PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 14-9-0227
Parcel No. 09-11-101-016

Village Square Plaza Limited Partners,
Appellant,
vs.
Bremer County Board of Review
Appellee.

Introduction

On June 2, 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. Paul R. Dietsch, Vice President of Noddles Companies, Omaha, Nebraska represented Appellant Village Square Plaza Limited Partners. County Attorney Kasey E. Wadding represented the Bremer County Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Village Square Plaza Limited Partners (Village Square) is the owner of commercial property located at 1311 4th Street SW, Waverly, Iowa. According to the property record card, the subject property is an 8.73-acre site improved by a multi-tenant retail building used as a Hy-Vee grocery store and retail strip shopping center. It was built in 1988 and an addition was constructed in 2006. The building has 72,448 square-feet of gross building area including cold storage coolers/freezers and loading docks. The property is also improved by 215,000 square-feet of concrete paving, yard lighting, and fencing. Its January 1, 2014, assessment was $3,999,520, representing $450,950 in land value and $3,548,570 in improvement value.

Village Square protested the assessment 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)(a)(1)(b). It asserts $2,585,000; allocated $450,950 to land value and $2,134,050 to improvement value, is the correct value. The Board of Review denied the protest. Village Square then appealed to this Board reasserting its claim.

Although 2014 would typically be an interim assessment year, in this case, the assessor revalued and changed the 2014 value from what it was the previous year; as a result, all grounds of appeal were available to Village Square. *Eagle Food Centers, Inc, v. Bd. Of Review of City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993).

Joe Kirshenbaum, chairman of Noddle, testified the company has built several strip-centers in the Midwest similar to the subject property and has bought and sold them. He believes the actual income and expenses indicate a value of $2,583,931 and that would be the list price if offered for sale.

Kirshebaum is knowledgeable about grocery store sales and leasing in the Midwest, including Hy-Vee stores in Iowa. He commented on a pending supermarket sale in Prairie du Chien that Village Square sold for the value indicated by actual income. Kirshenbaum testified that Hy-Vee is a premier tenant. He stated that when the Storm Lake Hy-Vee lease was lost, the lease rate was reduced by 50-60% and the company had to pay for the cost of fixing up the property. Kirshenbaum referred to Village Square's listing agreement offering $6.50 to $8.50 rental rates and tenant improvements. (Exhibit 4).

Robert Ehler, President of Vanguard, Inc. in Cedar Rapids, testified for the Board of Review and provided a background of the assessment. He explained Vanguard re-inspected and re-valued commercial and industrial property in the county for the 2012 assessment. Ehler offered testimony, which distinguished some of the comparable properties used in the appraisals from the subject property. Vanguard compiled a list of sales in the county, compared the sales prices to the assessments, and determined obsolescence adjustments. (Exhibit B). Because this evidence would be best used for equalization, county-wide revaluation, or equity purposes and it is not directly relevant to establish the market value of Village Square, we give it no consideration.

Appraisals

Village Square submitted two independent appraisals of the subject property. D. Keith Jones of ASA Urban Properties, Valuation Services, Inc. Cedar Falls, Iowa, completed an appraisal and testified at hearing. (Exhibit 2). Mark Winninger of Winninger Commercial, Waterloo, Iowa, completed an appraisal and testified on Village Square's behalf. (Exhibit 3).

The Board of Review submitted an appraisal completed by Russ Manternach of Commercial Appraisers of Iowa, Inc., West Des Moines. (Exhibit A). The following chart summarizes the approaches to value used by the appraisers and their respective conclusions.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jones	$2,510,000	$2,800,000	N/A	$2,750,000
Winninger	$2,800,000	$2,380,000	$3,000,000	$2,610,000
Manternach	$4,130,000	$3,610,000	$4,151,000	$3,800,000

The Jones Appraisal

Jones completed the sales comparison and income approaches to value. Jones submitted revised Exhibit 2, which corrected an error in the original exhibit and references herein to Exhibit 2 are to the corrected version. His conclusions were as follows:

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jones	$2,510,000	$2,800,000	N/A	$2,750,000

Jones describes the subject as a grocery anchored, exterior entry, neighborhood shopping center likely rated class B or C. He reports that while the grocery tenant is a major Midwest chain, the remainder of the strip mall is occupied by local tenants with a history of high turnover, vacancy, and credit loss. In his opinion, Waverly's' retail community is weak as compared to larger communities like Cedar Falls, Waterloo, or Carroll. He reported that many Waverly residents work and shop in Waterloo.

Jones' appraisal states he did not develop the cost approach because it has little validity when applied to older, multi-tenant buildings. Additionally, he believes the small market area and relatively high vacancy in the strip mall portion make estimation of the external depreciation factors lack reliability. (Exhibit 2, p 2).

Jones testified the cost approach to value can be misleading because, in his opinion, the method by which economic obsolescence is extracted from the market can be manipulated to achieve a desired value. Moreover, he asserts the cost and sales approach may have some value, but the income approach is the best method to value this property.

Despite Jones' claim that the cost approach's reliability may diminish when valuing older properties because of economic obsolescence factor; we find it still serves as a check as compared to the conclusions drawn from other approaches to value. We note the other two appraisers completed this approach.

In developing the sales comparison approach, Jones searched for comparable properties in Bremer County, adjoining counties and similarly situated locations back to 2011. (Exhibit 2, p 32). He found twelve sales and three listings that met these criteria in Iowa and nearby Wisconsin. *Id*. Of these, he adjusted comps 1, 2, 4 and 5 and Listing 3 which he believed were of similar location, age, size, quality, and condition. The sales prices ranged from $425,000 to $4,169,500, or $22.88 to $32.70 per-square-foot. The appraisal indicates all were leased at the time of sale. The chart below summarizes his data.

Property	Location	GBA	Sale Date	Sale Price	Unadjusted Price PSF	Adjusted Price PSF
Subject	Waverly	72,448	N/A	N/A	N/A	N/A
Comp 1	Webster City	66,650	2/13	1,525,000	$22.88	$29.74
Comp 2	Osage	37,394	5/11	$900,000	$24.07	$33.70
Comp 4	Fort Dodge	87,282	8/11	$2,400,000	$27.50	$28.88
Comp 5	Prairie du Chien	127,493	7/14	$4,169,500	$32.70	$32.70
Listing 3	Knoxville	43,439	N/A	$2,600,000	$59.85	$47.88

Comparable 1, located in Webster City one block from highway access, is distant from the primary retail activity in the community, which Jones believes makes it inferior to the subject. It is newer than the subject property, but considered similar in age and condition. Because it only has three tenants, Jones considers it inferior to the subject. He testified it was occupied at the time of sale and purchased for continued use. He gave it a relative weight of 15%. (Exhibit 2, pp 33, 35).

Comparable 2 is a multi-tenant strip-center on a highway with primary access to the city of Osage. The community is smaller than Waverly with a smaller retail market area. It is older, lacks updating, is smaller, and he feels it is inferior in quality. Jones testified the property had four tenants at the time of sale. Jones gave it a relative weight of 15%. (Exhibit 2, pp 33, 39).

Comparable 4 is located just north of a highway with high traffic flow in a primary retail area of Fort Dodge. He considered the location similar to the subject. It was vacant at the time of sale and was updated after purchase. The property is now a renovated big-box, discount center, which has two large tenants. Jones opines it is similar to the subject in size and is in above-average condition. He gave it a relative weight of 15%. (Exhibit 2, pp 33, 38).

Comparable 5 is a neighborhood retail center located on a highway providing entry to Prairie du Chien, Wisconsin, a community similar in size and trade area as the subject. While much larger, this property is similar in age and condition to the subject and is also anchored by a grocery store. Jones testified it was purchased by the tenants. Jones gave it a relative weight of 30%. (Exhibit 2, pp. 33, 39).

Listing 3 is a former Hy-Vee anchored shopping center smaller than the subject and located in Knoxville. An adjustment was made to reflect its active listing status. The property is the same age as the subject but was not renovated resulting in inferior condition. Jones gave it a relative weight of 25%.

Jones gave Comparable 5 and Listing 3 the greatest emphasis because he believed the tenant makeup and potential were most similar to the subject. After adjusting the comparable sales for differences. he concludes an opinion of $35.63 per-square-foot, or $2,510,000 (rounded) for the subject.

Jones' appraisal briefly explains his adjustments to the comparable properties for location, age and condition, size, and quality. (Exhibit 2, p 33). In Jones' opinion, the subject's fee simple value was the same as its leased fee value. Therefore, he made no adjustment for this factor.

Jones believes buyers of this type property are buying the income stream. In developing the income approach, Jones analyzed two years of the subject's income and expenses, and rent rolls. He compared the current leases with similar properties from the MLS and appraiser's files. (Exhibit 2, p 71). He testified Noddles reported Hy-Vee lease rates generally range from $2.95 to $6.50, while the subject Hy-Vee rent is $3.50. In his opinion, the subject's current contract rents for the retail tenants, ranging from $7.00 to $11.50, serve as comparable rents for one another and reinforce each other. Jones asserts they reasonably represent market rent for a property with the vacancy and income history of the subject.

Jones estimated a vacancy rate of 8.7% and effective gross income of $317,691. He developed a reconstructed operating statement, reducing the effective gross income by expenses, including 4% management fee, and added 3% reserves to arrive at net operating income (NOI) of $266,353. (Exhibit 2, p 72). Jones then relied on listings and sales, and Realty Rates to arrive at a 9.5% capitalization rate. He did not include the real estate taxes as an expense and did not add the tax rate to the cap rate. The result is a value by the income approach of $2,800,000 (rounded). (Exhibit 2, p 73).

The Winninger Appraisal

Winninger completed all three approaches to valuation: cost, income, and sales comparison. His conclusions were as follows:

Appraiser	**Sales Approach**	**Income Approach**	**Cost Approach**	**Final Opinion of Value**
Winninger	$2,800,000	$2,380,000	$3,000,000	$2,610,000

In his property description, Winninger noted at the time of the 2006 addition extensive exterior and site improvement updates were performed. (Exhibit 3, p 26). He believes the quality of construction, design, and interior and exterior condition appears to be average. Roughly 76% of the property is occupied by Hy-Vee, which is major regional grocery store chain, and credit-worthy anchor. Small retail spaces (1200 to

4200 square feet) occupy the balance of the building. According to Winninger, these spaces struggle for occupancy and have a difficult time in replacing exiting tenants with new tenant leases. (Exhibit 3, p 28) He believes the subject property is too large for a town the size of Waverly.

Winninger considered the cost approach relevant and applicable to provide support for the value conclusion. He used one vacant land sale in Waverly, adjusted it for size and zoning, arriving at a $58,013 per-acre site value. We note Manternach analyzed five land sales and Winninger used only one, which he reported was the only similar commercial parcel of land that could be identified in the subject's area occurring in the last four years. The sale occurred six months after the assessment date.

Winninger used the *Marshall Valuation Service*, a national cost service manual, to estimate the replacement cost of the improvements. He valued the Hy-Vee as an average class D supermarket and the retail spaces as a low cost class D neighborhood strip-center relying on the descriptions in *Marshall*. The replacement cost of each portion was separately calculated, as were the site improvements. Based on a useful life of 35 years and an effective age of 18.5 years, Winninger estimated 53% physical depreciation. The depreciated value of the improvements was $2,543,151 and the indicated value by the cost approach was $3,000,000 (rounded). He weighted the cost approach 10% in his reconciliation.

Winninger considered the sales approach relevant and applicable. He searched several northeast Iowa assessors' records and LoopNet Commercial Listing Service for recent comparable sales of neighborhood retail strip-centers and large store properties with similar location characteristics as the subject. In his opinion, the quantity and quality of the comparable sales was good. (Exhibit 2, p 39). Winninger found six sales that met his criteria. The following chart summarizes his data.

Property	Location	GBA	Sale Date	Sale Price	SP/SF	Adj SP/SF
Subject	Waverly, IA	72,448	N/A	N/A	N/A	N/A
Comp 1	Fort Dodge, IA	87,272	09/2011	$2,400,000	$27.50	$38.50
Comp 2	Waterloo, IA	35,549	07/2010	$1,575,000	$44.31	$39.88
Comp 3	Waterloo, IA	30,705	10/2014	$1,350,000	$43.97	$39.57
Comp 4	Webster City, IA	66,650	02/2013	$1,525,000	$22.88	$34.32
Comp 5	Manchester, IA	23,336	09/2013	$800,000	$34.28	$37.71
Comp 6	Osage, IA	43,394	05/2011	$900,000	$18.60	$37.20

Comparable 1 was a fee simple sale of a strip-center in Fort Dodge, which formerly housed Hobby Lobby and Big Lots stores. Winninger considered it inferior in overall condition and adjusted upward by the cost to update the mechanicals, roof, and exterior. He also considered it inferior in layout and design and adjusted upward. He gave this sale 22.5% weight. (Exhibit 2, pp 40, 43, 46)

Comparable 2 was the sale of a leased, retail strip-center in Waterloo, which was 90% occupied by tenants with average rents of $9 per-square-foot when sold. This property is older than the subject property, but it had received considerable recent and past updates. Winninger considered the location superior in the number of potential investors and tenants. He adjusted downward to account for the subject's smaller market location. It is roughly half the size of the subject. Winninger gave this sale 22.5% weight. (Exhibit 2, pp 40, 43, 47).

Comparable 3 was occupied and leased by a Toys-R-Us Store with one year remaining on the lease, when it sold. It is located in a regional shopping mall in Waterloo. Winninger adjusted the sale downward to account for its superior location for investors and tenants. We note the property was not listed at the time of the assessment and the sale occurred ten months after the assessment date. Winninger gave this sale 22.5% weight. (Exhibit 2, pp 40, 43, 48).

Comparable 4 is a retail strip-center in Webster City. Over 60% of it was leased and occupied by a Bomgaars Store when it sold. Other tenants were Pizza Hut, Verizon, and a dance studio. Winninger considers the pre-engineered metal, steel frame building inferior to the subject and adjusted upward by the cost to reflect the difference in construction quality. He testified this property was part of a multi-parcel sale and the sale price was allocated. Winninger gave this sale 5.0% weight. (Exhibit 2, pp 40, 43, 49).

Comparable 5 was a former EconoFoods Grocery Store built in 1990, which was vacant at the time of the fee simple sale. It is located in Manchester. Winninger adjusted the sale upward by the cost of improving the interior finish, which he believed was inferior to the subject property's finish. Winninger gave this sale 22.5% weight. (Exhibit 2, pp 40, 43, 50).

Comparable 6 is a retail strip-center in Osage. It was built in 1968 and was in below-average condition. A Dollar General Store and furniture store are the main anchors. This property has a high vacancy (40%) and is in need of updating. Rents range from $3 to $5 per-square-foot. Winninger adjusted the sale upward by the cost of updating the façade, roof, mechanicals, and parking lot. He gave this sale 5.0% weight. (Exhibit 2, pp 40, 43, 51).

Winninger also commented on two, retail strip-center listings. One was located in Clive and vacant at the time. Asking price was $41.43 per-square-foot. The other property was a fully occupied strip-center in Cedar Rapids. Asking price was $37.84 per-square-foot. No adjustments were made to these listings and they were not weighed in Winninger's value conclusion. He concluded a value for the subject property of $38.60 per-square-foot, which resulted in value of $2,800,000 after rounding. We note that Winninger did not make any adjustments for leased fee sales and therefore, question that his conclusion represents a fee simple opinion of value. He weighted the sales approach 40% in his reconciliation.

Winninger commented that the income capitalization approach is generally the most useful in valuing income-producing properties like the subject, because they are normally purchased by investors seeking rental income and a return on their investment. He considered this approach the most relevant and applicable to value the subject.

Winninger analyzed the subject's 2012 and 2013 income and expenses. He used the contract rent of $3.50 per-square-foot for the space leased by Hy-Vee and the occupied strip-center rents of $6.00 to $11.50 per-square-foot. He testified this was market rent based on his judgement and knowledge of the market.

Winninger was critical of Manternach's use of $5.50 per-square-foot rent, not the contract rent of $3.50, in his income approach. Winninger analyzed the subject's expenses and compared them to typical market expenses. We note that he included the actual 2013 real estate taxes in the expenses. He estimated an annual NOI of $214,220, applied a 9% capitalization rate, and concluded an opinion of value by the income approach of $2,380,000. (Exhibit 2 pp 52-56). In Winninger's opinion, the income approach is generally the most useful in valuing income-producing properties, normally purchased by investors rather than by owner-users. He believes an investor would likely place the greatest reliance on the income approach. Therefore, he weighted the income approach 50% in his reconciliation.

Considering the weighted values of all three approaches, Winninger concluded a final value estimate of $2,610,000.

The Manternach Appraisal

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

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Manternach	$4,130,000	$3,610,000	$4,151,000	$3,800,000

Manternach describes the property an above-average quality supermarket and multi-tenant retail building. He reports that the building was constructed in 1988 (51,214 square feet) with a substantial addition to the grocery store portion in 2006 (21,234 square feet). Accordingly, he calculated 1994 as the weighted average year of construction for the entire property.

In developing the cost approach, Manternach used five vacant land sales to support his opinion of land value. He adjusted the sales for location, size, and market conditions. The land sales occurred between June 2011 and June 2014, which was six months after the assessment date. Sale prices ranged from $1.94 to $4.52 per-square-foot. Adjusted prices ranged from $1.70 to $ 2.44 per-square-foot. He concluded an opinion of value of $700,000 for the subject site, or $1.85 per-square-foot. Relying on *Marshall*, he estimated the replacement costs new of the improvements. Manternach rated the grocery store and multi-tenant building as above-average quality or Class C in *Marshall.* He testified this was based on the block and metal truss construction and his observations. He estimated an economic life of 45 years, and a remaining life of 28-years. We note this differs from Winninger who used Class D with a 35-year economic life resulting in 53% physical depreciation. He applied physical (38%) and functional obsolescence (25%) and ultimately concluded an opinion of $4,150,000 rounded by the cost approach. (Exhibit E, pp 33-40).

Manternach also developed the sales comparison approach. He included three sales in his analysis located in Carroll, Waterloo, and Cedar Rapids, Iowa. He adjusted them for differences in property rights conveyed, market conditions, location, condition, and land to building ratio. He provides a table with adjustments and written explanation of the adjustments in his report. (Exhibit E, pp 42-44).

Property	**Location**	**GBA**	**Sale Date**	**Sale Price**	**Unadjusted Price PSF**	**Adjusted Price PSF**
Subject	Waverly	72,448	N/A	N/A	N/A	N/A
Comp 1	Carroll	63,388	09/13	$3,825,000	$60.34	$62.77
Comp 2	Waterloo	66,900	12/12	$3,426,000	$51.21	$60.20
Comp 3	Cedar Rapids	105,944	03/10	$5,500,000	$51.91	$53.90

In the Comparable 1 sale, the leased-fee interest was purchased. It included leasehold improvements completed by a tenant, including a building addition, not considered in the lease income. These facts are similar to the subject property's leasehold improvements and addition. Therefore, Manternach applied an upward adjustment. Hy-Vee is the tenant that leases roughly 70% of this property and constructed an addition at its own expense in 2006, similar to the subject property. He testified Hy-Vee rent was $6.77 triple net at the time of sale.

Comparable 2 was adjusted downward because it was fully leased for roughly five years. Its major tenant, Hobby Lobby, leased roughly 76% of the property. It was adjusted downward for a superior location in Waterloo. Manternach adjusted it downward for its lower percentage of small retail by area.

Comparable 3 was a former grocery store. The purchaser extensively renovated it for use as a farm supply store. It was adjusted downward for a superior location in Cedar Rapids. Manternach adjusted it downward for its lower percentage of small retail by area.

Based on these sales, he concludes an opinion of $57.00 per-square-foot for the subject property. His opinion of value, by the sales comparison approach, is $4,130,000 (rounded). We note that Manternach is the only appraiser that adjusted for two sales of leased-fee properties to recognize the differences in the rights conveyed.

Manternach testified he always develops the income approach with this type of property. To complete the income approach to value, Manternach summarized the subject lease data noting that the Hy-Vee lease is the most recent renewal. He reported Hy-Vee occupied 31,942 square feet of the building since its construction in 1988 and paid $5.55 per-square-foot. In 2006, Hy-Vee completed a 22,806 square-foot addition at its own expense on land given by Village Square. At that time, because the area Hy-Vee leased increased, but the overall rent remained unchanged, the rental rate decreased to $3.50 per-square-foot. Manternach's comparable lease data shows properties of similar size have rental rates ranging from $4.89 to $6.77 per-square-foot.

(Exhibit E, p. 47). Other tenant rental rates ranged from $6.00 to 11.50 per-square-foot. (Exhibit E, pp 46-48).

Based on these leases he concludes a $5.50 per-square-foot for the building area occupied by Hy-Vee and $8.50 per-square-foot for the remaining leased areas.

He summarizes his analysis in the reconstructed operating statement and determines an NOI of $342,915. (Exhibit E, p 51). Lastly, he develops a capitalization rate of 9.25% before taxes and a loaded capitalization rate of 9.51% and determines an opinion of value by the income approach of $3,610,000 rounded. (Exhibit E, p 54).

Manternach gave all three approaches to value some consideration, but gave the least consideration to the cost approach, and reconciled an opinion of $3,800,000 for the subject property, as of January 1, 2014. (Exhibit E, p 55).

Manternach testified good land values were available and he believes buyers would want to know the replacement costs. He disagreed with the property's quality and classification assigned by Winninger. Manternach was critical of some of the comparable properties used by other appraisers. He reported Jones Comparable 1 and Winninger's Comparable 4 was a sale of a four-tenant property, including the business, the inventory, and the real estate. He states the sale price was allocated to each component's value. Manternach commented that Jones Comparable 2 was much older than the subject property, had 40% vacancy, and was in need of updating. The rents were $3 to $5 per-square-foot *gross rent,* under which the landlord paid all expenses, as compared to the subject's $3.50 to $11.50 *net rent*. Therefore, he does not think this property is comparable to the subject. Jones and Winninger both failed to identify the recent leased-fee sale in Carroll used by Manternach (Comparable 1) in which Hy-Vee was a tenant and had built an addition at its own expense similar to the subject property.

Village Square is critical of Manternach's adjustments because it believes Waverly's retail market is weakened by its location in proximity to the Waterloo/Cedar Falls market area. It asserts these sales should be adjusted downward to account for it. We note that Manternach did make location downward adjustments to two of his sales. He also pointed out construction of a new Walmart Super Store and new Fareway in Waverly, as well as, Hy-Vee's expansion at the subject property are indicators of Waverly's strong market.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB 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). PAAB considers only those grounds presented to or considered by the Board of Review, but 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(1)(a-b). New or additional evidence may be introduced, and PAAB 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); *Carlon 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.

In this case, all three appraisers developed the sales approach to value and developed other approaches as well.

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).

Village Square presented the competent evidence of two-disinterested witnesses necessary to shift the burden to the Board of Review. Further, we 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

Winninger used actual expenses and income in developing the income approach to value; however, he did not consider the investment Hy-Vee made in the addition to the building, which resulted in a significant increase in retail area for its use and a reduction in its rent on a per-square-foot basis.

Jones failed to adjust for the leased-fee sales he used in his appraisal. In developing the income approach, he used actual rent without accounting for the leasehold improvements made at Hy-Vee's expense and concurrent reduced rent per-square-foot.

A main thrust of Village Square's argument and its appraisers' value conclusions is that the rental rate for the Hy-Vee space is consistent with the market. An income approach to value should utilize objective, not actual, rental income. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 789 (Iowa 2009) (quoting *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 423 (Iowa 1997)). While the actual rental rate of a specific property may be consistent with the market, we find there is insufficient evidence to support that conclusion here. The Hy-Vee lease was entered into in 2007 at $3.50 per-square-foot. In the absence of a showing that a 2007 lease is consistent with 2014 market rents, we decline to automatically assume that to be the case. Of note, neither Jones nor Winninger substantiated that the Hy-Vee rent was at market. Winninger's appraisal contains no lease comparable analysis. (Exhibit 3, p. 52). Jones' lease comparable analysis shows markets rents ranging from $9 to $16 per-square-foot, contradicting Village Square's assertion that the Hy-Vee rent is at market. (Exhibit 2, p. 41). Meanwhile, Manternach's appraisal shows that properties of similar size are renting between $4.89 to $6.77 per-square-foot. (Exhibit E, p. 47). As such, we find Manternach's rental rate of $5.50 per-square-foot for the Hy-Vee space to be more representative of the market.

In its post-hearing brief, Village Square argues that Manternach's adjustments do not adequately account for the trade area differences between the subject's location in Waverly and his comparable properties. First, we note that Manternach made negative location adjustments to his comparables in Waterloo (20%) and Cedar Rapids (20%). Manternach's location adjustment exceeds the location adjustment Winninger applied to other properties located in Waterloo (10%) he selected as comparables. Second, we recognize that Jones applied at 20% location adjustment to his comparable at 2403 Superior St, Webster City while Winninger did not apply any location adjustment to the same property. Within the realm of real estate appraisal, there is clearly room for some subjectivity. Therefore, even if Manternach should have made some kind of location adjustment to the Carroll property, we find that such an omission is less egregious than Jones' and Winninger's lack of adjustment to account for the leased-fee status of their sales.

Manternach is the only appraiser that appropriately adjusted for the leased-fee property interest conveyed in the sales approach, used sale properties that were more comparable to the subject, and considered the significant contribution of the leasehold improvements made at Hy-Vee's expense in his income approach to value. Accordingly, we find his appraisal to be more credible and persuasive than the others. The best evidence in the record established Village Square's correct fair market value is $3,800,000 based on Manternach's final conclusion of value for the subject property.

For the foregoing reasons, this Board finds Village Square property is over-assessed and its fair market value is $3,800,000 as of January 1, 2013.

Order

IT IS THEREFORE ORDERED that the Bremer County Board of Review's action is modified and Village Square Plaza Limited Partners' property assessment is $3,800,000 as of January 1, 2014.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 31st day of August, 2015.

Jacqueline Rypma

Jacqueline Rypma, Presiding Officer

Stewart Iverson

Stewart Iverson, Board Chair

Karen Oberman

Karen Oberman, Board Member

Copies to:

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