

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**3M Company,**  
Appellant,

v.

**Marion County Board of Review,**  
Appellee.

**ORDER**

**Docket No. 13-63-0228**  
**Parcel No. 09695-002-00**

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On October 23, 2014, 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. Attorneys Donald B. Redfern and Brandon J. Gray of Redfern, Mason, Larsen and Moore, PLC, Cedar Falls, represented Appellant 3M Company. Assistant Marion County Attorney Benjamin P. Hayek represented the Marion County Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

The subject property is 3M Company's industrial manufacturing facility located at 3406 Pleasant Street East, Knoxville, Iowa. The facility was constructed in phases from 1973 to 2007 with the bulk of the improvements (76%) built in 1973. (Exhibit E). The improvements include warehouse space for raw and finished product, office space, and manufacturing space. According to the record, the improvements are roughly 580,000 square feet. The main level is approximately 482,000 square feet and there are approximately 98,000-square feet of mezzanine. (Exhibit 2, pp. 36-37; Exhibit 5, p. 30; Exhibit E, p. 34). The site is 64-acres and has 402,500 square feet of paved parking. (Exhibit H, p. 83).

In 2013 the property was assessed at \$9,602,370, allocated as \$975,000 in land value and \$8,627,370 in improvement value. 3M protested the assessment to the Marion County Board of Review contending it was assessed for more than authorized by law under section 441.37(1)(a)(2). The Board of Review denied the petition. 3M then appealed to this Board and contends the correct assessment is \$4,430,000.

County Assessor Drew Sanders testified for the Board of Review and provided a background of the assessment. Sanders explained commercial and industrial property in the county had not been revalued for some time, and thus Vanguard, Inc. completed a complete re-inspection appraisal of these properties for the 2013 assessment. The process resulted in the increase from \$6,977,220 the previous year to the property’s current assessment of \$9,602,307.

***Appraisals***

3M submitted two independent appraisals of the property. Paul Bakken of The Valuation Group, Inc. Plymouth, Minnesota, completed an appraisal and testified on 3M’s behalf. (Exhibit 2). Likewise, Ellen Herman of EB Herman Companies, St. Paul, Minnesota, completed an appraisal and testified at hearing. (Exhibit 5). Additionally, Herman completed an income approach analysis separate from her appraisal. (Exhibit 7).

The Board of Review submitted an appraisal completed by Russ Manternach of Commercial Appraisers of Iowa, Inc., West Des Moines. (Exhibit E). The following chart summarizes the approaches to value used by the appraisers 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>
Bakken	\$4,000,000	N/A	N/A	\$4,000,000
Herman	\$4,385,000	\$4,450,000 (addendum to appraisal)	\$4,770,000	\$4,425,000
Manternach	\$7,470,000	\$7,360,000	\$8,130,000	\$7,450,000

In addition to the appraisals, 3M submitted a review of Manternach’s appraisal completed by Bakken, which critiqued Manternach’s choices of sales and adjustments. The Board of Review also called Robert Ehler, President of Vanguard, Inc. Cedar Rapids, to provide an oral review of Bakken’s and Herman’s appraisals.

The Bakken Appraisal

Bakken completed only the sales comparison approach to value. His conclusions were as follows:

<b>Appraiser</b>	<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
Bakken	\$4,000,000	N/A	N/A	\$4,000,000

In his description of the subject property, Bakken asserts the mezzanine, which is roughly 98,000 square feet, holds little to no value to anyone other than the user. (Exhibit 2, p. 15). Nevertheless, he includes this area in his final opinion; but then he asserts his “valuation will most likely overstate the value of the property.” (Exhibit 2, p. 16).

Bakken also testified that he does not believe the subject would be converted to warehouse use because of its narrow column spacing, insufficient ceiling heights, and insufficient docking. For this reason, Bakken believes that *only* manufacturing facilities “would capture those elements of obsolescence.” Additionally, Bakken asserts the subject property’s location in Knoxville is a detriment because there are likely no “local” buyers to purchase the property. He claims the subject property is not located proximate enough to a major interstate or highway to be appealing to market participants. He does acknowledge the subject property has a railroad spur, which he asserts is for specialty items. Bakken cites this lack of a “transportation infrastructure” combined with the location in a “small town” as support for his opinion that the

subject's location is not ideal and a further detriment for conversion of the improvements to a warehouse use.

Bakken's appraisal states he did not develop the cost approach because he does not believe it is reliable due to the age of the property and the high amount of accrued depreciation that would have to be applied to it; he further commented he would not develop the cost approach for a building over three to four years old. (Exhibit 2 p. 9). We find despite Bakken's claim that the cost approach's reliability may diminish when valuing older properties, it still serves as a check as compared to the conclusions drawn from other approaches to value. Moreover, because this property is a single-owner, large manufacturing facility, "Buyers of these properties [limited-use] often measure the price they will pay for an existing building against the cost to purchase an existing structure and make any necessary modifications." (THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, 566 (14th ed.)). We find that by failing to develop the cost approach, the reliability of Bakken's analysis is limited, particularly considering the other appraisers were able to complete this approach.

Bakken further testified he did not complete the income approach because the subject property is owner-occupied and designed for a single user.

In developing the sales comparison approach Bakken based his search for comparable properties on the following criteria (Exhibit 2 p. 86):

- Located in Iowa; then sales of similar plants in surrounding states used as a check
- Used for manufacturing and/or production prior to the sale; warehouses were omitted
- Over 100,000 square-feet
- "Ex-urban" location were preferred over urban areas
- Sold within the last three years
- Multiple building ages with a preference of original construction in 1970's

He found twelve sales that met these criteria. (Exhibit 2 p. 87). Bakken further limited this list to nine sales, which he used to determine an indicator of value for the subject property. (Exhibit 2 p. 136). After adjusting the sales for differences, he concludes an opinion of \$7.00 per square foot. His appraisal, however, contains no explanation regarding adjustments to the comparable properties or how he determined them, but only an Adjustment Grid. (Exhibit 2 p. 136). Further, we found his testimony ambiguous regarding his comparisons and adjustments.

Bakken provided an additional sale, located in Mosinee, Wisconsin, as a “double-check on the value conclusions.” (Exhibit 2 p. 187). The sale had an original list price of \$14,900,000. Eventually, the price was reduced and the property sold at auction in July 2013 for \$4,991,500, which was less than the minimum bid requirement. Despite this fact, Bakken did not adjust this sale for differences compared to the subject property and relies on the unadjusted sale price-per-square-foot to support the conclusions from his sales comparison approach. Foremost, we do not find an unadjusted sale to be persuasive evidence of the market value of the subject property or definitive support for other analyses. Moreover, when questioned, Bakken testified it was atypical for industrial/manufacturing properties to sell at auction. Without adjustment or adequate analysis of how the auction may have affected the property’s sale price we find the reliability of the sale is further limited and really lends no support for his comparable sales analysis.

Bakken’s appraisal also contains a “Check on Accuracy of Adjustments” grid, which has no explanation attached to it. (Exhibit 2 p. 136). Although Bakken attempted to explain at hearing how this grid was developed, we found his answers were confusing and circular. Because Bakken did not provide any explanation of this analysis in his report, and his testimony did not alleviate the lack of clarity, we give it no consideration. Additionally, in its post-hearing

brief, 3M attempts to explain Bakken’s analysis; however, its reference to the APPRAISAL OF REAL ESTATE text did not clarify Bakken’s logic. (Appellants Brief p 7).

Bakken also referenced some “additional examples of the value of manufacturing plants that sell in the market” and provided a brief information sheet on each property. (Exhibit 3 pp. 66, 68-79). However, we have concerns with several of these sales. For example, the sale located in Bridgeton, Missouri, was purchased by an investor who intended to lease the property to multiple-tenants, and we do not find it represents a single-owner use like the subject property. (Exhibit 3 p. 70). Further, the two sales located in Leavenworth, Kansas, and in Rolla, Missouri, indicated local incentives were part of the transaction. (Exhibit 3 p. 72-73). Ultimately, we do not find it necessary to recite and analyze each of Bakken’s “additional comparable properties” because he does not adjust them, and we, therefore, give them no consideration.

Given the testimony and evidence in the record, we find Bakken and his report to be the least reliable. We find his analysis lacks substantive evidence or explanation to support his adjustments and conclusions. Further, we find his decision to limit his opinion to a single method of value, the sales comparison approach, further limits his credibility.

The Herman Appraisal

Herman completed all three approaches to valuation: cost, income, and sales comparison. Her conclusions of value were as follows:

<b>Appraiser</b>	<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
Herman	\$4,385,000	\$4,450,000 (addendum to appraisal)	\$4,770,000	\$4,425,000

Herman briefly testified about a prior appraisal report on the subject property, which she completed in July 2014. (Exhibit 6). Essentially, the Board of Review asserts Herman is not credible because of her numerous opinions throughout the appeal process. (Appellee’s Brief p.

12). However, we recognize there can be phases of appraisal work to meet a client's needs. These phases would result in multiple reports, each having their own unique scope that may affect the conclusions of value; but each opinion may still be credible based on the scope of work. In this case, we find it reasonable to focus only on Herman's final opinion (Exhibit 5), which incorporated the broadest scope of work.

At hearing, Herman explained that she did not develop the income approach to value in her initial appraisal report, but completed it later at 3M's request. (Exhibit 5 p. 46; Exhibit 7). She stated that while she was able to go through the mechanics of developing the income approach and the conclusions are reasonable, she did not have any lease data for large, single-user manufacturing facilities. As a result, her income approach uses asking rental rates for two properties available for sale or lease, which were later sold. She estimates an annual net operating income of \$560,009, applied at 12.58% cap rate, and concluded an opinion of value by the income approach of \$4,450,874, or \$7.67 per-square-foot. (Exhibit 7 p. A6). Although Herman stated that this conclusion is not inconsistent with values arrived at by the sales comparison and cost approaches, she ultimately gave the income approach no consideration.

Herman developed the cost approach to value but she finds it a "weak indication of value." (Exhibit 5 p. 46). She stated it was developed as a secondary approach "because it is good appraisal practice to develop two approaches to value." She believes she took appropriate care in developing the costs new, but noted depreciation is difficult to estimate. In Herman's opinion, because of the age and multiple additions, the subject property has a tremendous amount of physical depreciation and functional obsolescence.

Herman developed the cost approach using reproduction costs rather than replacement cost. Herman explained that she looked at all of the subject's improvements and valued each of

them individually because of different construction materials, features, year built, and clear heights. She noted the property had multiple additions, which she explained is typical for an older, owner-occupied manufacturing plant that has been under the same ownership for a long period. But, she also goes on to say that because of the age and multiple additions the subject property has a tremendous amount of physical depreciation and functional obsolescence. After determining the cost new of the subject improvements, she determined and applied a separate depreciation for each of the different buildings. (Exhibit 5 p. 85).

While a using reproduction costs is a valid method, it is an atypical method for this Board to see in an assessment appeal. In the subject property's case, this methodology would result in significantly higher depreciation due to the various ages of the property's additions, which would further limit the reliability of the approach. Moreover, it would make her estimation of depreciation more difficult to calculate and less reliable.

In developing the sales approach, Herman noted the basic areas of comparison and identified the following criteria that would be most similar for comparison purposes to the subject property. (Exhibit 5 p. 46).

- Large, owner-occupied industrial properties between 250,000 to 1,300,000 square-feet of building area
- Similar age to the subject
- Located in Iowa or other similar upper Midwest markets

Herman found seven industrial sales that met her criteria.

<b>Property</b>	<b>Location</b>	<b>Square Feet</b>	<b>Acres</b>	<b>Sale Date</b>	<b>Sale Price</b>	<b>Unadjusted Price PSF</b>	<b>Adjusted Price PSF</b>
Subject	Knoxville, IA	580,296	64	N/A	N/A	N/A	N/A
Comp 1	Milford, IA	364,757	21.84	03/2013	\$2,143,903	\$5.88	\$7.52
Comp 2	Eldridge, IA	328,053	26.48	06/2012	\$2,500,000	\$7.62	\$7.47
Comp 3	Appleton, WI	276,084	19.31	02/2012	\$2,000,000	\$7.24	\$7.53
Comp 4	Milwaukee, WI	374,736	26.39	09/2011	\$3,300,000	\$8.81	\$7.66
Comp 5	Neenah, WI	847,867	39.59	04/2011	\$4,750,000	\$5.60	\$7.68
Comp 6	Omaha, NE	1,297,224	93.83	11/2011	\$7,000,000	\$5.40	\$7.50
Comp 7	Mosinee, WI	677,917	43.64	07/2013	\$4,991,500	\$7.36	\$7.66

Comparable 1 was owned by furniture manufacturer, Klaussner, that listed the property for sale or lease after it determined it was going to close the plant. Polaris Industries, an ATV manufacturer, purchased the property for manufacturing use. We note that the record also includes testimony from Ehler that Polaris spent “millions of dollars” modifying the property for the manufacturing processes it would ultimately use.

Comparable 2 was operated as a printing plant when it sold. Peterson Properties, LLC, which specializes in repositioning large manufacturing properties, purchased it. According to Herman, Peterson Properties typically repositions properties into multi-tenant occupancy for either manufacturing or industrial purpose use. Herman believes this is a similar property to the subject because it was used for manufacturing at the time it was sold.

Comparable 3 was sold by the owner-occupant, Hoffmaster Group, Inc., which used the facility to make paper products such as paper cups and plates. Herman explained that it had multiple additions and similar original construction to the subject. Perkins, LLC, purchased the property and intends to reposition it into a multi-tenant property for mixed industrial use.

Herman believes Comparable 4 was a former manufacturing facility at some point in its history but prior to the most recent sale it was already repositioned as a multi-tenant use. The

buyer, T&M Industrial Prop, LLC, intended continued multi-tenant use. Because of this, she does not believe it is the most similar comparable but included it in her analysis as an indication of value of a larger former manufacturing plant and the transition it has been through.

Comparable 5 was operated by the Kimberly-Clark Corporation and was operated as a disposable diaper manufacturing facility prior to the sale. The plant was closed and was purchased by a buyer who intends to convert it to a multi-tenant industrial use. Comparable 6 is located in Omaha, Nebraska and is the largest facility Herman selected for her analysis. It has nearly 1,300,000 square feet of building area. (Exhibit 5 p. 58). The seller manufactured electronic cabling, then vacated the property and listed it for sale. The buyer intended to reposition it to a multi-tenant use.

Comparable 7 was a manufacturing plant purchased for continued use as an owner-occupied manufacturing. As previously discussed, this sale occurred as the result of an auction. (*See supra* p. 5).

Herman testified that after adjusting the sales, in this case, she did not feel that there was a “best indicator” sale. Therefore, she concluded a value for the subject property based on the average and median of the adjusted sale prices per-square-foot, \$7.56. Her opinion of value for the subject property, after rounding, is \$4,385,000.

When questioned by this Board about the use of the subject property by single users or for multi-tenant repositioning, Herman stated that the highest and best use of the subject property would be for “another manufacturing occupant.” But she also stated that because of market conditions and a lack of buyers it could be repositioned to a multi-tenant. In Herman’s opinion, in most instances these older, large manufacturing facilities simply lack buyers. However, she pointed to Comparables 1 and 7 as examples of continued-use properties. We agree with

Herman’s statements that these properties are not *typically* purchased for owner-occupant use. However, for this reason, we believe other approaches to value must be considered in order to value the property as its going-concern and consider the property’s current conditions as an operating, owner-user manufacturing plant. Ultimately, we find the comparison of properties that were purchased, almost exclusively, for a different use (multi-tenant) does not adequately consider the market value of the subject property in its use as of January 1, 2013. Our concern is that Herman’s valuation appears to have primarily considered a secondary use, or a repositioning of the subject property, rather than the current use of the property as a single-user manufacturing facility. We do not believe the two different uses (single-use manufacturing and investor-owned multi-tenant) would necessarily result in the same opinion of value because the motivations and needs of the users are vastly different.

The Manternach Appraisal

Manternach developed all three approaches to value. His conclusions were as follows:

<b>Appraiser</b>	<b>Sales Approach</b>	<b>Income Approach</b>	<b>Cost Approach</b>	<b>Final Opinion of Value</b>
Manternach	\$7,470,000	\$7,360,000	\$8,130,000	\$7,450,000

In describing the subject property, Manternach notes that 76% of the property, or 367,990 square-feet, was built in the original phase in 1973. Subsequently, there were nine additions to the property between 1974 and 2007, which comprises the remaining 24% of the gross building area (GBA). (Exhibit E p. 36). Manternach testified he did not consider the property piecemeal because the majority of the building was built in one phase (76%), and the reason there were different ceiling heights is because it is what the user needed. We consider this relevant because of the direct testimony, written opinions, and inferences of Bakken and Herman that the subject property had been “cobbled together” and was therefore functionally obsolete because of the

layout. Given that the bulk of the improvements were constructed in a single-phase, we find limited merit to the argument that the layout of the property is hampered or rendered entirely functionally obsolete in the marketplace. That being said, we do agree that the age of the improvements could have an impact on value because of changes in the market such as technology advancements that would reflect a more modern workflow if the improvements were new. Manternach also notes the property includes approximately one mile of railroad spur, various tanks used for 3M's manufacturing process, and a large amount of pavement. We note that Bakken did not consider the value of the railroad spur and tanks, which are inherent in the current use of the property. Herman made adjustments for the railroad spurs in her sales comparison analysis but does not mention the tanks and does not appear to consider them in her cost analysis.

To complete the income approach to value, Manternach analyzed comparable property leases. (Exhibit E p. 51). Based on these leases he concludes a \$1.75 per-square-foot of total gross building area, which weights the higher valued main level and the lower valued mezzanine area. (Exhibit E p. 51). He summarizes his analysis in the reconstructed operating statement and determines a net operating income (NOI) of \$697,267. (Exhibit E p. 55). Lastly, he develops a loaded capitalization rate of 9.47% and determines an opinion of value by the income approach of \$7,360,000 rounded. (Exhibit E p. 57).

Manternach testified that several of the fifteen leases he used were manufacturing plants, but about two-thirds were warehouse facilities due to the fact that the majority of manufacturing plants are owner-occupied and not leased. He also stated if there were leases in the market for manufacturing facilities, the rates would likely be higher because the buildings are more expensive to construct.

Manternach developed the cost approach, including developing an opinion of \$770,000 for the subject site, or \$12,000 per acre. Relying on *Marshall Valuation Service*, a national cost service manual, he estimated the replacement costs new. This is different from the methodology Herman employed to determine cost. He applied physical, functional, and external obsolescence and ultimately concluded an opinion of \$8,130,000 rounded by the cost approach. (Exhibit E p. 44).

Lastly, Manternach developed the sales comparison approach. He included four sales in his analysis and adjusted them for differences. All of the sales are located in Iowa. He provides a table with adjustments and written explanation of the adjustments in his report. (Exhibit E p. 46-49).

<b>Property</b>	<b>Location</b>	<b>Total Square Feet</b>	<b>Sale Date</b>	<b>Sale Price</b>	<b>Unadjusted Price PSF</b>	<b>Adjusted Price PSF</b>
Subject	Knoxville, IA	580,033	N/A	N/A	N/A	N/A
Comp 1	Ottumwa, IA	352,860	05/2012	\$7,100,000	\$20.12	\$20.98
Comp 2	North Liberty, IA	751,800	05/2011	\$19,837,000	\$26.39	\$15.98
Comp 3	Newton, IA	175,000	02/2011	\$2,775,000	\$15.86	\$13.11
Comp 4	Underwood, IA	425,160	11/2011	\$4,600,000	\$11.95	\$12.60

Based on these sales, he concludes an opinion of \$15.50 per-square-foot for the subject property, which he applies only to the main level building area (482,017 square feet) because he considered the mezzanine in the adjustments. His opinion of value, by the sales comparison approach, is \$7,470,000 rounded.

Manternach gave all three approaches to value some consideration and reconciled an opinion of \$7,450,000 for the subject property, as of January 1, 2013.

Manternach testified there is no perfect approach to value for 3M's property. He notes the cost approach is weakened because the property does suffer from obsolescence. The sales

approach is not perfect because there are no identical sales of identical improvements in identical locations. Lastly, because there are not leases available of similar properties, it is difficult to determine, precisely, leases or capitalization rates. Although no approach is perfect, he finds that all three are still applicable.

3M was critical of Manternach's Comparable 1 asserting the sale price included personal property and that the property was subject to a lease at the time of sale. Manternach explained he was very familiar with the sale because he had appraised the property and that the sale price reflected the amount paid for the real estate and no personal property was included. Further, he adjusted the sale by 15% in his analysis to reflect the value of the lease. Manternach stated the tenant had occupied the property since at least 2002, but had renegotiated the lease immediately prior to the sale in 2012. He testified that the use of a sale with a lease was sound practice, if properly adjusted.

3M was also critical of Manternach's Comparables 2 and 3 because they were warehouses. Manternach admitted the subject property could not be easily converted into a distribution warehouse; but that he did not believe distribution warehouses are more valuable in the market than manufacturing plants. In his opinion, most large industrial properties in Iowa are unique and manufacturing and industrial plants are typically more expensive to build than warehouse facilities. For this reason, he believes that if a manufacturing plant and warehouse were both new, the manufacturing plant would be more valuable in the market place because of the initial upfront costs. As the properties get older, there would be too many factors to consider saying that one would always be more or less valuable. Manternach explained he adjusted these sales for any physical differences between them and the subject property and ultimately, he appraised the subject as a manufacturing facility.

Finally, 3M was critical of Manternach's remaining Comparables 2, 3, and 4, essentially asserting they were not verified properly and as a result would affect Manternach's conclusions. Manternach rebuked each of the assertions and stood by his verification sources, adjustments, and conclusions.

When asked by 3M if he looked outside of Iowa for comparable sales, Manternach explained that he had but not to a large extent. When asked if he had looked at any of the sales Bakken included in his review, he stated he had not, but in review of Bakken's report, he would not have included them in his own analysis for various reasons. (Exhibit 3 pp. 68-71). 3M then asked Manternach if it was important to include manufacturing properties as comparables. Manternach testified that it did not have to be specifically manufacturing. Basically, he was looking for "large industrial properties with similar locations, similar physical attributes...whether they were used 100% for warehouse, 60% for warehouse, or 40% manufacturing."

3M also submitted an appraisal review of Manternach's report that Bakken completed. (Exhibit 3). Similar to his appraisal, we find Bakken's review reflects flawed analysis as well as minimal explanation and support for his critique. We find Bakken's analysis used disparate adjustments made between elements of the comparables and lacked explanation of how he arrived at the adjustments; he relied on a sale that we do not believe represents a normal transaction in that it was an auction sale (Exhibit 3 pp. 12-13); and lastly, in his final analysis (Exhibit 3 pp. 16-17) he relies on a sale that he purposefully excluded from his own market analysis, which was reported as selling with an incentive from a local government. Based on the foregoing reasons we do not consider his review reliable.

## Robert Ehler Testimony

Robert Ehler is the President of Vanguard Appraisal and testified on behalf of the Board of Review. Ehler is a certified appraiser and a certified assessor in several states throughout the Midwest. Vanguard provides mass appraisal services to assessment jurisdictions throughout the Midwest. Ehler oversees the appraisals of all the assessment work done by Vanguard each year, which totals about 30,000 to 40,000 properties. Vanguard has a staff of about 60 employees.

Ehler explained the general process to value property includes an inspection of the property, a calculation of the replacement cost of every structure, analysis of every sale, and an income statement questionnaire. He testified that the mass appraisal process, presented in a cost format, incorporates income and sales comparison data.

Ehler explained that the cost calculations could take as many as three days for a property the size of the subject. In this assessment process, Chris Weis, a Vanguard employee, inspected the subject property on May 7, 2012, and then calculated the replacement costs. Then, Ted Goslinga, another Vanguard employee, did the “actual valuation” of the property. Ehler explained that Goslinga looked at all the sales that occurred in the county and then calculated depreciation and obsolescence by comparing Vanguard's costs to the sales. When this process is completed, the valuations are sent to the County, which has about thirty to forty-five days to review and ask Vanguard any questions it may have about the individual results. Finally, the County mails out notices to all property owners and informal hearings are held for property owners to come and speak with Vanguard. Ehler stated the goal of assessment is to ensure equity among similar properties. However, mistakes can occur; therefore, the goal of the informal hearing is to fix any possible mistakes.

Ehler testified that the subject property has multiple tanks, containment areas, and control centers (MCC buildings – motor control centers). In his opinion, the tanks alone have a valuation of over \$400,000; and including all of the containment areas and yard items, the total is about \$1,000,000 of the assessed value by the cost approach. Ehler asserts that Vanguard’s valuation is the only opinion in the record that includes all of the improvements on the site, including the tanks and containment areas. Ehler was critical of Bakken and Herman for little or no reference to the tanks. As far as he was able to tell, neither of them included them in their valuation opinions. Ultimately, in this case, we do not consider the tanks to be a substantive issue of concern.

First, we do not rely on Bakken’s appraisal. Ehler was critical of Bakken’s appraisal, comparable selection and adjustments. Because we have determined Bakken lacks credibility in his analysis we do not find it necessary to recite Ehler’s critique. Ehler was critical of Herman’s sales comparison analysis, explaining that he was very familiar with several of the properties she included. (Exhibit 5 p. 63). Ehler explained that Herman’s Comparable 1, located in Milford, Iowa, had been vacant when Polaris purchased it. The property had been used for furniture manufacturing and included items such as “misterters,” which were used to keep the product moist. However, the property was purchased for steel fabrication, which does not want moisture, so there were “literally millions of dollars spent changing this building from a furniture manufacturing over to a toy or off roads manufacturer.”

He testified that Herman’s Comparable 2 located in Eldridge, Iowa, a vacant manufacturing plant, purchased by Peterson Properties, LLC. Ehler explained he was “very familiar” with Peterson Properties as an entity that buys factories and then subdivides and rents to multiple tenants.

Likewise, Ehler was familiar with Herman's Comparable 3 located in Appleton, Wisconsin that was purchased by a local investor, who positioned it to a multi-tenant use. Moreover, it was only 38% occupied as recently as the beginning of 2014, approximately two years after the purchase.

Ehler asserts that Herman's Comparable 4 was a foreclosure sale and is now has a multi-tenant use; and her Comparable 5 (Neenah, Wisconsin) is also multi-tenant and still not fully occupied.

Ehler stated that Herman's Comparable 6, located in Omaha, Nebraska was part of a larger property that was sold off individually and this was the last piece to be sold. The other two parcels that sold and were not included for analysis by Herman and had considerably higher sales prices. Lastly, Ehler was critical of Herman's Comparable 7 which sold in an on-line auction, which he had never seen occur before.

Ultimately, while he provided important background regarding the 2013 assessment of the subject property, Ehler did not opine a new opinion of value but rather believes the subject's current assessment is correct.

### ***Conclusions of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2013). 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 determines 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. § 441.37A(3)(a).

### ***General Principles of Law Applicable to Assessment of Real Property***

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a) and (1)(b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 778 (Iowa 2009).

“*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.

§ 441.21(1)(b). In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration.”

*Id.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Soifer*, 759 N.W.2d at 779 n.2 (citing *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995)). “[A]bnormal 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.” § 441.21(1)(b).

The sales-comparison method is the preferred method for valuing property under Iowa law. *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 398 (Iowa 2009); *Soifer*, 759 N.W.2d at 779; *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); *Carlton Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). The first step in this process is determining if *comparable* sales exist. *Soifer*, 759 N.W.2d at 783. If PAAB is not persuaded as to the comparability of the properties, then it “cannot consider the sales prices of those” properties. *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)).

Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.

*Id.* at 783 (citing *Bartlett & Co. Grain*, 253 N.W.2d at 94).

Where the market value of the property cannot be *readily* established using comparable sales, one can turn to other factors to determine the value. § 441.21(1)(b) (emphasis added); *Soifer*, 759 N.W.2d at 779.

Assessors are permitted to consider the use of property as a going concern in its valuation. *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985). When an assessor values property as a going concern, “he is merely following the rule that he must consider conditions as they are.” *Soifer*, 759 N.W.2d at 788 (quoting *Maytag Co. v. Partridge*, 210 N.W.2d 584, 590 (Iowa 1973)). The assessor is “recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for good will, patents, or personnel.” *Id.*

### ***Claim of Over-Assessment***

To prevail on a claim that an assessment is for more than authorized by section 441.21(1), the law requires two showings. *Heritage Cablevision*, 457 N.W.2d at 597. First, the record must show the property is over assessed; and second, what the fair market value of the property should be. *Id.*; *Boekeloo*, 529 N.W.2d at 276-277. If PAAB “determines the grounds of protest have been established, it must then determine the value or correct assessment of the property.” *Compiano*, 771 N.W.2d at 397. Here, PAAB “makes its independent determination of the value based on all the evidence.” *Id.*

### ***Burden of Proof***

Initially, the burden of proof in an assessment protest rests with the taxpayer, who “must establish a ground for protest by a preponderance of the evidence.” *Compiano*, 771 N.W.2d at 396. However, if the taxpayer “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 shifts to the board of review to uphold the assessed value.” *Id.* at 396-397; § 441.21(3). Failure to shift the burden of proof is not equivalent to failing to satisfy the burden of proof. *Id.* at 397. “Ultimately, the burden of proof is one of persuasion,” which “comes into play after all of the evidence is introduced at hearing.” *Id.* at 397 n. 3.

“Evidence is competent under the statute when it complies with the statutory scheme for property valuation for tax assessment purposes.” *Compiano*, 771 N.W.2d at 398. “[M]arket-value testimony by a taxpayer’s witnesses under a comparable-sales approach is ‘competent’ only if the properties upon which the witnesses based their opinions were comparable.” *Soifer*, 759 N.W.2d at 782. (noting “If the distorting sale factors or the points of difference between the assessed property and the other property are not quantifiable so as to permit the required adjustments, the other property will not be considered comparable.”); *Boekeloo*, 529 N.W.2d at

279; *Bartlett & Co. Grain*, 253 N.W.2d at 88. If they are, an opinion would “constitute ‘competent evidence’ and the burden of persuasion” shifts, “otherwise it does not shift.” *Bartlett & Co. Grain*, 253 N.W.2d at 88; *Soifer*, 759 N.W.2d at 783. However, the *Soifer* Court also stated the approach followed in Iowa is “[W]here the properties are reasonably similar, and a qualified expert states his 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.* (internal citations omitted). Just because the evidence is competent, however, does not mean it is credible. *Homemakers Plaza, Inc. v. Polk Cnty. Bd. of Review*, 2003 WL 105220105220 (Iowa Ct. App.) (citing *Soifer*, 759 N.W.2d at 785).

“Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* at 783 (other citations omitted). Likewise, “[t]he use to which comparable properties are put need not be identical to the use of the assessed property.” *Hy-Vee Food Stores, Inc. v. Carroll Cnty. Bd. of Review*, No. 3-546 / 12-1526 (Iowa Ct. App. October 2, 2013) (unpublished) (citing *Soifer*, 759 N.W.2d at 785). “Nonetheless, a difference in use does affect the persuasiveness of such evidence because ‘as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced.’ ” *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

Here, we need not decide if 3M has shifted the burden as we ultimately conclude that a preponderance of the evidence shows the subject property is assessed for more than authorized by law. We reject the Board of Review’s assertion that the current assessment is correct given that all three experts who completed market value appraisals arrived at values below the current

assessment. Therefore, we must determine which of the appraisals is ultimately more credible and persuasive than the others in order to conclude a market value for the subject properties.

### *Appraisers' Opinions of Market Value*

Based on our review of the sales comparables offered by both parties, we find that the subject property's fair market value cannot be readily established by the sales comparison approach alone. While the subject is a large, single-owner manufacturing facility, it is clear to this Board that properties like the subject typically do not sell for continued use as large, single-owner manufacturing facilities. Rather, the evidence demonstrates the buyers typically reposition these properties as multi-tenant facilities. Moreover, in the limited instances where these properties re-sell to single-owner manufacturers, it is typical for the buyer to invest substantial sums of money into making the property work for their use. Finally, the only other available sales were typically warehouse facilities rather than manufacturing facilities.

In this case, we do not believe the repurposed manufacturing facility sales relied on by 3M are qualitatively superior to the warehouse facility sales offered by the Board of Review. In some respect, each set of comparables fails to consider the subject property in its current and on-going state as an owner-occupied manufacturing facility. Because of the lack of sales evidence of continued use, owner-occupied manufacturing facilities, we question the comparability of the sales data provided by both parties.

We also note that circumstances surrounding a number of the sales utilized by the appraisers in the record, including foreclosures, auction sales, properties with various amounts of vacancy, etc., impair their reliability. As a result, there is a distinct lack of normal, arm's length sales of properties comparable to the subject in the record, which hampers this Board's ability to rely on the sales comparison approach in this case. For these reasons, we find the subject

property cannot be readily valued using the sales comparison approach alone and other methods of valuation must also be considered for an opinion of value to be reliable.

Bakken's appraisal failed to value the subject property using any approach other than sales comparison. Having found that the sales comparison approach alone cannot readily establish the fair market value of the subject property, we give Bakken's conclusions no consideration. Moreover, as compared to the other two appraisals in the record, Bakken provided no explanation in his written report for the adjustments he made to the comparable sales. Because the information in his report is too limited and this Board found his testimony at hearing regarding the adjustments unconvincing, this Board cannot reach a conclusion whether they are reasonably comparable. *Soifer*, 759 N.W.2d at 783.

While Herman's analysis was explained in detail, we find the majority of her sales were converted to other uses upon purchase. We find these sales to be less persuasive than manufacturing facility sales from one owner-occupier to another owner-occupier. Further, Ehler testified to conditions surrounding her sales that lead us to question their reliability.

Turning to her other approaches, we decline to rely on Herman's cost approach to value because the value she determined was based on a reproduction cost analysis. This analysis is an atypical cost method for determining fee simple market value of an industrial property in an assessment appeal before this Board. Further, her reproduction cost analysis would include a greater estimate of depreciation and thus makes it less reliable. While she developed the income approach to value at her client's request, her analysis used asking rents, not actual market lease data, for two properties and she ultimately gave the income approach no consideration. For this reason, we do not find Herman's opinion of value is the most reliable indicator of value for the subject property as of the assessment date.

Finally, Manternach explained his analysis in detail and demonstrated in both his report and testimony that he verified the information he used. Manternach's sales represent arm's-length transactions of properties in Iowa. While Manternach primarily relied on warehouse sales, he also testified that he valued the property as a manufacturing facility.

Moreover, he developed the cost approach using replacement costs as an additional check on the value. We find this cost approach more reliable than the reproduction cost method Herman used in her report. His income approach uses a larger set of comparable lease data than utilized by Herman and we find this lends support to his ultimate conclusion. Despite the limitations in Manternach's development of the three approaches to value, we find his cost and income approaches support his final opinion, and we find his final value conclusion to be the best evidence in the record of the subject property's fair market value. *Heritage Cablevision*, 457 N.W.2d at 598 ("The advantage of using multiple appraisal techniques lies primarily in those instances where differing techniques lead to similar conclusions concerning market value and therefore tend to support each other."). In total, we conclude Manternach's conclusion of value is the most reliable indication of the property's fair market value as of January 1, 2013.

For the foregoing reasons, this Board finds the 3M property is over-assessed as of January 1, 2013. The best evidence in the record established 3M's correct fair market value is \$7,450,000 based on Manternach's final conclusion of value for the subject property upon consideration of his three approaches to value.

THE APPEAL BOARD ORDERS the January 1, 2013, assessment of the properties is modified as set forth herein.

The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Marion 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 5th day of March, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

Donald B. Redfern & Brandon J. Gray  
415 Clay Street  
PO Box 627  
Cedar Falls, Iowa 50613  
ATTORNEY FOR APPELLANT

Benjamin Hayek  
Assistant County Attorney  
214 E Main Street  
Knoxville, Iowa 50138  
ATTORNEY FOR APPELLEE

Jake Grandia  
Auditor  
214 E Main Street  
Knoxville, Iowa 50138