

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

<p><b>Village Green Co-Op, Inc.</b> Appellant,</p> <p><b>v.</b></p> <p><b>Polk County Board of Review,</b> Appellee.</p>	<p><b>ORDER</b></p> <p><b>Docket Nos. 11-77-0421</b> <b>12-77-0041</b> <b>13-77-0213</b></p> <p><b>Parcel No. 110/06491-020-001</b></p>
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On February 26, 2015, 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. Attorney Jim Nervig of Brick Gentry PC, West Des Moines, represented Village Green Co-Op, Inc. Assistant Polk County Attorney David Hibbard represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Village Green protested the 2011, 2012, and the 2013 assessments of its multi-building, 128-unit housing complex located along the north side of East Seneca Avenue and west of East 14th Street in Des Moines, Iowa. The following list identifies the address for each building in the project as reported on the property record card. Each building has eight units.

Address	Address
1100 E Seneca Ave	1222 E Seneca Ave
1108 E Seneca Ave	1228 E Seneca Ave
1116 E Seneca Ave	1234 E Seneca Ave
1124 E Seneca Ave	1240 E Seneca Ave
1132 E Seneca Ave	1246 E Seneca Ave
1200 E Seneca Ave	1300 E Seneca Ave
1210 E Seneca Ave	3916 E 14th St
1216 E Seneca Ave	3914 E 14th St

The apartment buildings were constructed between 1961 and 1966 and all have below-normal condition ratings. The following chart identifies the unit mix for the subject complex. (Exhibit 3).

Unit Type	Unit Size	# of Units
Standard Studio	280	5
Large Studio	325	1
Downstairs 1 BR Standard	460	33
Upstairs 1 BR Standard	460	36
Large 1 BR	500	23
X-Large 1 BR	525	3
2 BR	570	11
2 BR Hoffman	670	16
	Total	128

Other improvements include 40,300 square feet of concrete and asphalt paving, a basketball court, a 400-square-foot garage built in 1985, and a 480-square-foot garage built in 1991, which is used as a maintenance shop. The site is 5.163 acres.

The property's assessment was \$1,986,000 for 2011, 2012, and 2013, allocated as \$500,000 to the land value and \$1,486,000 in improvement value.

Village Green protested its 2011 assessment to the Polk County Board of Review contending it was assessed for more than authorized by law under Iowa Code section 441.37(1)(a). It also claimed the property was misclassified and that there was an error in the assessment under sections 441.37(1)(c-d). The error claim reiterated its claims that the property was assessed for more than authorized by law and misclassified. The Board of Review denied the petition. The January 1, 2012, and 2013 assessments remained the same, pending appeal, and Village Green protested these assessments for the same grounds. The Board of Review denied the subsequent protests. Village Green appealed each decision to this Board.

Because there was no change in value from the previous assessment, the only ground this Board can consider on appeal for the 2012 assessment is that there has been a change in value since the

last reassessment. Iowa Code §§ 441.35(2), 441.37(1)(a)(2); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). However, if Village Green is entitled to a reduction in the 2011 assessment, the 2012 assessment may be set at the same value during the interim year. The parties stipulated that any value determination by this Board should apply equally to assessment years 2011, 2012, and 2013.

Village Green no longer contends the property is misclassified, and thus, the only issue before this Board is whether the property is assessed for more than its fair market value.

Richard Hickman, Village Green President

Richard Hickman testified for Village Green. Hickman is an investor in the Des Moines area and currently owns and manages about 250 rental properties. The property record card indicates Village Green Partners purchased the property for \$1,815,000 in 1993 and it was converted to Village Green Co-op in 2010. Hickman asserts the property has been a challenge since the day he took over management. He testified that he has contributed anywhere from \$70,000 to \$100,000 per year to keep the operations going. He indicated that roughly nineteen units were vacant to date, and another seven or eight units were delinquent on rent. Hickman noted the property has a high turnover rate, which he asserts runs from 60% to 80% per year.

Hickman testified that, in his opinion, the variable expenses on the stabilized operating statement considered by Village Green's appraiser, Ted Frandson, were reasonable. (Exhibit 3). He noted there is an on-site manager that rents the apartments and collects rents. Village Green also pays a contract security company about \$300 per week and has had expenses for pest infestation. Further, Hickman explained that when he bought the property the capitalization rate was about 12%. For this and the foregoing concerns with the property, it is his opinion that the capitalization rate of 10% used by Frandson was reasonable, if not a little low.

## *Appraisals*

The record includes two independent appraisals of the property. Village Green submitted an appraisal completed by Ted Frandson of Frandson and Associates, LC, Des Moines, and called him as a witness. (Exhibits 2 & 3).

The Board of Review submitted an appraisal completed by Gene Nelsen of Nelsen Appraisal Associates, Inc., Urbandale, who also testified. (Exhibit C). The following chart summarizes the approaches to value the appraisers used and their respective conclusions.

<b>Appraiser</b>	<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
Frandson	Not Developed	\$1,194,000	Not Developed	\$1,194,000
Nelsen	\$1,860,000	1,840,000	Not Developed	\$1,840,000

### The Frandson Appraisal

Frandson explained that he appraised the entirety of the subject's operations, which includes two parcels. (Exhibit 2). He later supplemented his appraisal with an allocation solely to the subject parcel under appeal. (Exhibit 3).

Frandson completed only the income approach to value. Frandson explained his decision to exclude the cost and sales approaches to value. He asserts the cost approach is not applicable because the buildings were constructed in the 1960s and are in below normal condition. Further, in his opinion the land value is too difficult to estimate in this location.

Frandson acknowledges the sales comparison approach is typically developed for apartment complexes, but he chose not use it in this case for several reasons. He states that he looked exhaustively for sales, but he was unable to find large complexes like the subject. The few he found were bank repossessions, and he did not consider them reliable indicators of value. Additionally, the other sales he found were "significantly better" in location, condition, and quality.

Frandsen believes market participants would be most interested in the income approach and completed this approach to value the subject property. Frandsen relied on four apartment complexes in the Des Moines area to examine market rents and concluded the subject's actual rents were at market rates. (Exhibit 2, pp. 36-38). His report and testimony confirm that, in his opinion, all of the properties he reviewed to determine market rents were in superior locations. Nevertheless, he believes the properties he selected are adequate comparisons for rental analysis; and in his opinion, it is unlikely the current subject property rents could be higher. He notes the subject is located right across the street from Radio City mobile home park, which he asserts has a negative influence on the subject property and the rents it can receive. His conclusion of the Gross Potential Income (GPI) for the subject parcel is \$628,351. (Exhibit 3).

Frandsen considered the subject's actual vacancy but because it is so high, he asserts it results in a higher collection loss overall, in part because of the tenancy profile of the subject property. He notes the historical physical vacancy has been at a higher rate. In January 2011, he reports it was 15.6%. (Exhibit 2, p. 38). We note that it appears the vacancy and collection loss has been historically between roughly 8-13%, based on the operating statements, income/expenses, and assuming a GPI of \$659,340 for each fiscal year 2008, 2009, and 2010. (Exhibit 2, p. 41). Ultimately, he determined a 12% vacancy/collection loss of the stabilized gross potential income.

Frandsen discussed the variable expenses, explaining that for the most part his estimates match the actual expenses from 2010. (Exhibit 2, p. 41). Village Green has not been paying for professional management services because it self-manages the property. This was roughly a \$30,000 additional variable expense Frandsen considered. However, he states that lower estimated expenses in the repairs, supplies, and lawn category offset this by approximately \$30,000. As a result, the bottom-line estimated expenses are very similar to the 2010 actual expenses. Another expense Frandsen

considered that was not allocated in the actual 2008-2010 expenses is \$30,375 for reserves for replacement. (Exhibit 2, p. 41).

Frandsen testified that the low end of the capitalization rate range are typically “investment grade” properties that are newer and in good locations like the western suburban markets where the expectation is that the net income will continue to improve and the tenant quality is better, resulting in less vacancy and fewer repairs. The mid-level capitalization rate range is an older product in an average location that is not an investment grade but still has a local/regional buyer pool. This is still a stable product without a lot of tenant quality issues. Lastly, the subject property would fall in the high end of the capitalization rate range as these properties often have chronic issues of turnover and no real anticipation of improvement in the income stream. In Frandsen’s opinion, the high turnover rate of the subject property is a sign of a problematic property and a symptom of the tenancy pool.

Frandsen explained the best way to determine a capitalization rate is by looking at similar properties that have sold and the overall rates of those properties. He considered three comparable properties to determine a capitalization rate. (Exhibit 2, p. 42). The following chart summarizes his analysis.

Comparable	Sale Date	R <sub>O</sub>
1	Oct-08	8.87%
2	Nov-09	8.75% - 9%
3	Nov-08	8.50%

He testified that all three comparable properties are in better locations and are superior in age, condition, and quality. Sale 1 had recent updating in 2006, including a parking lot, roof, and 60% new air condition units. Further, many of the units were updated with such items as carpet, vinyl, appliances, and cabinetry. Sale 2 is located near Merle Hay Mall, which is superior to the subject in Frandsen’s opinion. It recently had windows and siding replaced and the units were in better condition. Lastly, Frandsen asserts the complex itself was superior in construction. Like the other

properties, Sale 3 is also in a superior location and has better condition and quality compared to the subject. Frandson noted a regional investor purchased this property.

Because all three properties are superior to the subject, Frandson asserts the indicated capitalization rates are lower than what the subject could expect to receive and are just benchmarks of a property that would be attractive to a regional investor. When the Board of Review questioned Frandson regarding these properties, he testified that he was aware of the selling price of the comparable properties he relied on, as well as the net operating incomes to derive the capitalization rates.

Frandson explained that another method to determine capitalization rates is to look at surveys. In his opinion, these are often wide-ranging and from different markets; however, it would provide a check. He relied on the first-quarter 2012 Real Estate Research Corporation (RERC), which indicates third-tier investment properties in the Midwest have capitalization rates ranging from 6.8% to 14%, with an average of 9%. (Exhibit 2, p. 43). Frandson asserts the subject property would be much more like those at the higher end of this range. Frandson asserts that at best, the rate for the subject property would be 10%, because the buyers know it is a problematic property. Loading the rate for taxes, his conclusion of a capitalization rate is 14.6%.

Based on the foregoing, Frandson's estimated value of the subject property by the income approach is \$1,220,214. He deducts \$26,684 for personal property (appliances), and concludes a final opinion of value of the subject property of \$1,194,000 (rounded). (Exhibit 3).

#### The Nelsen Appraisal

Nelsen completed the sales comparison and income approaches to value. His conclusions were as follows:

<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
1,860,000	1,840,000	Not Developed	1,840,000

Nelsen testified that he did not inspect the subject improvements even though he requested an inspection. We note that Nelsen’s assumptions about the condition of the subject property are similar to Frandson and Hickman’s testimony about the actual condition.

Nelsen testified that there was an active interest for apartment complexes like the subject; but owners were not offering them for sale because the apartment rental market was strong. As a result, there would be few sales. He stated around 2009 rents started increasing as there was less competition from home starts beginning in about 2008 and the overall capitalization rates were compressing as demand for rentals increased.

Nelsen selected five comparable apartment complexes for the sales comparable analysis. (Exhibit C, p. 48-55). The following chart summarizes his sales.

Address	Sale Price	Sale Date	# of Units	Year Built	Adjusted Price/Unit
Subject	N/A	N/A	128	1962	N/A
920 Hartford Ave, DSM	\$1,790,000	Mar-10	106	1992	\$13,436
2221 Stanton Ave, DSM	\$2,080,000	Dec-10	66	1972	\$14,812
6209 SE 5th St, DSM	\$3,478,400	Nov-08	108	1975	\$14,068
2071 NW 86th St, Clive	\$5,819,000	Jan-11	153	1968/1990	\$15,031
3610 Elm Dr, Urbandale	\$2,850,000	May-10	104	1968	\$15,500

Prior to adjustments, the sale prices of the comparable properties ranged from roughly \$16,900 to \$38,000 per unit. Four of the properties had sale prices above \$27,000 per unit. Because of this, Village Green questioned Nelsen regarding their actual comparability to the subject property. Nelsen responded that the comparable properties all had similar overall age and unit count, and many had vacancy issues and were in need of updating like the subject property.

Nelsen explained he included Sale 1 in his analysis because it offers similar overall size and is a multi-building property like the subject. It also has similar characteristics and is an investment-grade type of property located in Des Moines with similar overall age and condition to the subject. This

property was about 12-15% vacant at the time it sold, much like the subject property. At the time of sale, roughly 10% of its units had been remodeled. After the property was purchased, the buyer renovated many of the remaining units, spending roughly \$500,000 to do so. Since that time, the property has been fully occupied. Village Green questioned whether the parties to this transfer were related. Nelsen explained that this was not likely a related transfer because \$500,000 worth of renovation and repairs were completed immediately after the transfer. Village Green was also critical of this Sale because it was built in 1992 and much newer than the subject. Nelsen testified that the age alone would not be as concerning as other factors. He explained that the quality of construction would also need to be considered in determining the effective age, which would best indicate comparability. Further, in his opinion, this sale offered a very similar overall location and neighborhood as well as similar unit count to the subject property.

Nelsen had personally appraised Sale 2 at the time it sold. Like the subject, it had a somewhat depressed condition at time of sale. He explained that the owners had determined to sell it without renovation. This Sale is also a multi-building, multi-story property. Village Green asserts this Sale is significantly superior to the subject's location because it is located near Wakonda Country Club. Nelsen disagreed. He explained it is located on the west side of Fleur Avenue, quite a distance from the Wakonda Club, and immediately north of the Des Moines International Airport. Further, there is commercial/retail, office space, and then some residential and industrial activity in the immediate area. Village Green questioned whether the tenants who occupy this property would consider occupying the subject property. In Nelsen's opinion, it is a similar property to the subject and also has tenancy problems like the subject.

Sale 3 was not marketed publicly and Nelsen testified he was the least familiar with this property. It has a mix of studio apartments, one-bedroom, and two-bedroom units. At time of sale, the property was "reportedly in good condition." (Exhibit C, p. 52). Village Green questioned whether

this property sold from a regional investor. Nelsen testified he was unaware if that was true or not, but that the buyer did not appear to be a regional investor based solely on the name of the grantee.

Regarding regional investors or Real Estate Investment Trusts (REIT), Nelsen explained that depending on the investor their portfolios might be very different. Some may only be interested in Class A office buildings, top-notch apartments, and some that only buy “troubled assets” like Comparable 3. Village Green asked if there were REITs interested in “troubled assets” in the 2008, 2009, 2010 time-frame, why wouldn’t there have been comparable sales to analyze. Nelsen explained this was because owners were very reluctant to sell because rents were going up, capitalization rates were going down, and there are more tenants moving in.

Village Green also asked about the nature of Sale 3’s surrounding neighborhood compared to the subject property. Nelsen explained that Sale 3 was located near a mall; a failed Best Buy is directly to the east, and some commercial properties are located to the south. Village Green asserts this Sale does not have any negative influences like the vacant mobile home park that is next door to the subject. Further, it asserts that a REIT would not be interested in the subject property because of the mobile home park. Nelsen declined to comment, reiterating again that different REITS may have different objectives.

Nelsen had also appraised Sale 4 when it sold and considered it in average condition overall due, in part, to remodeling in 1990. One reason he picked this Sale was that it was built in 1968 and is similar to the subject’s age. When it sold, the grantor provided \$750,000 in secondary financing. Village Green again asserts that the grantor of Sale 4 is a regional investor or REIT. Again, Nelsen disagreed with this assertion. Additionally, Village Green asserts this Sale is in a superior location, which Nelsen agreed with and adjusted for this factor.

Village Green questioned whether the tenants that reside in Sale 4 would consider renting a unit in the subject property. Nelsen explained that there are individuals of limited means in all

communities and that Sale 4 would appeal to that segment of the population in this community much like those in the subject's immediate community.

Lastly, Nelsen explained Sale 5 was a troubled property at the time it sold. It was 40% vacant at the time of sale, or shortly thereafter when many tenants were evicted. Every unit was renovated after the purchase. Like the subject it has multiple buildings and is situated on two different streets. Similar to Sale 4, Village Green asserts this Sale is in a superior location, which Nelsen again agreed with and adjusted for this factor. Village Green asked Nelsen if he would characterize this property as having a strong stabilized history. Nelsen responded, "Absolutely not."

Village Green questioned Nelsen whether a regional investor would purchase the subject property, put a tremendous amount of money into the property, and expect to get a return off its investment. Nelsen explained that a local person, who could be considered a regional investor in that he owns properties in many areas, purchased Sale 5. The purchaser buys properties to fix them up and then may resell it within the next year, although he has kept this particular property. Further, this investor has experience with troubled properties.

Because Nelsen had asserted there was a demand for apartment properties beginning in 2008 to 2009, Village Green asked Nelsen why he was unable to find properties in below average condition like the subject. Nelsen explained that in several instances he was being generous by describing the other properties as average because they did need a lot of work after the sales. For instance, the buyers of Sale 1 (920 Hartford Avenue) spent \$500,000 on improvements. In that instance, he does not believe there is really that much disparity between it and the subject regarding their conditions, but adjusting it downward was beneficial to the subject property. He could have considered it similar to the subject and by doing so its adjusted per-unit value would have increased from \$13,346 to something closer to the \$14,500 range bringing it more in line with the other comparable properties.

Nelsen adjusted the comparable properties for differences. He explained that he accepted that the subject property is in below normal condition and therefore all of the sales were adjusted downward to some degree for superior condition. After adjustments, the sales ranged from \$13,436 to \$15,500 per unit. Nelsen determined a per-unit value of \$14,500 or \$1,860,000 (rounded) for the subject property, as of January 1, 2011.

In determining the market rent of the subject property, Nelsen explained that he had the subject's rent roll and, in addition, relied on a third-party survey, in-house surveys, and a survey completed by a competitor. (Exhibit C, p. 60-63). The reported 2010 actual rents *received* for the subject property were \$573,349, which accounts for vacancy and collection loss. (Exhibit C, p. 64). Nelsen asserts the market rent for the subject's 128 units is \$675,000, but then adjusts this by 15% to reflect vacancy and collection loss, resulting in an effective gross income (EGI) of \$573,750, which mirrors the current rents received. (Exhibit C, p. 65).

Nelsen developed a reconstructed operating income statement. (Exhibit C, p. 65). The variable expenses total \$327,100 or just less than 60% of the EGI. Nelsen explained the various expenses, some were similar to actual and some were a little higher than the actual. Further, he noted that many of the expenses were based on surveys by the Institute of Real Estate Management, which is based on surveys of Des Moines properties. He said that the average expense ratio for properties in Des Moines is 51% by the 2011 survey. In this case, the total expenses, not counting taxes, is roughly 60% -- so his estimates are 9% over the average for Des Moines properties. In his opinion, this is almost unheard of in the Des Moines area; however, this property has many challenges so it is warranted in this case. He concludes a net operating income of \$231,650. (Exhibit C, p. 65).

Village Green was critical of Nelsen's NOI because it asserts it did not include some professional management and other miscellaneous expenses that Frandson considered and to which Hickman provided support. It submitted Frandson's Operating Statement for comparison. (Exhibit 6).

Ultimately, there is about a \$53,000 difference in variable expenses. Village Green specifically asked Nelsen if he felt Frandson's on-site personnel expense of \$28,738 and a professional management fee of \$28,738 were reasonable for a project like the subject. Nelsen explained that a typical management fee for a property like the subject would be 4.5% to 5%. The current owners elect to have an on-site manager, who is paid, which Nelsen accounts for as a \$25,000 management expense, but then also includes a legal/administration fee of \$10,000 and a security expense of \$18,000; therefore, although presented differently, he asserts his numbers are overall similar to Frandson's regarding management of the subject property.

Further, Village Green questioned why Nelsen did not include a \$38,000 miscellaneous category as Frandson did. Nelsen pointed out that many of the categories Frandson considered in his miscellaneous adjustment were considered and included, just differently allocated. Overall, Nelsen simply noted that Frandson's expenses were simply more than he determined reasonable for the subject property. Ultimately, Nelsen testified he was simply reluctant to go higher than what the owner reported on his 2010 tax returns and the expenses are already well over the industry norm. He reiterated that his estimated expenses are at 60% ratio, which is greater than the 51% industry norm that includes taxes. If taxes were considered in his analysis, the subject's expenses would be closer to 74%. Considering Frandson's expense analysis with taxes, his ratio is closer to 84%, and Nelsen simply does not consider that reasonable. Nelsen explained that he built many expenses into the income approach to compensate for some of the characteristics of the subject property. He explained that by increasing the expenses on a troubled property like this, it minimizes the risk associated with the capitalization rate.

In determining a capitalization rate, Nelsen relied on a mortgage equity technique, which indicated a 7.85% rate; and, an investor survey, which indicated average rates of 5.80% and 5.98% for the 4th and 3rd Quarters of 2011 respectively. He also considered properties in his sales comparison

analysis, which ranged from 8.5% to 9.1%; and some of these properties had significant risk associated with them, like the subject, having high vacancy rates and in need of updating. He also recognized that capitalization rates for apartments have been declining since 2008 and are now at 6% in 2015.

Ultimately, he estimated a capitalization rate of 8% for the subject as of January 2011. Adding the levy rate to account for the tax liability, he concluded a loaded capitalization rate of 12.60%. Nelsen defends his use of a lower capitalization rate because he believes he has more than adequately considered the troubled nature of the subject improvements, which would require greater expenses for security, legal issues, management, and maintenance.

Based on the foregoing, Nelsen's estimated value of the subject property by the income approach is \$1,840,000 (rounded). (Exhibit C, p. 70).

Nelsen considered both the income and sales comparison approach, which were very similar but ultimately reconciled at the lower end that was closer to the income approach. As of January 1, 2011, Nelsen's opinion of the market value of the subject property is \$1,840,000.

Village Green noted that Frandson had deducted \$26,684 from his conclusion for appliances, which he considered personal property. Nelsen testified that he was not in disagreement with that reduction and if deemed appropriate, agreed his value could be reduced by that amount. This would result in an opinion of value of \$1,813,000 (rounded).

### ***Conclusion of Law***

The Appeal Board has jurisdiction of these matters under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). 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 the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale 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 to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

The sales-comparison method is the preferred method for valuing property under Iowa law. *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 398 (Iowa 2009); *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 779 (Iowa 2009); *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). "[A]lternative methods to the comparable sales approach to valuation of property cannot be used when *adequate* evidence of comparable sales is available to *readily* establish market value by that method." *Compiano*, 771 N.W.2d at 398 (emphasis added). "Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding." *Id.* (citing *Soifer*, 759 N.W.2d, at 782); *Carlson Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997).

The Board of Review's criticizes Frandson for not completing the sales comparison approach and argues the approach should have been attempted and adjustments made to render the properties

comparable. Village Green counters that when an appraiser is required to make substantial adjustments to a property in the sales comparison approach, one must question the comparability of those properties. (Appellant’s Notice of Authority, citing THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 458-59 (12th ed. 2001)). We take Village Green’s argument as both support for Frandson’s lack of sales comparison approach as well as criticism of the adjustments made by Nelsen in his sales comparison approach and the reliability of his analysis.

In Frandson’s opinion, the value of the subject property cannot be readily established by sales. He asserts there is not a market for the subject property, and thus, there are no comparables sales to develop the approach. He states that “any sales that could be utilized would require significant adjustments and as such, the Sales Comparison Approach . . . would be given little, if any, consideration, in the final value estimate.” (Ex. 2, p. 34). We agree that when an appraiser is required to make substantial adjustments to selected comparable sales, the size of the adjustments may indicate an underlying lack of comparability. There is no evidence in this case, however, to suggest that Frandson ever attempted to make adjustments to sales, only to find that substantial adjustments would be required to render them comparable. It is notable that Frandson provided and used apartment sales in his market rent and capitalization rate analysis, even though he contended all of the properties were superior to the subject.

While we recognize the condition of the subject property limits the availability of *identical* comparable sales, we do not believe the subject is so unique that comparisons could not be made to other complexes, though some may be in superior condition. *Bartlett & Co. Grain v. Bd. of Review of City of Sioux City*, 253 N.W.2d 86, 93 (Iowa 1977) (stating, “For the evidence to be admitted it must be shown that the conditions are similar. ‘Similar’ does not mean identical, but having a resemblance; and property may be similar in the sense in which the word is here used though each possesses points of difference.”). Further, “‘readily established,’ just as ‘comparability’ is relative.” *Id.* at 94.

In this case, we believe there are sufficient comparable sales to make the sales comparison approach a reliable indicator of the property's fair market value and the approach is worthy of consideration. We find that by failing to develop any other approach, the reliability and credibility of Frandson's analysis is limited, particularly when the record indicates sales of other apartment complexes were available for analysis. Nelsen examined comparable sales to complete the sales comparison approach to value and to determine the capitalization rate applied in his income approach to value. For his part, Frandson used comparable property sales to develop his capitalization rate in his income approach, though he stated they were superior to the subject.

Nonetheless, the record also indicates this property suffers from many challenges, including its condition, pest infestations, security problems, and vacancy issues. Given these challenges and the fact that apartment complexes are, by their nature, income-producing facilities, we also give consideration to the income approach to value.

Nelsen's appraisal developed both the income and sales comparison approaches to value. Nelsen included five comparable properties that sold between November 2008 and December 2010. While all required downward adjustments for condition, many offered similar unit count, style, and location to the subject property. Moreover, two of the sales had similar or worse vacancy rates than the subject property, indicating that despite unfavorable circumstances, there is a market for distressed investment properties.

Village Green is critical of the fact that Nelsen did not complete an interior inspection of the property and, as a result, his opinions do not adequately account for the subject's condition. We recognize that Nelsen considered the subject to be in below average condition, which appears to be consistent with the actual condition of the property. In addition, we note that Frandson's inspection was also limited due to a bed bug infestation at the property. (Exhibit 2, p. 2). As a result, it appears

that neither appraiser had the benefit of a full inspection nor can we say that either has a materially better understanding of the property’s overall condition.

Nelsen also developed the income approach. A distinguishing factor between Nelsen and Frandson’s income analysis was a roughly \$54,525 difference in expenses, as well as different capitalizations rates. The following chart summarizes the differences in expenses, net operating incomes (NOI) and capitalization rates.

	Effective Gross Income	Total Expenses	NOI	Capitalization Rate	Conclusion
Frandson	\$574,753	\$396,625	\$178,128	14.60%	\$1,220,214
Nelsen	\$573,750	\$342,100	\$231,650	12.60%	\$1,838,770

We find Nelsen’s conclusions more reliable. After reviewing surveys of other investment properties in the Des Moines area, Nelsen testified the expenses were already at the high end of the range for the market. Nelsen explained that the industry norm for expense ratios in the Des Moines market was 51%, which included taxes. He estimated expenses were at 60% before taxes and would be closer to 74% if taxes were included. For this reason, he believes he has more than adequately considered the troubled nature of the subject improvements, which would require greater expenses for security, legal issues, management, and maintenance. In comparison, Frandson’s expense ratio, including taxes, would be closer to 84% and, in our opinion, excessively high.

Village Green complains that Nelsen, unlike Frandson, did not include a miscellaneous expense category. Nelsen testified that he considered those expenses and allocated them in his other expense categories. On the other hand, Frandson’s inclusion of a \$38,000 miscellaneous expense category appears to be replication of the historical operating statement. (Exhibit 2, p. 41). Frandson indicates the owner included “snow removal, trash, phone, miscellaneous expenses, pest control, and deposit refunds within this category.” (Ex. 2, p. 39). Without knowing if the deposits were initially treated as income, we question the inclusion of deposit refunds as an expense and the impact this would have on

the reported expenses. In addition, we note the remaining items can be easily categorized into the other expense categories used by the appraisers and, per his testimony, Nelsen indicated he did so.

Moreover, both appraisals indicated capitalization rates in the Des Moines area in the 8-9% range, yet Frandson determined a rate above that at 10%. He cites the subject's location, condition, and occupancy rates as requiring a higher capitalization rate. We disagree. Nelsen explained that a lower capitalization rate was warranted because much of the risk had been built into the expense and NOI analysis. We find that Frandson's higher than normal expenses coupled with a higher capitalization rate artificially lowers his indicated value of the subject property's market value.

In conclusion, we find that Nelsen's appraisal is the best evidence in the record of the fair market value of the subject property and establishes it is over-assessed. However, we find Nelsen did not reduce his conclusions by the personal property associated with the project. He agreed the estimate of \$26,684 determined by Frandson was reasonable, and therefore, we reduce his conclusion by this amount.

THE APPEAL BOARD ORDERS the 2011, 2012, and 2013 assessments of the 128-unit housing complex located along the north side of East Seneca Avenue and west of East 14th Street in Des Moines, Iowa and identified by parcel number 110/06491-020-001, is modified to \$1,813,000.

The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 27th day of May, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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