 and 1200 Locust Street under the sales comparison approach.

Board of Review appraiser Mark Kenney chose six comparable sales from a national market for his sales comparison approach. All six sales were of single tenant corporate headquarters buildings with the same current use as 1100 and 1200 Locust Street. "Due to the subject's construction quality, condition, size and single-tenant nature, recent sales transactions in the national market have been researched and analyzed, with appropriate consideration being made for dissimilarities." (App. 845).

All six comparable sales are located in bigger markets than the Central Business District of Des Moines. 1100 Locust Street has 765,674 square feet and 1200 Locust Street has 371,920 square feet. The Wellmark building, the subject of the Iowa Supreme Court case *Wellmark v. The Polk County Board of Review*, 875 N.W.2d 667 (Iowa 2016), has 599,880 square feet.

Three of the sales have more square feet than 1100 Locust Street and three have less. All six sales comparables have more square feet than 1200 Locust Street. In, addition, all six of Mr. Kenney's comparable sales were occupied and not vacant at the time of sale. Mr. Kenney testified he gave his sales comparison approach less weight because of the larger markets where these six comparable sales are located. (Tran Vol. III p 26 L. 7-13, App. 184).

Board of Review appraiser Russ Manternach selected four comparable sales for his sales comparison approach. All four of his comparable sales were located in the State of Iowa. Two of his comparable sales were located in the Western Gateway section of the Central Business District of Des Moines, like 1100 and 1200 Locust Street. Sale 3 was located in Cedar Rapids, Iowa and sale 4 in Johnston, Iowa. The same four sales were used in his appraisal for 1200 Locust Street.

Comparable sales 1, 2, and 3 are multi-tenant office buildings with a different current use than the subject property. Sale 4 is a built to suit, single tenant office building leased to

Dupont Pioneer. All four comparable sales were occupied and not vacant at the time of sale. Mr. Manternach made the proper adjustments to his comparable sales.

Neither Nationwide nor the Polk County Board of Review offered credible or persuasive evidence of market value when using the sales comparison approach. Based on the previous analysis and the holding of the *Wellmark* case, the District Court was correct to resort to the other factors approach to establish market value for 1100 and 1200 Locust Street.

III. THE DISTRICT COURT CORRECTLY CONCLUDED THE POLK COUNTY BOARD OF REVIEW OFFERED COMPETENT, CREDIBLE AND PERSUASIVE EVIDENCE OF MARKET VALUE UNDER THE COST APPROACH.

PRESERVATION OF ERROR

All issues raised in this appeal and in Appellee's argument herein were raised in Appellee's Proposed Findings of Fact and Conclusions of Law and supplemental briefing submitted to the District Court following trial. See App. 043-096 & 107-112.

STANDARD OF REVIEW

Appeals from decisions of a local Board of Review are triable in equity and this Court's review of a tax protest is *de novo*. *Wellmark v. Bd. of Review* 875, N.W.2d 667, 672 (Iowa 2016); *Boekeloo v. Bd. of Review*, 529, NW2d 275, 276 (Iowa 1995). Weight is given to the district court's findings of fact, but this court is not bound by them. *Iowa R. App. P. 6.904(3)(g)*; *Wellmark* at 672.

MERITS

Iowa law allows the use of an "other factors" approach when the market value cannot be readily established using the sales comparison approach like in this case. Iowa Code Section 441.21(2).

The Iowa Supreme Court in the *Wellmark* case held, "We conclude that in this case, the value of the building simply could not be readily established by a comparable sales analysis." *Wellmark*, 875 N.W.2d 667 at 682. The appraisers had "to make substantial adjustments to their comparable sales to support their analysis." *Id.* at 682.

All four appraisers used the Marshall and Swift Valuation Service material to calculate the replacement cost new of 1100 and 1200 Locust Street. The fighting issue between the appraisers for Nationwide and the appraisers for the Board of Review under the cost approach is how they calculated functional and external obsolescence.

Nationwide's appraisers opined that 1100 and 1200 Locust Street each suffered from functional and external obsolescence. Mr. Scaletty considered 1100 Locust Street to suffer from external obsolescence because "the demand for this type of property is inadequate to justify the \$175 million construction price." (Transcript Vol I. p 126 L. 16-23, App. 155). In addition, he stated, that current development of a single-tenant retail building is not feasible on a purely speculative basis." (App. 284). He calculated a total depreciation value for 1100 Locust Street of 82.5% or \$145,168,992. (App. 285).

He found 1200 Locust Street suffered from functional and external obsolescence for the same reason as in 1100 Locust Street and calculated 75.5% depreciation. (App. 441).

Mr. Vaske testified 1100 Locust Street had depreciated 67% from external obsolescence. (App. 599). He believes the market rents do not appear to support the level of costs associated with the subject's design and construction quality. There is a limited number of potential users requiring office properties the scale/size of the subject in this market. (App. 597).

He depreciated 1200 Locust Street 62% for external obsolescence for the same reasons stated above. (App. 692-694).

The *Wellmark* decision requires Mr. Vaske and Mr. Scaletty to value 1100 and 1200 Locust Street at their current use as single-tenant, owner occupied, corporate headquarters buildings. They are to assume a hypothetical buyer at its current use. They depreciated 1100 Locust and 1200 Locust Street at unreasonable amounts based on their beliefs no market exists for single-tenant properties the size and quality of these two buildings. Mr. Vaske and Mr. Scaletty are valuing 1100 and 1200 Locust Street based on their assumptions these

properties would sell as multi-tenant property, which is a different use than the current use. *Wellmark*, 875 N.W.2d 667 at 683.

The Board of Review appraisers opined that 1100 and 1200 Locust Street suffered from functional and external obsolescence, but valuing these buildings at their current use as corporate headquarters buildings arrived at numbers much smaller than Nationwide's appraisers.

Mark Kenney used the Marshall and Swift Valuation Services Manual to arrive at a functional and external obsolescence for 1100 and 1200 Locust Street of 22%. (App. 894). This equates to \$36,313,347 in functional and external obsolescence for 1100 Locust and \$12,972,811 in functional and external obsolescence for 1200 Locust Street. (App. 894).

Mr. Manternach found functional and external obsolescence to exist at 1100 and 1200 Locust Street due to the large size of these single-tenant corporate headquarters buildings, but only found it represented 25% for 1100 Locust Street and 20% for 1200 Locust Street. He also subtracted

physical depreciation from 1100 and 1200 Locust Street before calculating functional and external obsolescence so as not to artificially inflate the amounts for functional and external obsolescence.

Mr. Kenney and Mr. Manternach calculated functional and external obsolescence based on the current use of 1100 and 1200 Locust Street as single-tenant, owner-occupied corporate headquarters buildings as is required by the *Wellmark* decision. They did not use inflated functional and external obsolescence to reflect a lack of market for these exceptionally large and distinct corporate headquarters buildings like Nationwide's appraisers. Mr. Manternach was the only appraiser who subtracted physical depreciation from the replacement cost new amount before calculating functional and external obsolescence.

The corporate headquarters building located at 1100 Locust Street has a total assessed value as of January 1, 2017 of \$87.05 million, allocated as \$8,793,700 land value and \$78,256,300 building value. (App. 1362).

Mr. Kenney, when adding in a land value of 8.9 million, arrived at an indicated value for 1100 Locust Street of \$99 million under the cost approach, which is more than the January 1, 2017 assessed value of \$87.05 million. Mr. Manternach, when adding in land value of \$7.91 million, arrived at an indicated value of \$86.1 million under the cost approach, which is slightly below the January 1, 2017 assessed value of \$87.05 million.

The corporate headquarters building located at 1200 Locust Street has a total assessed value as of January 1, 2017 of \$44.91 million, allocated as \$3,165,300 land value and \$41,744,700 building value. (App. 1369).

Mr. Kenney, when adding in a land value of \$5.8 million, arrived at an indicated value for 1200 Locust Street of \$41 million, which is slightly below the January 1, 2017 assessed value of \$44.91 million. Mr. Manternach, when adding in a land value of \$3.58 million, arrived at an indicated value \$44 million, also slightly below the January 1, 2017 assessed value of \$44.91 million.

The District Court was correct to consider Polk County's appraisals and supporting exhibits before reaching a conclusion in this case. (App. 130-131).

Some of those supporting exhibits are as follows:

The minimum assessment agreement set the minimum actual value for 1100 Locust Street at \$78.5 million and the minimum actual value for 1200 Locust Street at \$36 million. The minimum assessment agreement was in effect for this 2017 and 2018 property tax assessment appeal. (App. 1494-1496).

The 2015 assessed value for 1100 Locust Street was \$80,230,000. (App. 223).

The 2015 assessed value for 1200 Locust Street was \$41,390,000. (App. 229).

Thus, both 1100 and 1200 Locust Street were assigned higher assessed values in 2015 than the minimum actual values in the Minimum Assessment Agreement. (App.1494-1496), (App. 223) & (App. 229). Witness testimony at trial

confirmed Nationwide did not appeal the 2015 assessed values for 1100 and 1200 Locust Street.

Witness testimony at trial also affirmed Nationwide spent millions of dollars in 2015 and 2016 in renovations to maintain and improve its buildings. Board of Review's Exhibit V details the substantial costs Nationwide incurred associated with these building improvements and Nationwide's Exhibit 1, p. 5, and Exhibit 4, p. 4, also detail the various building permits issued to Nationwide in 2015 and 2016. "In determining actual value of building for tax purposes, an important factor on the issue of depreciation chargeable against building is the repair and maintenance of building and care it has received." *Clark v. Lucas County Board of Review*, 44 N.W.2d 748, 755 (Iowa 1950).

Nationwide's appraisers, Thomas Scaletty and Don Vaske, also verified the land values for the 1100 and 1200 Locust Street substantially increased from 2015 to 2017. (See their respective appraisals and Nationwide's exhibits 1 and 4. (App. 1514). (App. 222) and (App. 228).

Prior valuations have no binding effect on courts or officers in making subsequent valuations, but the value of property in one year is competent and persuasive evidence of value in a subsequent year. 16 *Eugene McQuillin, the Law of Municipal Corporations*, Section 44:148-"Valuation generally-Prior valuations" (3rd Ed. July 2019 update); cited in *Metropolitan Jacobson Development Venture v. Board of Review of City of Des Moines*, 524 N.W.2d 189,192 (Iowa 1994)(It is presumed that a valuation fixed by the courts continues to be the true value of the property in subsequent years unless a change of value is shown).

The 2015 assessed values for 1100 and 1200 Locust Street should be considered competent and persuasive evidence by the Court in this case. The evidence presented at trial regarding the change of value between January 1, 2015 and January 1, 2017 involved the improvements to 1100 and 1200 Locust Street, through renovations and maintenance, the continued development of the Western Gateway area in downtown Des Moines with the addition of more corporate office buildings, and

the sales ratio study completed and mass appraisal methodology performed by the Polk County Assessor's Office. All of this relevant evidence indicated increases in the land and building valuations were justified based upon what occurred in 2015 and 2016.

CONCLUSION

Based on all of the above, the District Court was correct when it found:

"Polk County's evidence is competent, more credible, and supports the assessed values for 1100 and 1200 Locust Street as of January 1, 2017. Under the cost approach, this Court finds Polk County's appraisers have provided competent evidence of the assessed values of 1100 and 1200 Locust Street. The Court finds that the Polk County's appraisals and supporting exhibits contain a reasonable range of values. Based on such, the Court concludes Polk County's evidence proves by a preponderance of the evidence that 1100 and 1200 Locust Street are not over-assessed." (App. 130-131).

The Polk County Board of Review respectfully requests the Iowa Supreme Court affirm the decision of the District Court and find the January 1, 2017 assessment of 1100 Locust Street of \$87,050,000 and the January 1, 2017 assessment of 1200

Locust Street of \$44,910,000 to represent the market values of the properties.

REQUEST FOR ORAL SUBMISSION

In accordance with Iowa Rule of Appellate Procedure 6.908(1), Appellee/Polk County Board of Review hereby requests the Court submit this matter following oral argument.

Dated this 9th day of March, 2021.

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on March 9, 2021, I electronically filed this Final Brief in accordance with Chapter 16 of the Iowa Rules of Court, which will be electronically served on the attorney of record.

/s/ Amber Cahill_____

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Proof Brief complies with the type-volume limitation, typeface, and the type-style requirements of Iowa Rule of Appellate Procedure 6.903. This Proof Brief was prepared in Microsoft Word using Bookman Old Style font, size 14. The number of words is 13,079, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

Date: March 9, 2021

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