

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Kohl's Department Store, Inc.,**  
Petitioner-Appellant,

v.

**Pottawattamie County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-78-0733**

**Parcel No. 002 035 530 014892 021 000**

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On December 15, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Petitioner-Appellant, Kohl's Department Store, Inc., was represented by Dan Gross of Thomson Reuter Tax & Accounting, Chicago, Illinois, and submitted evidence in support of its appeal. Gross participated by telephone. The Board of Review designated Assistant County Attorney Leanne Gifford as its legal representative, and she appeared in person. It submitted new evidence in addition to the certified record. The Appeal Board now having examined the entire record, heard the testimony and being fully advised, finds:

***Findings of Fact***

Kohl's Department Stores, Inc. (Kohl's), owner of property located at 3626 Metro Drive, Council Bluffs, Iowa, appeals from the Pottawattamie County Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2009, assessment and valued at \$9,000,000; representing \$2,000,000 in land value and \$7,000,000 in improvement value. Kohl's protested to the Board of Review on the ground that the property was assessed for more than

authorized by law under Iowa Code section 441.37(1)(b). The Board of Review reduced the assessed value to a total of \$6,100,000.<sup>1</sup>

Kohl's then appealed to this Board. Kohl's checked the boxes on the appeal form indicating its appeal was based on equity and error. Kohl's also attached cost information that had previously been submitted to the Board of Review. As previously ordered, we will only address the ground of whether the property is assessed for more than authorized by law.<sup>2</sup>

The subject property is a Kohl's Department Store retail building located in the Metro Crossing area of Council Bluffs. The site consists of 5.83 acres and the building is approximately 69,626 square feet. The improvements were constructed in 2007. The parking area is 113,750 square feet and is comprised of asphalt paving.

Thomas Scaletty of Mainline Valuation Services, Lenexa, Kansas, testified by telephone at hearing regarding an appraisal he completed on behalf of Kohl's. Scaletty valued the subject property for January 1, 2009, at \$4,350,000. He valued the property based on the cost approach at \$4,850,000; the sales approach at \$4,350,000; and the income approach at \$4,020,000.

Scaletty's cost approach has a replacement cost new of \$5,652,007 (excluding land value) and after depreciation a value of \$3,066,094; \$2,270,000 in external obsolescence; and \$315,913 in physical depreciation. He valued the land at \$1,780,000 for a total value of \$4,846,094 (rounded to \$4,850,000). PAAB notes that Scaletty measured external obsolescence by doing an income analysis. He used the net operating income required for speculative development to estimate potential net

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<sup>1</sup> Kohl's assessment of \$6,100,000 was later increased to \$7,015,000 based on a 15% equalization order issued by the Iowa Department of Revenue. This value was retroactive to January 1, 2009, and thus the assessment before us is actually \$7,015,000.

We note that Kohl's did not appeal the 15%-ordered increase to either the Board of Review or this Board.

<sup>2</sup> At hearing, the Board of Review requested PAAB reconsider its Order that denied the Board of Review's Motion to Dismiss. We decline to reconsider and decline to follow our findings in the 2008 Kohl's case that limited the appeal grounds. In this case, and in the future, PAAB finds it is appropriate to consider all grounds alleged by the petitioner at the Board of Review unless those grounds are specifically limited by the petitioner. In this case, dismissal would be a harsh remedy and it is rare that a case will not survive a motion to dismiss. *Kingsway Cathedral v. Iowa Dept. of Transp.*, 711 N.W.2d 6, 8 (Iowa 2006). It is clear the Board of Review knew what ground was before it and its decision was based on that ground. It suffers no prejudice or surprise by having to defend that ground before PAAB.

operating income. He used a capitalization rate of 8.5%. Scalety also said he used the *Iowa Real Property Appraisal Manual* in his appraisal; but he didn't know if the *Manual* addressed cost. We find Scalety's truthfulness questionable because the *Manual* is primarily a *cost* manual.

In the income approach, Scalety valued the subject property at \$4,020,000. He used the direct capitalization summary method. This method estimates the potential income, adjusted for vacancy loss, and estimates the expenses to arrive at a net operating income (NOI) of \$381,795. Scalety determined a capitalization rate of 9.50% from determining an overall rate from the market. Scalety then divided the NOI by the capitalization rate of 9.5% for a value of \$4,018,895 (rounded to \$4,020,000). Additionally, we do not follow Scalety's attempted justification for using a capitalization rate in this analysis of 9.5%, and then a capitalization rate of 8.5% in the cost approach.

Scalety considered the sales comparison approach to be most reliable, and valued the subject property at \$4,350,000. He used five comparable sales that range in price from \$30.82 to \$49.37 per square foot. After adjustments for time/market, age/condition, building utility, and location, the adjusted price range is \$38.66 to \$64.07 per square foot. Scalety determined \$62.50 per square foot was the best indication for the subject property. He multiplied \$62.50 per square foot by 69,626 square feet to arrive at a value of \$4,351,625 (rounded to \$4,350,000).

In the sales approach, Scalety testified he purposefully excluded consideration of any properties that were built-to-suit or leased-fee transactions. Essentially, this left Scalety with only sales of second-generation stores. On cross-examination, Scalety testified his reason for choosing only second-generation stores was based on his understanding of the definition of market value. He believes it is based on a fee simple transaction and that definition makes him assume the value he is to determine is the value of the property if the current tenant no longer wanted to occupy the property – he claims that way he is not assuming the creditworthiness of the tenant. Scalety's understanding, however, is flawed. Most recently, in *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 788

(Iowa 2009), the Iowa Supreme Court has held it is permissible to value property as a going concern business. Scaletty, however, ignores any possibility of going concern value by valuing the property as a second generation and limiting his consideration of sales to these types of properties.

In his final reconciliation and final value opinion he testified that he relied most heavily on the sales comparison approach and determined a final value of \$4,350,000.

Penny Ravlin, Pottawattamie County Chief Deputy Assessor, testified on behalf of the Board of Review. Ravlin contradicted Scaletty regarding the rate of growth in the subject market area. In fact, following Ravlin's testimony, it became apparent how unfamiliar Scaletty was with this area of Council Bluffs.<sup>3</sup> The Board of Review supplied aerial photos for 2007, 2009, and 2010 that demonstrated the growth for Metro Crossing. Ravlin also testified the local market conditions indicate comparable property rented for \$10.80 to \$14.00 (triple net) and the market included capitalization rates of 7.23% to 8.00%. Ravlin testified regarding use of the income approach by Scaletty. Ravlin determined a potential gross income of \$696,260 versus Scaletty's \$666,907, and used a 10% vacancy factor, which was the same as Scaletty. Ravlin used lesser expenses because of the triple net lease. Ravlin determined a NOI of \$563,971, whereas Scaletty determined a NOI of \$381,795. Ravlin then used a capitalization rate of 8.5% even though greater than her market range from 7.23% to 8.00% to be conservative. As previously noted, Scaletty used 9.5% in his income approach and 8.5% for his cost approach income adjustment. Ravlin determined that the subject property value based on the income approach is \$6,634,941, and testified this would be a fair indication of the subject property's market value.

Ravlin also testified regarding sales of comparable properties in the Omaha-Council Bluffs area. She said of the three sales she considered, she arrived at a value around \$133 per square foot, which would support the assessment.

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<sup>3</sup> For example, on cross-examination, Scaletty claimed his reference to "minimal growth" area was a typographical error, however, his appraisal never notes the casinos in the area, the arena, and other attractive features.

Finally, Ravlin testified she would agree that approximately \$6.1 million as set by the Board of Review in its 2009 regular session is more representative of the market value of the subject property.

As previously noted, Scaletty testified he used sales that are sometimes referred to as second-generation properties. Usually, these are properties that are vacant structures that sell and need to be rebuilt to meet the tenant's needs. We note the subject property is a first generation lease-back. Scaletty claimed that built-to-suit properties cost more to build than they were worth. Scaletty in his cost approach determined a replacement cost of \$5,652,000 excluding land; he valued the land at \$1,780,000. This is a total value of \$7,432,007 *before depreciation*. This Board finds it hard to believe that someone would invest over \$7 million on a property that would be worth only \$4,850,000 two years later. We also notes that Scaletty's cost approach is circular to his income approach. He made a large adjustment for external obsolescence based on his subjective opinion that the subject property would lease for way less to another tenant.

Scaletty's appraisal indicates a minimal growth for the Metro Crossing area; although he claims this is a typographical error, he did not note the actual growth in the area and other attractions. His appraisal report also fails to mention the casinos, which is a major draw to the market area. Scaletty's appraisal primarily refers to the Omaha market while ignoring this area of Council Bluffs. We believe Ravlin's testimony that this is a faster growing market area than other markets in the Omaha/Council Bluffs area, especially considering the aerials she presented. We, therefore, find Scaletty to be unfamiliar with the subject property area and market and give very little weight to his appraisal. We find Ravlin to be honest and very reasonable in her testimony.

Reviewing all the evidence, we find the record as a whole does show the subject property is over-assessed, but not to the extent that Kohl's claims. The best evidence in the record to show the subject property's market value is the testimony and reconstructed income approach by Deputy Assessor Ravlin. We find this is the most reliable evidence after considering the sales Ravlin

referenced and determining that we cannot rely on that information alone as supporting documentation was not submitted.

### *Conclusions of Law*

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code section 441.37A(3)(a).

Property is to be valued at one hundred percent of its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). "To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the conditions with respect to the other land must be 'similar' to the property being assessed." *Soifer v.*

*Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). “Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference.” *Id.* Determining comparability of properties is left to the “sound discretion” of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is “free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value” *Heritage Cablevision*, 457 N.W.2d at 598.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Findings are “based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.” Iowa Code § 17A.12. Scaletty’s appraisal failed to convince us the subject property was over assessed and that Scaletty’s determination of the market value of the property should be adopted. Scaletty limited his search for comparable sales to second-generation properties in an attempt to value them as if the current tenant were going to vacate the property. By completely ignoring the existence of built-to-suit sales and/or leased-fee sales and limiting sales to second generations, Scaletty appears to ignore the assessor’s ability to “consider the use of the [assessed] property as a going concern.” *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 788 (Iowa 2009) (quoting *Riso v. Pottawattamie County Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985)). The subject property operates as a going concern, and this fact should not have been ignored. *Id.* We find Ravlin’s testimony, however, was persuasive and showed the subject property is slightly over assessed, even though the Board of Review appeared to argue it supported the current assessment. Ravlin’s evidence and testimony supports a slight change in value from the current assessment.

We, therefore, modify the assessment of the Kohl's property as determined by the Pottawattamie County Board of Review.

THE APPEAL BOARD ORDERS that the assessment of the Kohl's Department Store, Inc. located at 3626 Metro Drive, Council Bluffs, Iowa as of January 1, 2009, set by the Pottawattamie County Board of Review is modified to \$6,634,941; representing \$2,000,000 in land value and \$4,634,941 in improvement value.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Pottawattamie County Auditor and all tax records, assessment books and other recordings pertaining to the assessment referred herein on the subject parcel shall be corrected accordingly.

Dated this 24 day of February, 2011.

  
Richard Stradley, Presiding Officer

  
Jacqueline Rypma, Board Member

  
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>2-24</u> , 201 <u>0</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>Jean Carper</i></u>