

IN THE SUPREME COURT OF IOWA
Appeal No. 20-1290
Polk County Case No. CVCV054470

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

DEFENDANT-APPELLEE POLK COUNTY BOARD OF REVIEW'S
APPLICATION FOR FURTHER REVIEW OF IOWA
COURT OF APPEALS DECISION (FILED FEBRUARY 16, 2022)

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT-
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BOARD OF REVIEW**

QUESTIONS PRESENTED FOR REVIEW

Defendant-Appellee Polk County Board of Review submits the following questions presented for review in accordance with Iowa Rule of Appellate Procedure 6.1103 on the following two grounds: (1) The Iowa Court of Appeals has entered a decision in conflict with prior decisions of this Court and the Court of Appeals on an important matter (Iowa R. App. P. 6.1103(1)(b)(1)); and (2) The case presents an issue of broad public importance that the Iowa Supreme Court should ultimately determine. (Iowa R. App. P. 6.1103(1)(b)(4)).

Question No. 1: Did the Iowa Court of Appeals rule in conflict with forty (40) years of Iowa Supreme Court decisions (See *Compiano v. Bd. of Review of Polk Co.*, 771 N.W.2d 392 (Iowa 2009); *Soifer v. Floyd Co. Bd. of Review*, 759 N.W.2d 775 (Iowa 2009); *Ruan Center Corp. v. Bd. of Review of the City of Des Moines*, 297 N.W.2d 538 (Iowa 1980); *Equitable Life Ins. Co. v. Bd. of Review of the City of Des Moines*, 281 N.W.2d 821 (Iowa 1979); and *Heritage Cablevision v. Bd. of Review of City of Mason City*, 457 N.W.2d 594 (Iowa 1990)), and the Court of Appeals' own prior decisions in *Kohl's Dept. Stores, Inc. v. Bd. of Review of Dallas Co.*, 895 N.W.2d 486, 2016 WL 7403722 (Iowa App. 2016) and *Dowden v. Dickinson Co. Bd. of Review*, 338 N.W.2d 719 (Iowa App. 1983), on the issue of the competency of expert witnesses in property tax assessment appeals? In particular, did the Iowa Court of Appeals err in finding the testimonies of the Polk County Board of Review's expert witnesses not competent, even though they used the sales comparison approach in combination with other uniform and recognized appraisal methods (the cost and income approaches) to establish their market value opinions?

Question No. 2: Did the Iowa Court of Appeals err by finding that Iowa's statutory scheme for the valuation of property requires reliance upon

the sales comparison approach, even though all of the experts in this case decided it was necessary to complete, consider, and give degrees of weight to other valuation methods, namely the income and cost approaches to value?

Question No. 3: If all of the expert witnesses were competent by completing and analyzing all three uniform and recognized appraisal methods, did the Iowa Court of Appeals rule in conflict with the Iowa Supreme Court's decision in *Wellmark, Inc. v. Polk Co. Bd. of Review*, 875 N.W.2d 667 (Iowa 2016) by not addressing the burden of persuasion, the credibility of the expert witnesses, or giving any deference to the trial court's assessment of witness credibility?

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STATEMENT SUPPORTING FURTHER REVIEW

This matter involves the property tax assessment appeal of the Nationwide properties located at 1100 and 1200 Locust Street in downtown Des Moines for the 2017 and 2018 tax years. The Polk County District Court trial of this matter occurred in person on February 18-20, 2020. On September 22, 2020, District Court Judge Paul D. Scott issued his ruling, affirming the \$87,050,000 assessed value for 1100 Locust Street and the \$44,910,000 assessed value for 1200 Locust Street, as of the January 1, 2017, two-year tax assessment cycle. (Amend. App. 0113-0132). Judge Scott found Nationwide produced two competent, disinterested expert witnesses who utilized the appropriate appraisal methods for valuing property for tax assessment purposes. (Amend. App. 0128). Judge Scott also explained his determination Nationwide's appraisal experts were competent and disinterested simply shifted the burden to the Polk County Board of Review to uphold the assessment value. (Amend. App. 0128). Ultimately, in terms of satisfying the burden of persuasion, Judge Scott found the Board of Review's expert witnesses competent and more credible than Nationwide's experts. (Amend. App. 0130).

The Iowa Court of Appeals, in its February 16, 2022, decision,

adopted the District Court's finding Nationwide produced two competent, disinterested expert witnesses. (Court of Appeals' Decision, p. 8). The Iowa Court of Appeals then refused to adopt the District Court's finding the Polk County Board of Review also produced two competent expert witnesses. (Court of Appeals' Decision, p. 12). The Court of Appeals decided the Board of Review's experts were not competent because they did not follow Iowa's statutory scheme for property valuation. (Court of Appeals' Decision, p. 12).

The competency of appraisers as expert witnesses in property tax assessment appeals is a matter of great public importance. If the Court of Appeals ruling in this case is allowed to stand, then it may result in significant reductions in the valuation of all commercial properties in the State of Iowa, and thereby substantially reduce commercial property tax revenue, which would negatively affect the abilities of local governments to provide essential services. For commercial properties involving corporate headquarters buildings in downtown Des Moines, this could mean millions of dollars of lost property tax revenue if courts decide assessment appeals based solely upon the competency of equally qualified appraisers, rather than analyzing witness credibility and determining which party satisfied the

burden of persuasion, even when each of the appraisers completed and considered all three uniform and recognized appraisal methods (sales comparison, cost, and income approaches to value).

All four experts in this case utilized all three approaches to property valuation in their respective appraisals, as shown on the chart included below. No expert in this case relied solely upon the sales comparison approach, which indicates there was a consensus among all of the appraisers the sales comparison data was insufficient to be relied upon as the sole basis for valuation. Thomas Scaletty (Scaletty) and Don Vaske (Vaske) were Nationwide's experts while the Polk County Board of Review retained Mark Kenney (Kenney) and Russ Manternach (Manternach) as its experts.

1100 LOCUST STREET

Assessed Value \$87,050,000 (\$8,793,700 land and \$78,256,300 building)

APPRAISER	COST APPROACH	SALES COMPARISON APPROACH	INCOME APPROACH	RECONCILIATION FINAL VALUE
Russ Manternach	\$86,100,000.00 ¹	\$81,300,000.00	\$82,100,000.00	\$82,100,000.00
Mark Kenney	\$99,000,000.00	\$107,000,000.00	\$80,000,000.00	\$94,000,000.00
Don Vaske	\$54,388,000.00	\$48,237,000.00	\$48,117,000.00	\$49,000,000.00
Thomas Scaletty	\$39,470,000.00	\$39,390,000.00	\$39,550,000.00	\$39,450,000.00

¹ Manternach explained at trial that his cost approach value for 1100 Locust Street was actually \$86,100,000 instead of \$89,300,000. (Defendant's Exhibit Z, Amend. App. 1515-1517).

1200 LOCUST STREET

Assessed Value \$44,910,000 (\$3,165,300 land and \$41,910,000 building)

APPRAISER	COST APPROACH	SALES COMPARISON APPROACH	INCOME APPROACH	RECONCILIATION FINAL VALUE
Russ Manternach	\$44,000,000.00	\$42,800,000.00	\$42,900,000.00	\$43,000,000.00
Mark Kenney	\$41,000,000.00	\$63,000,000.00	\$55,000,000.00	\$47,000,000.00
Don Vaske	\$26,650,000.00	\$26,034,000.00	\$25,134,000.00	\$26,000,000.00
Thomas Scaletty	\$23,440,000.00	\$22,640,000.00	\$24,240,000.00	\$23,280,000.00

Scaletty's reconciled final value for Nationwide's properties at 1100 and 1200 Locust Street is closest in proximity to his cost approach value in both instances. Vaske clearly gave some weight to the cost approach in his valuation of the 1100 Locust Street property because his reconciled final value is higher than both his sales comparison and income approach values. While Kenney gave considerable weight to the cost approach in his valuation, his reconciled final value reflects he gave the sales comparison and income approaches consideration as well. Manternach relied primarily upon the sales comparison and income approaches to value for 1100 Locust Street and all three approaches to value for 1200 Locust Street, which is confirmed by his reconciled final values in the above-referenced chart.

Scaletty stated in his appraisal report he gave considerable weight to both the sales comparison and income approaches to value for 1100 Locust Street. (Amended App. 0324, Exh. 7, p. 91). Scaletty further explained he gave 60% weight to the sales comparison approach and 40% weight to the income approach for 1100 Locust Street. (Amended App. 0325, Exh. 7, p. 92). Vaske explained in his appraisal report how he gave consideration to all three approaches to value for 1100 Locust Street. (Amended App. 0627, Exh. 9, p. 89). Kenney also detailed in his appraisal report how he gave consideration to all three approaches to value for 1100 Locust Street (Amended App. 0895, Exh. A, p. 153). Manternach stated in his appraisal report he gave primary consideration to the sales comparison and income approaches to value for 1100 Locust Street. (Amended App. 1242, Exh. B, p. 78).

Using 1100 Locust Street as an example, how could the Court of Appeals have decided Scaletty and Vaske were competent, yet Kenney and Manternach were not? When all four of these experts each have virtually the same qualifications to appraise property (MAI designations from the Appraisal Institute), and each of them believes it was necessary to complete all three approaches to value the Nationwide properties, this is not a question

of whether the appraisers are competent. It is a question of witness credibility and which appraisals are more persuasive based upon how each appraiser completed, considered, and utilized the three recognized appraisal methods.

BRIEF

1. Kenney and Manternach Must Be Considered Competent Expert Witnesses According to Previous Iowa Court Decisions.

The Iowa Court of Appeals erred in deciding that the Polk County Board of Review's experts did not present competent evidence of the value of Nationwide's properties, finding that the Board of Review's experts did not follow the statutory scheme for the valuation of the two properties. Evidence is competent under the statute (Iowa Code Section 441.21) when it complies with the statutory scheme for property valuation for tax assessment purposes. *Compiano v. Bd. of Review of Polk Co.*, 771 N.W.2d 392, 398 (Iowa 2009). In *Soifer v. Floyd Co. Bd. of Review*, 759 N.W.2d 775 (Iowa 2009), the Iowa Supreme Court explained, "A requirement that evidence be competent does not mean that it must be credible." *Id.* at 784. "Where the properties are reasonably similar, and a qualified expert states an opinion that they are sufficiently comparable for appraisal purposes, it is better to leave the dissimilarities to examination and cross-examination than to

exclude the testimony altogether.” *Id.* “The mere fact that sales might be considered comparable, however, did not necessarily mean that valuation based on them was credible.” *Id.* The *Soifer* Court continued, “Consequently, in determining whether the Soifers offered competent testimony from two disinterested witnesses, we examine whether this evidence was admissible on the question of value, not whether we find it persuasive.” *Id.*

In *Ruan Center Corp. v. Bd. of Review of the City of Des Moines*, 297 N.W.2d 538, 540 (Iowa 1980), the Iowa Supreme Court found both of the taxpayer’s expert witnesses were competent because both witnesses used more than one approach to value in arriving at their valuations. One of the taxpayer’s experts relied upon the income approach to value and used the sales comparison approach primarily as a check on the results of the income approach. The Iowa Supreme Court explained, “While the (expert’s) testimony might reduce the weight a court should give to the (expert’s) valuation under the market data (sales comparison) method, we cannot conclude that it must be ignored.” *Id.* at 540. “The (expert’s) testimony was competent because he used more than one factor in determining value.” *Id.* In the *Ruan* case, the Iowa Supreme Court also found the taxpayer’s second

expert witness to be competent as well. The second expert used both the income and cost approaches to arrive at his valuation and the manner in which the expert computed his cost method was tied to his results under the income method. Consistent with how the Iowa Supreme Court handled the taxpayer's first expert, the Court found the second expert competent and that Ruan had produced two disinterested witnesses who offered competent evidence to shift the burden of proof to the Board of Review to uphold its valuation. *Id.*

In *Kohl's Dept. Stores, Inc. v. Bd. of Review of Dallas Co.*, 895 N.W.2d 486, 2016 WL 7403722 (Iowa App. 2016), the District Court found Kohl's first expert appraiser incompetent for not making proper adjustments between his comparable sales and the subject property. In the *Kohl's* case, the Iowa Court of Appeals determined this appraiser used the sales comparison approach to value the property as required by Iowa law and, therefore, the appraiser followed Iowa's statutory scheme. The Iowa Court of Appeals concluded Kohl's appraiser's methodology was consistent with generally accepted appraisal methodology and was not grounds to find the appraiser's testimony and report incompetent. The Iowa Court of Appeals also found Kohl's second expert appraiser competent even though he used

the sales comparison approach and other approaches to value the Kohl's store, determining the appropriateness of the second appraiser's analysis goes to the persuasiveness of the ultimate valuation figures rather than witness competency.

In *Dowden v. Dickinson Co. Bd. of Review*, 338 N.W.2d 719, 723 (Iowa App. 1983), the Iowa Court of Appeals determined Dowden's experts were incompetent because they did not complete the sales comparison approach and only completed the income and cost approaches to value. Dowden's experts relied solely upon the income method to reach their final property valuations. The *Dowden* case is distinguishable from the case at hand. Each of the appraisers in the case in question completed all three approaches to value, including the sales comparison approach, and none of them solely relied upon one particular approach to value.

2. The Use and Consideration of the Income and Cost Approaches to Value by the Parties' Appraisers Confirms the Sales Comparison Approach Was Not Reliable by Itself to Value the Nationwide Properties.

The Iowa Supreme Court has previously recognized the importance of utilizing and weighing all three approaches to value in appraisal methodology as a "checks and balances" method, particularly in situations

where appraisers are not comfortable enough with the sales comparison approach to rely upon it by itself. The Iowa Supreme Court has understood it is implied the sales comparison approach has some degree of uncertainty in the valuation process when the appraisers decide to give weight to other approaches.

In *Equitable Life Ins. Co. v. Bd. of Review of City of Des Moines*, 281 N.W.2d 821, 825 (Iowa 1979), the Iowa Supreme Court reviewed a property tax assessment appeal in which the parties retained a total of six appraisers and each of the six appraisers used the sales comparison, income, and cost approaches to value in some degree. The Court decided, “Implicit in this evidence is an assumption by the parties that market value for the property could not readily be established through the ‘sales prices’ approach alone, but had to be determined by use of the ‘other factors’ approach. We believe this assumption was warranted.” *Id.* In the *Equitable Life Ins. Co.* case, the Court added, “When the other factors approach is used it is not necessary that sufficient sales price data be available upon which to determine market value by use of that method alone.” *Id.* “The other factors approach presupposes that the sales price data is insufficient to be relied upon as the sole basis of valuation.” *Id.*

The Iowa Supreme Court in the *Equitable Life Ins. Co.* case further recognized that, “Even though the statute (Iowa Code Section 441.21) prescribes the method which must be employed by the taxpayer to trigger the shift in the burden of proof, it does not dictate any particular technique which must be used by the assessor to carry the burden when it has shifted to the assessor.” *Id.* at 824. Iowa Code Section 441.21(3)(b)(2) provides:

For assessment years beginning before January 1, 2018, 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.

Because Iowa Code Section 441.21 does not require the Polk County Board of Review to present two disinterested witnesses, it is possible for the Board of Review to carry its burden with competent evidence from either one or two disinterested witnesses, as long as the Board of Review’s evidence is more credible and persuasive.

The Iowa Supreme Court re-affirmed its position taken in the *Equitable Life Ins. Co.* case in *Heritage Cablevision v. Bd. of Review of City*

of *Mason City*, 457 N.W.2d 594 (Iowa 1990) regarding the use of multiple approaches to value in a property tax assessment appeal and that courts should accept all of the evidence and then decide which evidence is most reliable. In *Heritage Cablevision*, the Iowa Supreme Court stated, “The advantage of using multiple appraisal techniques lies primarily in those instances where the differing techniques lead to similar conclusions concerning market value and therefore tend to support each other.” *Id.* at 598. “A trier of fact deciding a (property tax assessment) appeal may be better served in such situations by accepting that evidence which it finds to be most reliable and rejecting that which is determined to be unreliable.” *Id.*

3. The Iowa Court of Appeals Failed to Comply with Existing Iowa Law by Not Considering Admissible Evidence and Thereby Never Determined Which Evidence Was More Credible and Persuasive.

The Iowa Court of Appeals should have admitted all of the parties’ expert testimonies and appraisal reports into evidence. Failing to do so caused the Court of Appeals to never reach the merits of this property tax assessment appeal and determine which appraiser(s) were most convincing. The District Court found the Polk County Board of Review’s appraisers competent and more credible than Nationwide’s appraisers following trial after recognizing that all four appraisers in this case determined it was

necessary to complete all three approaches to value and gave varying degrees of weight to each approach.

Because of the Court of Appeals' erroneous decision to find both Kenney and Manternach not competent, we are left with an appellate ruling where no presented evidence was found credible or persuasive. The Polk County Board of Review conceded Nationwide's appraisers were competent because that is what previous Iowa case law contemplated in terms of admissible evidence from qualified experts in property tax assessment appeals. The Board of Review never conceded Nationwide's appraisers were credible or persuasive and the District Court found they were neither credible nor persuasive. The Iowa Court of Appeals should have decided whether to give deference to the District Court's witness credibility findings given all of the evidence presented in this property tax assessment appeal. The Iowa Supreme Court has held the appellate courts should be "especially deferential to the trial court's assessment of the credibility of witnesses." *Wellmark, Inc. v. Polk Co. Bd. of Review*, 875 N.W.2d 667, 672 (Iowa 2016).

CONCLUSION

For all of the above-stated reasons, it is important for the Iowa Supreme Court to accept this application for further review. The Iowa Supreme Court needs to further address the competency of expert witnesses in property tax assessment appeals, particularly when the experts utilize the sales comparison approach to value, but do not solely rely upon it as they choose to complete and consider all three recognized appraisal approaches to reach a final reconciliation value.

The Defendant-Appellee Polk County Board of Review respectfully requests this Court to reverse the Court of Appeals' decision and affirm the District Court's decision.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATIONS FOR
APPLICATIONS**

This Application complies with the typeface requirements and type-volume limitations of Iowa R. App. P. 6.1103(4) because this Application has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size and contains 3,143 words, excluding the parts of the Application exempted by the cited rule.

/s/ Jason Wittgraf
Jason Wittgraf

March 7, 2022
Date

CERTIFICATE OF FILING AND SERVICE

The undersigned certified that on March 7, 2022, this Application for Further Review of the Defendant-Appellee was filed electronically with the Clerk of the Iowa Supreme Court through EDMS, which system provides access to and service of the Application to:

Sean P. Moore
Brown Winick, PLC
666 Grand Ave., Suite 2000
Des Moines, IA 50309

**ATTORNEYS FOR PLAINTIFF-APPELLANT
NATIONWIDE MUTUAL INSURANCE COMPANY**

/s/ Jason Wittgraf

IN THE COURT OF APPEALS OF IOWA

No. 20-1290
Filed February 16, 2022

NATIONWIDE MUTUAL INSURANCE COMPANY,
Plaintiff-Appellant,

vs.

POLK COUNTY BOARD OF REVIEW,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge.

Plaintiff appeals the assessment for tax purposes of its property by the Polk County Board of Review. **REVERSED.**

Sean Moore of Brown, Winick, Graves, Gross and Baskerville, P.L.C., Des Moines, for appellant.

Mark Taylor and Jason Wittgraf, Assistant Polk County Attorneys, Des Moines, for appellee.

Heard by Schumacher, P.J., Ahlers, J., and Mullins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2022).

SCHUMACHER, Presiding Judge.

In this appeal, we are called upon to determine whether the valuation of two structures located in downtown Des Moines comports with Iowa Code section 441.21 (2017) and the supreme court's decision in *Wellmark, Inc. v. Polk County Board of Review*, 875 N.W.2d 667 (Iowa 2016).

Nationwide Mutual Insurance Co. (Nationwide) appeals the assessment for tax purposes of its property by the Polk County Board of Review (Board). The district court affirmed the Board's valuation. Nationwide presented evidence from two disinterested witnesses to support its claim that the actual value of the property was less than the assessed value, and the burden then shifted to the Board to uphold the assessment. The Board's experts did not rely on the sales approach to value the property. The district court did not address whether the fair market value of the property could be readily established by looking at comparable sales. Nationwide entered into a minimum assessment agreement that established the minimum actual value of the property and we determine this amount is the tax assessment value for the property. We reverse the decision of the district court.

I. Background Facts & Proceedings

Nationwide owns buildings at 1100 Locust Street and 1200 Locust Street in Des Moines. These buildings are used as the company's headquarters. In 2006, Nationwide entered into an Urban Renewal Development Agreement with the Des Moines City Council, which provided Nationwide would receive \$28 million in economic incentives to increase the size of the buildings. The agreement called for a minimum assessed value of \$78.5 million for 1100 Locust Street and \$36 million for 1200 Locust Street for a period of ten years.

The agreement, signed by Nationwide on August 27, 2007, stated:

Nothing herein shall be deemed to waive Nationwide's rights under Iowa Code section 403.6(19) [2007], as amended, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Values established herein. In no event, however, shall Nationwide seek to reduce the actual value assigned below the Minimum Actual Values established herein during the term of the Agreement.

The building at 1100 Locust Street has seven stories with 798,696 square feet. It is a single-tenant, built-to-suit, owner-occupied building. Part of the building was built in 2002 and the remainder in 2006. It was remodeled between 2011 and 2016. The building contains office areas, conference rooms, a cafeteria, and a fitness center.

The building at 1200 Locust Street is a part five-story, part four-story building, with 371,920 square feet. This building is also single tenant, built to suit, and owner occupied. It was built in 2007 and remodeled between 2013 and 2015. The building contains office areas, conference rooms, and a dining area.

The minimum assessment agreement was in effect for the 2017 and 2018 tax years.¹ For those years, the Polk County Assessor increased the valuation of 1100 Locust Street from \$80,230,000 to \$87,050,000 and the valuation of 1200 Locust Street from \$41,390,000 to \$44,910,000. Nationwide contested the valuations. The Board determined the property was assessed at its fair market value and did not change the valuations of \$87,050,000 and \$44,910,000.

¹ During oral arguments before our court, Nationwide noted it also has appeals pending for the 2019 and 2021 assessments not subject to the minimum assessment agreement. Neither the 2019 nor 2021 assessment is included in the instant appeal.

On July 12, 2017, Nationwide appealed the Board's decision to the district court. It hired Thomas Scaletty, an appraiser for Mainland Valuation Services, in Lexena, Kansas. Scaletty considered three comparable sales in Des Moines and three outside of Des Moines but still in the Midwest. He made adjustments based on perceived differences in the properties. Using the comparable sales method, Scaletty found the value of 1100 Locust Street was \$39,390,000 and 1200 Locust Street was \$22,640,000. He testified, "I relied significantly on that sales comparison approach, because it specifically focuses on single-tenant buildings that were sold for continued single office use."

Based on the cost approach, Scaletty found the value of 1100 Locust Street, was \$39,740,000 and 1200 Locust Street was \$23,440,000; however, he gave no weight to the cost approach. Scaletty determined the value of 1100 Locust Street was \$39,550,000 using the income approach, and the value of 1200 Locust Street was \$24,240,000 using this method. He stated he gave less weight to the income approach than the comparable sales approach.

Nationwide also hired Don Vaske, an appraiser with Frandson & Associates in Des Moines. To determine fair market value, Vaske considered four comparable sales. He looked at two sales in the Des Moines area and two sales outside of Iowa. He adjusted the sales price for size and location, as well as market conditions. All the sales involved transactions of a fee simple interest. Using the comparable sales approach, Vaske valued 1100 Locust Street at \$48,237,000 and 1200 Locust Street at \$26,034,000.

Vaske used the cost approach to value 1100 Locust Street at \$54,385,000 and 1200 Locust Street at \$26,650,000. He used the income approach to value

1100 Locust Street at \$47,117,000 and 1200 Locust Street at \$25,134,000. Vaske testified:

In the case of the subject, there's some functional and external obsolescence. All these factors weaken the reliability of the cost approach. The sales comparison approach relies on examples of comparable sales, and market participants, price points, and reaction to the property; in this case, a larger corporate home office.

There are sales of larger corporate home offices. I analyzed two in Des Moines. You go to Midwestern communities, Kansas City, Minneapolis. There are examples of sales. The adjustments required to the sales as reasonable, I think the sales comparison approach deserves the most weight and is the most reliable in this case.

The income approach is most accurate when properties are typically bought for their income-producing potential. This is an owner-occupied building; it was designed for a single occupant, that weakens the reliability of the income approach. I'd give the income approach less weight.

The Board also presented evidence from two appraisers. Mark Kenney was an appraiser with American Valuation Group, Inc., located in Lansdale, Pennsylvania. Kenney looked at six comparable sales in markets larger than Des Moines. He stated he gave the sales approach "the least amount of weight," because of the difference in the market size. He valued 1100 Locust Street at \$107,000,000 using the sales approach and 1200 Locust Street at \$63,000,000.

Kenney testified:

I considered that they're national in the first place. I mean, ideal would have been another corporate headquarters right in downtown Des Moines.

So once you start looking at all the different factors and some of them are sale leasebacks, and—I mean, I thought they were comparable compared to my highest and best use because I want to use continued occupancy, comparable to what we have.

And yet with all the national exposure, national sales, I just felt that this approach wasn't as good, and I gave the most weight to the cost approach.

Kenney valued 1100 Locust Street at \$80,000,000 and 1200 Locust Street at \$55,000,000 using the income approach. Using the cost approach, he determined the value of 1100 Locust Street was \$99,000,000 and the value of 1200 Locust Street was \$41,000,000.

Russ Manternach is an appraiser with Commercial Appraisers of Iowa, Inc. Manternach used four comparable sales in Iowa—two in Des Moines, one in Cedar Rapids, and one in Johnston. Only one of the comparable sales was a fee simple sale. He looked at other sales, but found they did not involve buildings of a similar size and were not sufficiently comparable. Manternach looked at multi-tenant buildings as comparable sales, making adjustments to the sales price. For one comparable sale, he also made an adjustment because “all the leases were ending and there was more vacancy in the building.” Manternach stated he looked at each sale and considered if he would give them weight, and if so, how much weight. He found that using the sales approach the value of 1100 Locust Street was \$81,300,000 and the value of 1200 Locust Street was \$42,800,000.

Using the income approach, Manternach valued 1100 Locust Street at \$81,300,000 and 1200 Locust Street at \$42,900,000. Using the cost approach, he valued 1100 Locust Street at \$89,300,000 and 1200 Locust Street at \$44,000,000. Manternach stated he gave equal weight to the sales and income approaches, finding the results were “fairly close together.” He gave less weight to the cost approach “because of the amount of accrued depreciation.”

The district court determined Nationwide produced two disinterested witnesses who indicated the market value of the property was less than the market value determined by the Board, and under Iowa Code section 441.21(3)(b) (2017),

the burden shifted to the Board to uphold the assessed value. The court did not make a finding that the fair market value of the property could not be readily established using the sales comparison approach but considered alternative means of determining the value of the property. The court found:

Reviewing the testimony of each appraiser and their reports, the Court finds the reports of Kenney and Manternach to be more reliable than the reports of Vaske and Scaletty. In its analysis and review of the record and testimony before it, the Court gives more weight and consideration to the reports and testimony of Kenney and Manternach in its attempt to determine the value of the Property.

The court noted the replacement costs for insurance purposes of the properties were above the assessed values set by the Board. The court relied upon the cost approach and found the Board's appraisers provided competent evidence of the values for the two buildings. The court affirmed the valuation of 1100 Locust Street at \$87,050,000 and 1200 Locust Street at \$44,910,000. Nationwide now appeals.

II. Standard of Review

The Iowa Supreme Court has stated:

Our review of a tax protest is de novo. *Boekeloo v. Bd. of Rev.*, 529 N.W.2d 275, 276 (Iowa 1995); *see also Dolphin Residential Coop., Inc. v. Iowa City Bd. of Rev.*, 863 N.W.2d 644, 647 (Iowa 2015) (“[A]ppeals from decisions of the local board of review are triable in equity . . . , and our review is de novo”). “[W]e give weight to the [district] court’s findings of fact, [but] we are not bound by them.” Iowa R. App. P. 6.904(3)(g); *Boekeloo*, 529 N.W.2d at 276. We are especially deferential to the court’s assessment of the credibility of witnesses. *Boekeloo*, 529 N.W.2d at 276.

Wellmark, 875 N.W.2d at 672 (alterations in original).

III. Discussion

A tax payer may protest the assessed value of property to the county board of review. Iowa Code § 441.37(1); *Soifer v. Floyd Cnty. Bd. of Rev.*, 759 N.W.2d

775, 779 (Iowa 2009). Nationwide protested on the ground “the property is assessed for more than the value authorized by law.” See Iowa Code § 441.37(1)(b).

Section 441.21(3)(b)(1) states:

For assessment years beginning before January 1, 2018, 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 statute not only requires two disinterested witnesses, it also specifically requires the evidence offered by a disinterested witness to be competent before the burden of proof shifts to the board.” *Compiano v. Bd. of Rev. of Polk Cnty.*, 771 N.W.2d 392, 398 (Iowa 2009). “Evidence is competent under the statute when it complies ‘with the statutory scheme for property valuation for tax assessment purposes.’” *Id.* (quoting *Boekeloo*, 529 N.W.2d at 279).

Nationwide contends that it provided competent evidence from two disinterested witnesses, Scaletty and Vaske, to show the market value of the properties was less than the assessed value. The district court agreed with Nationwide, finding it presented the testimony of two disinterested witnesses to indicate the values of 1100 Locust and 1200 Locust were less than the current assessed values. The Board does not dispute this finding. We determine Nationwide met its burden to show the market value of the property was less than the Board’s assessment. Under section 442.21(3)(b), the burden shifts to the Board to uphold the assessed value. See *Boekeloo*, 529 N.W.2d at 279.

The valuation of property for purposes of determining the appropriate amount of property tax is governed by section 441.21. “All property subject to taxation shall be valued at its actual value” Iowa Code § 441.21(1)(a). In general, “The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property” *Id.* § 441.21(1)(b)(1); *Soifer*, 759 N.W.2d at 778 (noting the actual value of property is its fair and reasonable market value).

“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.

Iowa Code § 441.21(1)(b)(1). Finding the fair market value of property through comparable sales is the “preferred method” of valuation.² *Wellmark*, 875 N.W.2d at 679; *Compiano*, 771 N.W.2d at 398 (“The legislative scheme for the valuation of real estate for purposes of assessing taxes begins with the market-value approach, based on ‘comparable sales of other properties.’” (citation omitted)).

In “circumstances where the market value of taxable property [can] not be readily established,” an assessor may use “an alternative approach to establishing actual value.” *Wellmark*, 875 N.W.2d at 679. Section 441.21(2) provides:

In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive

² The consideration of sale prices is limited to “normal transactions reflecting market value.” Iowa Code § 441.21(1)(b)(1). “[S]ale 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.” *Id.* Abnormal transactions may include sales to immediate family members, foreclosure sales, or contract sales. *Id.*

and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor.

The Iowa Supreme Court has stated:

“Other factors” may be considered *if, and only if*, market value cannot be readily established through the preferred market analysis. Once that threshold has been crossed, the assessor may consider a broad range of factors, but cannot rely solely on one such factor in determining “the fair and reasonable market value” of the property, or “actual value.”

Id. (citing Iowa Code § 441.21(1)) (emphasis in original). The statute “mandate[s] that the assessor must first attempt to determine fair market value by using comparable sales.” *Carlton Co. v. Bd. of Rev. of City of Clinton*, 572 N.W.2d 146, 149 (Iowa 1997). “The[] alternate means of valuation may be used only when market value cannot be readily established using a comparable sales approach.” *Boekeloo*, 529 N.W.2d at 277.

Nationwide claims the Board failed to meet its burden because the Board’s experts did not adequately follow the statutory scheme for property valuation. See *Compiano*, 771 N.W.2d at 398. Nationwide asserts the Board did not present competent evidence to uphold the valuation of 1100 Locust Street at \$87,050,000 and 1200 Locust Street at \$44,910,000 because the Board’s experts, Kenney and Manternach, did not rely on comparable sales to determine the value of the properties. Nationwide states the fair market value of 1100 Locust and 1200 Locust can be determined through an analysis of the sales of comparable single-occupant buildings in Des Moines and similar markets. Nationwide asserts that the Board’s experts should not have considered other factors because market

value can be readily established through the comparable sales approach. Nationwide also argues the district court erred in the application of burdens

“[T]he sales prices approach is initially to be used and . . . the other factors approach may be employed ‘if and only if’ [the] exchange value cannot thus be readily established.” *Bartlett & Co. Grain v. Bd. of Rev. of City of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977) (quoting *Juhl v. Greene Cnty. Bd. of Rev.*, 188 N.W.2d 351, 353 (Iowa 1971)). The Iowa Court of Appeals recently stated, “The rule requires a fact-finder to first determine that the comparable-sales approach is unworkable before considering other factors.” *Lowe’s Home Centers, LLC v. Iowa Prop. Assessment Appeal Bd.*, No. 20-0764, 2021 WL 610105, at *3 (Iowa Ct. App. Feb. 17, 2021).

“[A] party relying on the other factors approach has the burden of persuading the fact finder that exchange value cannot be readily established by the sales prices approach.” *Bartlett & Co. Grain*, 253 N.W.2d at 88; see also *Carlson Co.*, 572 N.W.2d at 150 (“[T]he party relying on the ‘other factors’ approach has the burden of persuading the fact finder that the fair market value of the property cannot be readily established by the comparable sales approach.”).

While the district court noted, “the statute provides for alternative means of determining market value which should not be used unless the market value cannot be readily established using the Sales Comparison Approach,” the court did not address whether the fair market value of the property could be readily established by looking at comparable sales. The court stated only that it found the appraisals by Kenney and Manternach were more reliable than the appraisals by

Scaletty and Vaske. The court did not analyze comparable sales and considered the value of the buildings using the cost approach.

On our de novo review, we find the Board's experts, Kenney and Manternach, did not present competent evidence of the value of 1100 Locust Street and 1200 Locust Street. Neither expert relied upon the sales approach to value the property. Kenney gave the sales approach "the least amount of weight." Manternach gave equal weight to the sales and income approaches. The Board's experts did not follow the statutory scheme for the valuation of property. See *Wellmark*, 875 N.W.2d at 679 (noting that the cost and income approaches should be used only if "market value cannot be readily established through the preferred market analysis"). And the expert testimony presented by the Board did not carry its burden to show the value could not be established by the sales price approach. *Barlett & Co. Grain*, 253 N.W.2d at 150. We conclude the Board did not meet its burden under section 442.21(3)(b) to uphold the assessed value. See *Boekeloo*, 529 N.W.2d at 279.

If the evidence is adequate to determine the value of the property, the court makes an "independent determination of the value" of the property. *Compiano*, 771 N.W.2d at 397; see *Kaplan v. Bd. of Rev. of City of Sioux City*, No. 03-0604, 2003 WL 23220013, at *3 (Iowa Ct. App. Nov. 26, 2003) (finding that when the Board failed to meet its burden to uphold an assessment, the court valued the property). We may determine the actual value of the property. See *R.S. Fox, L.L.L.P. v. Bd. of Rev. of Des Moines Cnty.*, 656 N.W.2d 809, 816 (Iowa Ct. App. 2002) (modifying the assessed value of property); *Hormel Foods Corp. v. Clark Cnty. Bd. of Rev.*, No. 00-148, 2001 WL 355593, at *8 (Iowa Ct. App. Apr. 11,

2001) (establishing the taxable value of property when the Board failed to justify its assessed valuations).

“[T]he assessed value or ‘actual value’ may not exceed the fair and reasonable market value.” *Splash Enters., L.C. v. Polk Cnty. Bd. of Rev.*, No. 10-1887, 2011 WL 3925415, at *6 (Iowa Ct. App. Sept. 8, 2011) (citing Iowa Code § 441.21(1)(g)). Nationwide and the Board entered into a tax assessment agreement that provided there was a minimum valuation of \$78.5 million for 1100 Locust Street and \$36 million for 1200 Locust Street. The agreement stated, “In no event, however, shall Nationwide seek to reduce the actual value assigned below the Minimum Actual Values established herein during the term of this Agreement.” The minimum tax assessment agreement was in effect for the period involved in Nationwide’s protest here.

During oral arguments before this court, both sides requested we set the assessed value of the property, rather than remand.³ We accept this invitation given the evidence contained in the record before us. We reverse the decision of the district court. We conclude the assessed value of 1100 Locust Street is \$78.5 million and the value of 1200 Locust Street \$36 million, as Nationwide agreed this is the minimum *actual* value of the properties. See Iowa Code § 441.21(1)(a) (“All property subject to taxation shall be valued at its *actual* value” (emphasis added)).

REVERSED.

³ Nationwide urges this court to set the assessed value below the minimum assessment agreement. We decline to do so given the language of Iowa Code section 441.21 and the minimum assessment agreement.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
20-1290

Case Title
Nationwide Mutual Ins. Co. v. Polk County Board of Review

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