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

PAAB Docket No. 2017-007-00376C

Parcel No. 8813-10-127-004

Lowe's Home Centers, Inc.,

Appellant,

vs.

Black Hawk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 18, 2018. After obtaining a transcript of the proceedings, the parties filed post hearing briefs and the record was closed as of May 31, 2019. Attorney Ryan Gibbs represented Lowe's Home Centers, Inc. (Lowes). Attorney Michael Treinen represented the Black Hawk County Board of Review.

Lowes owns a commercial property located at 400 E Tower Park Road, Waterloo. The property's January 1, 2017 assessment was set at $8,898,790, allocated as $989,000 in land value, and $7,909,790 in improvement value. (Ex. A).

Lowes petitioned the Board of Review claiming the subject property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b) (2017). The Board of Review denied the petition. Lowes reasserted its claim to PAAB.

Findings of Fact

The subject property is a large commercial retail store built in 2002. It has 137,643 square feet of gross building area (GBA), and a 19,476 square-foot outdoor sales and garden area. The 15.78-acre site is also improved with 284,000 square feet of paving. (Ex. A). The improvements include three dock-level truck doors with a load leveler and several other grade-level overhead doors allowing for interior access. (Ex. 1, p. 29). The property is located at the corner of East San Marnan Drive and Hawkeye Road, near the Highway 20 interchange. (Ex. 1, pp. 24-27; Ex. B, pp. 13-20).

The record includes two appraisals valuing the property as of January 1, 2017. Lawrence Allen, Allen and Associates Appraisal Group, Inc., Troy, Michigan, completed an appraisal for Lowes and testified on its behalf. (Ex. 1). Russ Manternach, Commercial Appraisers of Iowa, Inc., West Des Moines, completed an appraisal for the Board of Review. (Ex. B). Both parties submitted Manternach's appraisal. (Ex. 3, B).[1] Both appraisers are qualified to appraise the property.

The following table summarizes the appraisers' approaches to value and their respective conclusions as of January 1, 2017.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Allen	$5,490,000	$5,460,000	Not Developed	$5,480,000
Manternach	$9,080,000	$9,240,000	$9,080,000	$9,100,000

<u>Allen Appraisal</u>

Allen indicates he is valuing the "as is," fee simple market value of the subject property. (Ex. 1, p. 2). Allen utilized the definition of fee simple as stated in THE DICTIONARY OF REAL ESTATE APPRAISAL. (Ex. 1, p. 5). He testified the subject property was occupied by Lowes as of January 1, 2017, and that Lowes had no plans to vacate the property or the market area. (Tr. 78, ln. 5-11). He did not identify he was valuing the property under the hypothetical condition it was vacant.

[1] Exhibit 3 and Exhibit B is the appraisal Manternach completed on the subject property for this property assessment litigation. All references to Manternach's appraisal in the Order will be to Exhibit B.

Allen testified that the subject's market area has had population growth but at a lower rate than the state and nation. (Tr. 18, ln. 16-18). Citing a decline in the local labor force since 2008-2009, Allen's research indicated Waterloo has not had a robust economy. (Ex. 1, p. 17; Tr. 19, ln. 9-19). In his opinion, the subject is located in a weak market, not a growth market. (Tr. 21, ln. 9-10). He also cites numerous articles identifying a "retail apocalypse." (Ex. 1, pp. 55-56). Manternach was critical of this description noting that in the Waterloo/Cedar Falls area capitalization rates have been decreasing for the last few years, rents have been increasing, and vacancy levels are low for this property type. (Tr. 112, ln. 22 to Tr. 113, ln. 3).

Allen's appraisal identifies that the subject's neighborhood is in the stability stage of its life cycle, which he defines as a period of equilibrium without marked gains or losses. Allen identifies a limited amount of available, commercially zoned vacant land. (Ex. 1, p. 22). He acknowledges the neighborhood has an established transportation access and good access to major freeways with a full-service interchange. (Ex. 1, p. 23; Tr. 76, ln. 22-23). The surrounding area is mixed use – consisting of retail, commercial, industrial, and residential properties. (Tr. 76, ln. 6-17).

Allen testified Crossroads Mall is located about one mile from the subject property and in the same retail corridor. (Tr. 70, ln. 23 to Tr. 71, ln. 6). Based on his knowledge, having appraised the Mall, it is in decline and has lost most of its anchors. In his opinion, this would impact the retail corridor and the subject property. (Tr. 74, ln. 7-19; Tr. 75, ln. 7-11). Two other home improvement stores, Home Depot and Menards, are also located in the area. (Tr. 76-79). A Walmart and a Target store are located near the Mall. Allen agreed these properties would be considered big-box stores and he was not aware of any plans to close these stores. (See Ex. B, p. 13 – showing locations of other big box stores). In Manternach's opinion, the vacancy at Crossroads Mall has little impact on a big-box property along Highway 20. (Tr. 113, ln. 10-24).

In his highest and best use analysis, Allen stated "[i]t is concluded that the value of the subject property as improved exceeds the market value of the subject property as vacant." (Ex. 1, p. 58). Allen did not estimate the property's land value when completing his appraisal. He concluded retail use is the maximally productive use. (Ex. 1, p. 58).

Allen identified the subject improvements as a single-story warehouse discount store with a tilt-up concrete exterior. (Ex. 1, p. 28) In his opinion, the subject property is low-quality, Class C construction according to Marshall Valuation Services. (Tr. 27, ln. 19 to Tr. 28, ln. 1). He also described the subject improvements as a big-box store, which he defines as a property with 80,000 or more square feet. (Tr. 28, ln. 8-9). It is important to delineate size differences in box retail properties to discern between big-box, mid-box, and junior-box stores. He testified that big-box stores are larger and typically cost less to build, lease for less per square foot than junior-box stores, and that junior-box stores have a wider market with more potential users. (Tr. 28, ln. 13 to Tr. 29, ln. 9). Because of its layout, Allen indicated it is "generally intended for a single tenant/user" and "not easily conducive to multi-tenant conversion." (Ex. 1, p. 28-29).

Allen developed the sales comparison and income approaches to value in arriving at his January 1, 2017 opinion of fair market value. He did not develop the cost approach, asserting it was not a reliable approach "due to the age of the improvements and the large amounts of obsolescence exhibited in the market for properties such as this, along with the lack of use of this approach by participants in the market for this type of property." (Ex. 1, p. 59)

In his opinion, typical buyers of a property like the subject would not purchase it based on a cost analysis; their decisions are based on what it could rent for and how they could adapt it for their use. (Tr. 32, ln. 20 to Tr. 33, ln. 5). Manternach disagreed with Allen's decision to omit the cost approach. He noted it is important to analyze land value and the subject property is not that old, thus a cost analysis would be a reliable indication of value. (Tr. 122, ln. 20 – Tr. 123, ln. 2).

1. Allen's Sales Comparison Approach

Allen included seven improved properties for his sales comparison analysis. Allen testified he was looking for fee simple sales because that was the interest he was valuing. (Tr. 44, ln. 1-4). He searched for big-box sales with an emphasis on home improvement sales. (Tr. 34, ln. 20 to Tr. 35, ln. 2). Allen asserts that home improvement centers are more like "shell warehouse buildings" and tend to sell for less than other big-box retail properties such as a Target, Walmart, KMart, or Kohl's which have more finish. (Tr. 35, ln. 24 to Tr. 36, ln. 10). Allen also focused his comparable search on property in Iowa and the Midwest. (Tr. 41, ln. 11-12).

Allen described the subject's garden center as a concrete slab with a roof overhang. Additionally he explained there is a temporary steel and fiberglass structure that is bolted to the concrete but can be removed. He considered this latter structure a fixture rather than real property. (Tr. 38, ln. 21 to Tr. 40, ln. 1). Allen acknowledged that despite his opinion of whether these spaces contributed to the value of the real property, there was a cost to construct them. (Tr. 81, ln. 16-20). He also agreed that these improved areas had permanent lighting and electrical wiring. (Tr. 82, ln. 1-8). Lastly, Allen conceded that other home improvement stores like Menards and Home Depot, and some retailers like Walmart and Kmart, have garden centers. (Tr. 82, ln. 12-18).

Allen's comparable sales are summarized in the following table. (Ex. 1, p. 61-75).

Address	Sale Date	Sale Price	Building Area (SF)	Sale Price/SF	Adjusted SP/SF
Subject			137,193[2]		
1 - Davenport, IA	Dec-14	$6,250,000	147,767	$42.30	$44.85
2 - Brown Deer, WI	Dec-13	$4,000,000	139,571	$28.66	$25.91
3 - Holland Twp., MI	Jan-14	$1,750,000	103,540	$16.90	$16.30
4 - Oswego, IL	Feb-14	$3,650,000	140,061	$26.06	$19.87
5 - Elgin Twp., IL	Apr-16	$5,300,000	139,410	$38.02	$25.13
6 - Ankeny, IA	Jun-14	$1,914,940	66,643	$28.73	$35.38
7 - Clinton, IA	Aug-15	$2,055,000	89,553	$22.95	$34.57

All of the sales were adjusted upward for market conditions (time adjustment) between 2% to 8%. (Ex. 1, pp. 71 & 75). The Board of Review was critical of these upward time adjustments based on Allen's report and testimony identifying the Waterloo market as weak. (Tr. 79, ln. 24 to Tr. 80, ln. 9).

Allen also adjusted the sales for arterial and demographic attributes. Allen explained his traffic count estimate of 29,400 for the subject property was based on data

[2] This reflects only the actual building area and does not include the garden center.

from San Marnan and Hawkeye Road, and he asserts he also considered the fact that the subject backs up to US Highway 20. (Ex. 1, p. 73; Tr. 84, ln. 20 – Tr. 85, ln. 12).

He explained that arterial attributes relate to traffic, visibility, and access of the site, as well as population and income levels, which would be important to retailers selecting a site. (Tr. 42, ln. 16-21; Tr. 43, ln. 7-10). In addition to arterial attributes, the demographic attributes adjustment reflects population density and household income within five miles of the subject and each comparable property. (Ex. 1, p. 74). We note the combined adjustment of these factors would consider differences in location between the sales and the subject property. Considering these adjustments, Allen deemed Sales 6 and 7 to have similar or inferior locations as compared with the subject; while the remaining sales had superior locations.

Comparable Sale 1 was a vacant American TV Store that closed in 2014. The appraisal indicates American TV went into receivership. Following the purchase, a portion of the building was converted to an Ashley Furniture store. The remainder of the building was still available for lease in 2016. (Ex. 1, p. 63). Allen acknowledged that American TV went out of business, but in his opinion, this was not a forced sale because American TV only leased the property and did not own it. (Tr. 53, ln. 5-20; Tr. 83, ln. 22 – Tr. 84, ln. 3). Allen reported this sale was designed and built as a furniture store with greater levels of finishing than a home improvement store. (Ex. 1, p. 76). Despite this, he adjusted it upward 2% for age and condition. (Ex. 1, p. 75).

Comparable Sale 2 was a former Lowe's Home Improvement Center that closed in 2011. It was sold to and subsequently occupied by Walmart. (Ex. 1, p. 64). It was adjusted as being overall superior to the subject in location with a net and gross adjustment of 10% for arterial and demographics. (Ex. 1, p. 75).

Comparable Sale 3 was a former Home Depot. It was on the market for two years before it was purchased in 2013 for $1,250,000 by Rural King, a Midwestern chain of farm and home stores. After purchasing the property, Rural King's business focus changed and it subsequently sold the property to a developer for $1,750,000, who intended to lease a portion of the property to Dick's Sporting Goods and market the remaining space. (Ex. 1, p. 65).

Comparable Sales 4 and 5 were both former Lowe's Home Improvement stores located in Illinois. Allen considered both sales superior in overall location. (Ex. 1, p. 75). Comparable Sale 4 was purchased by an investor and converted to multi-tenant use with a portion of the building being occupied by Hobby Lobby. (Ex. 1, p. 66).

Comparable Sales 4 and 5 sold with restrictive covenants limiting them from being used as a home improvement store for twenty years and five years respectively from the date of sale. Comaparable Sale 4 was purchased by an investor and a portion of the building is occupied by Hobby Lobby. (Ex. 1, p. 66).

Allen submitted an analysis of properties that had sold with and without deed restrictions to support his position that no adjustment was warranted. (Ex. 1, pp. 70-71). But this analysis does not adjust for any other differences between the properties, which is required to isolate the element of comparison that is being analyzed. It also does not report the length of deed restrictions that are being compared, which could also have an effect on the conclusions. Notably, Comparables 4 and 5 are both former Lowe's, located near Chicago, with twenty- and five-year deed restrictions that sold for $3,650,000 and $5,300,000 respectively. Facially, this evidence suggests the length of a deed restriction may have an impact on price.

As it related to Comparable Sales 3, 4, and 5, Manternach testified he assumed these properties are selling for a reason, perhaps because they are non-performing stores, are in a bad location, or are not profitable. (Tr. 116, ln. 6-16). He also noted that because they sold with deed restrictions in place it changes the properties' highest and best use because they cannot be used for what they were designed for and thus are going to sell for "significantly less." (Tr. 116, ln. 17-24). Manternach testified that he has never seen a sale with use restrictions that did not impact the price in some way; yet Allen did not adjust for this factor. (Tr. 117, ln. 4-8).

Comparable Sale 6 was a former Dahl's in Ankeny purchased with the intent, in part, to subdivide the property. (Ex. 1, p. 68). Allen adjusted the original sales price to account for the expected sales of outlet parcels. He made an upward 30% adjustment to this sale because it was in receivership and as a result had a "lack of marketing," which would have likely resulted in a higher price. (Ex. 1, pp. 71 & 75) In fact, his appraisal reports it was on the market for “less than one day.” (Ex. 1, p. 68). Sale 6 is the only sale Allen adjusted for building size. He adjusted it downward 10%. (Ex. 1, p. 74-75). He reported Sale 6 was designed and built as a supermarket with higher levels of finish making it less similar to the subject. (Ex. 1, p. 76). Allen acknowledged that Sale 6 was a distressed sale. (Tr. 84, ln. 4-7; Ex. 1, p. 68). It does not appear that Allen considered that the subdivision of the property would impact its land-to-building ratio. He made no land-to-building ratio adjustments for this property or for any other sales comparable he considered. He also does not account for how the subdivision would impact the utility of the original parcel.

Sale 7 is a former Target purchased by a local developer who converted the property to a multi-tenant facility with Hobby Lobby as the largest tenant, occupying 55,000 square feet. (Ex. 1, p. 69). This sale received the highest net and gross arterial/demographic attribute adjustments of 38%. (Ex. 1, p. 75). Allen reports this property “was designed and built as a discount store with higher levels of finish.” (Ex. 1, p. 76). Despite this, he identified it as inferior in age and condition and adjusted it upward 6%. (Ex. 1, p. 75).

Several of the sales had known costs to convert the improvements for the use of future tenants or to be leased as a multi-tenant property, but Allen did not adjust them for these expenditures, although they were adjusted between -7% to +6% for age and condition. (Ex. 1, p. 75). On cross-examination, Allen agreed that all of his comparables sold for less than their cost to build. He testified this is because “the buyer considers what he could lease it for and a user will consider what they’ll have to do to the building to optimize their sales in that building.” (Tr. 92, ln. 14 to Tr. 93, ln.3).

After adjustments, Allen’s comparable properties indicate a range of value of $16.30 to $44.85 per-square-foot. (Ex. 1, p. 75). He considered multiple comparisons of his sales to the subject property, including which ones were most similar in size, age, design, location, and which were the most recent sales. He noted that Sales 1, 2, and 3 had the least gross adjustments. (Ex. 1, p. 76).

He also reviewed data of fifteen Lowe’s that sold across the country between 2010 and 2014. (Ex. 1, p. 76). In addition to being somewhat dated sales, there is no information about these properties in the appraisal to evaluate their comparability and it is unclear whether these properties sold subject to use restrictions imposed by Lowes, like Sales 4 and 5. We accordingly give them no weight.

After his consideration of the data, he concluded an opinion of value by the sales comparison approach of $40.00 per-square-foot, or $5,490,000. (Ex. 1, p. 77).

2. Allen's Income Approach

In his income approach, Allen identified twenty-one rent comparables. (Ex. 1, p. 79). He analyzed the leases in three categories: build-to-suit, big box, and junior box, which are summarized in the following table.

Lease Type	Low Lease Rate	High Lease Rate	Average Lease Rate
Built-to-Suit	$8.42	$13.50	$10.25
Big Box	$3.00	$6.00	$4.73
Junior Box	$5.50	$8.00	$7.03

Allen reported it is possible several of the leases included tenant improvements but this information was unable to be verified. He asserts that if tenant improvements were known and considered it would result in lower rents than he reported. (Ex. 1, p. 80). We find his lack of knowledge about the terms of the leases reduces the reliability of Allen's reported lease rates.

In Allen's opinion, build-to-suit leases reflect a custom building and do not represent market rent for an existing building. (Ex. 1, p. 80). He testified that a build-to-suit lease is based on the cost of construction specific to a particular use and it is not exposed to the market. In his opinion it represents a financing device for the tenant. (Tr. 55, ln. 22 to Tr. 56, ln. 1-7). He noted that junior box stores are typically smaller with higher rents. Therefore, in his opinion, the most relevant comparable leases are existing big box leases. (Ex. 1, p. 80).

Allen explained the build-to-suit leases had an average lease over $10.00 per-square-foot, compared to the average big box lease being $4.73. In his opinion, the difference between these average leases demonstrates obsolescence for build-to-suit properties. (Tr. 57, ln. 10-25). Manternach disagrees and asserts that if Lowes built a new store it would have several options such as getting a loan to build it themselves or entering into a sale-leaseback. In either case, the effective rents would be the same and therefore he believes these are relevant leases compared to the subject property because they are not leases for second-generation space. (Tr. 118, ln. 4-14). Although he believes the built-to-suit leases Allen submitted set the upper end of the range because they reflect new properties compared to the subject that is 15-years old, they should be considered. (Tr. 119, ln. 8-20).

The Board of Review noted the majority of the big-box and junior-box leases that Allen analyzed were built between 1960 and 1999; only two of the leases analyzed were of properties built after 2000. (Ex. 1, p. 79). Manternach testified that these leases all appear to be second-use lease, so there was likely some redesign to the improvements and significant tenant improvements. (Tr. 118, ln. 15-21). Additionally, the improvements are typically older and are not used for what they were originally designed for which would negatively impact the lease rate for that property. (Tr. 118, ln. 15 to Tr. 119, ln. 7).

Eleven of Allen's rent comparables were big-box leases, which include two active listings with asking lease prices of $5.00 per-square-foot. (Ex. 1, p. 79). Four are located in Iowa. (Tr. 58, ln. 1-7). His appraisal contains very little information about his comparable rentals, identifying only their tenant, location, size, and year built. The majority of the properties are older than the subject, some of them significantly so, and appear to be occupied by second-generation occupants. All of them are smaller in size than the subject. Most of the leases are dated; he provides only one lease comparable with a lease start date after January 1, 2015. Allen adjusted the leases for differences including the condition of the lease, size, location (arterial and demographic, and age/condition). (Ex. 1 p. 81)

Allen included junior-box leases to demonstrate a significant difference in the market between them and big-box leases. (Tr. 58, ln. 15-18). In his opinion, if junior-box leases were used to determine market rent they would need to be adjusted downward by roughly 33%. (Tr. 59, ln. 6-16).

He also relied on a CoStar[3] survey indicating an upward trend in lease rates from 2011 to 2016. (Ex. 1, p. 80). He believes the active listing would set the upper end of the lease range.

Allen also believed "the most similar comparables is (sic) *assumed* to have higher levels of tenant improvements, of which may have been included in the leases." (Emphasis added). (Ex. 1, p. 81). In his opinion, the subject property reflects a discount or building supply store which would require minimal tenant improvements, further warranting a lower rental rate than presented by his comparables. (Ex. 1, p. 81).

Based on the foregoing, he selected the $5.00 per-square-foot as the most likely market rent for the subject property's 137,193 square foot retail space ($685,965). (Ex. 1, pp. 81 & 84). The entirety of Allen's income approach ignores the subject's garden center area. In his experience, he has never seen a tenant for a garden center and does not believe the income approach can be applied to this portion of the subject property. (Tr. 36, ln. 24 to Tr. 37, ln. 12).

Allen also considered common area maintenance costs (CAM) and insurance as reimbursement income (Ex. 1, p. 83). His estimated potential gross income is $926,053. (Ex. 1, p. 84).

Based on CoStar property surveys and a review of the subject market, data from third party providers and conversations with local brokers, Allen estimated a total vacancy/credit loss of 7%. (Ex. 1, p. 82; Tr. 61, ln. 3 to Tr. 62, ln. 1). His estimated expenses total $300,223, and he concluded a net operating income (NOI) of $561,006. (Ex. 1, p. 84).

In developing his opinion of a capitalization rate for the subject property, Allen considered the band of investment analysis, investor surveys, and market extraction. (Ex. 1, pp. 84-87). Using the band of investment, Allen concluded a range of 4.73% to 14.97%, with an average capitalization rate of 8.57%. (Ex. 1, p.85).

Allen reviewed PRICE WATERHOUSE COOPER's 2016 4th Quarter rates for non-institutional power centers and strip retail centers, and REALTYRATES.COM's 2017 1st Quarter rates for Retail – Free Standing properties. These surveys indicate an average

[3] CoStar is a provider of commercial real estate information.

capitalization rate range of 7.17% to 10.79%. In addition, he considered CBRE's survey for the first half of 2017. (Ex. 1, p. 85). In discussing the investor surveys, Allen states,

> Our capitalization rate conclusion as best as possible is not based upon the credit of a particular tenant and reflect capitalization rates for the value of a fee simple interest in the subject property. A buyer of this property without a tenant in place would have to locate a tenant and negotiate a lease before he would have the benefit of the value that could be created by utilizing the credit of the tenant.

(Ex. 1, p. 86).

To extract capitalization rates for market sales, he considered seven properties located in Michigan, Ohio, Iowa, and Indiana. Five of the sales were Kmart properties, which he identified as having high risk leases. (Tr. 87, ln. 17 to Tr. 88, ln. 6). He believes this analysis mirrors the risk that is present in fee simple sales because the capitalization rates were extracted from big-box stores that had short-term leases in place when they sold. (Ex. 1, p. 87). The indicated capitalization rates ranged from 12.16% to 28.78%. Allen noted the capitalization rates are high because they reflect the anticipated loss of income from the tenant in place, above market rents, and the cost of finding a new tenant.

The upper-end of this range was set by a property that had Kmart as a tenant with two years left on its lease. In fact, we note that five of the properties were Kmarts, which Allen had identified as experiencing a significant number of store closures. (Ex. 1, p. 56). Moreover, based on the rent commence dates these properties are also significantly older than the subject. (Ex. 1, p. 87). Manternach was critical of relying on these sales to extract capitalization rates because they are near the end of their leases which adds more risk. In his opinion, these sales do not reflect a stabilized property. (Tr. 120, ln. 18 to Tr. 121, ln. 12). Based on these facts, we do not believe these sales represent similar risks as the subject.

Allen reconciled a capitalization rate of 9.50% and 9.75% when loaded for taxes. (Ex. 1, p. 87-88).[4]

[4] Ex. 1, p. 88 lists a capitalization rate of 9.68%. Allen testified this was incorrect, as that figure uses the incorrect vacancy rate. He testified the correct capitalization rate is 9.754089. (Tr. p. 95).

After capitalizing the NOI, Allen deducted $205,790 for leasing commissions. Based on this analysis, he concluded an opinion of value of $5,550,000. (Ex. 1, p. 88).

To serve as a check on this value, Allen also developed an income analysis whereby he did not load the capitalization rate for taxes, but rather included the taxes as an expense. (Ex. 1, p. 89). His report does not explain how he arrived at a property tax expense of $232,000. He also deducted for leasing commissions and arrived at a conclusion of value including the taxes of $5,460,000 using this method.

Allen asserts the lease-up cost deduction is needed to reflect the costs of finding a tenant. He testified that because he is concluding a fee simple value, he assumes the building is not leased. (Tr. 94, ln. 20-24).

He gave most consideration to his income analysis that included the taxes as an expense and reimbursement. He explains that the rents included in the income approach do not include an allowance for tenant improvements and likely overstate the value as a result. He concluded a January 1, 2017 opinion of value by the income approach of $5,460,000. (Ex. 1, p. 91).

3. Allen's Reconciliation

Allen gave both the sales comparison and income approaches consideration in his reconciliation, though giving primary weight to the sales comparison approach. His final opinion of value as of January 1, 2017, is $5,480,000. (Ex. 1, p. 91).

Manternach Appraisal

Manternach identified the purpose of his appraisal was to estimate the fee simple market value of the subject property as of January 1, 2017. (Ex. B, p. 2). He used the same definition of fee simple as Allen. He determined the property's highest and best use, as if vacant, is for retail or service commercial use and it is located along heavily traveled streets in an area of retail development. (Ex. B, p. 35; Tr. 101, ln. 9-10). Similarly, he concluded the property's highest and best use, as improved, is for continued retail use. (Ex. B, p. 36; Tr. 101, ln. 10-12). He indicated the "building and associated improvements contribute significant value to the site and have a lengthy remaining life." (Ex. B, p. 36).

Manternach testified that he estimated the value of the fee simple estate assuming stabilized occupancy. He explained that for assessment purposes, you would not assume a property would be 100% occupied but you would also not consider it to be vacant. (Tr. 123, ln. 7-23). Manternach explained he was not assuming the subject property was leased, but rather that it had stabilized occupancy, which is different. (Tr. 132, ln. 20-22; Tr. 133, ln. 25 to Tr. 134, ln. 5; Tr. 134, ln. 20-23).

Manternach described the subject improvements as having approximately 138,000 square-feet of retail space, which does not include a roofed sales area and roofed garden area. (Ex. B, pp. 33-34; Tr. 99, ln. 1-3). He explained the roofed sales and garden areas have lights, sprinklers, and interwoven roofing to the main building therefore he considered it a permanent structure. (Tr. 114, ln. 10-17).

Manternach developed the sales comparison, income, and cost approach to value in concluding an opinion of value for the subject property as of January 1, 2017. In his opinion, the cost approach is relevant because a typical purchaser of the subject property would also examine the cost to build the property new as an alternative to buying an existing property. (Tr. 102, ln. 6-9). He noted the property is not that old and believed it was important to know the land value and the replacement cost of improvements. (Tr. 122, ln. 17 to 123, ln. 2).

<u>1. Manternach's Cost Approach</u>

To determine the contributory land value, Manternach analyzed and adjusted seven land sales located in Iowa, which are summarized in the following table. (Ex. B, pp. 37-40).

Comparable	Site Size (SF)	Sale Date	Sale Price	SP/SF	Adjusted SP/SF
1 - Dubuque	894,722	Sep-13	$3,600,000	$4.02	$4.53
2 - Cedar Falls	875,556	Jan-15	$2,626,956	$3.00	$3.77
3 - Cedar Falls	392,563	Aug-15	$1,177,695	$3.00	$3.88
4 - Ankeny	767,032	Feb-14	$3,827,490	$4.99	$4.44
5 - Altoona	1,484,280	Mar-15	$6,953,050	$4.68	$4.29
6 - Cedar Falls	530,561	May-11	$1,061,034	$2.00	$4.00
7 - Waterloo	139,828	Nov-16	$1,246,656	$8.92	$4.67

One land sale is from Waterloo and three from nearby Cedar Falls.

Manternach explained he adjusted the comparable sites for differences between them and the subject site. He identified Land Sales 2, 3, and 6 as having an inferior location compared to the subject property; Sales 4, 5, and 7 were identified as having a superior location. (Ex. B, p. 38-39).

Lowes noted that the Cedar Falls Land Sales 2, 3, and 6 sold for $2.00 to $3.00 per square foot but Manternach concluded an opinion of site value of $4.00 per square foot. Manternach explained this was prior to adjustments for differences. Additionally he noted Sales 2 and 3 would not likely be improved with a home improvement store like the subject because they are neither located on a traffic artery nor back to Highway 20. (Tr. 150, ln. 6-12). He also testified Sale 6 required an abnormal amount of earthwork because of the topography which required a large upward adjustment. (Tr. 150, ln. 15-20). Lowes also asserted the Cedar Falls sales all required upward adjustments. Manternach acknowledge this and added that Land Sale 1, which is about the same size as the subject and had a home improvement store built on it, sold for $4.02. (Tr. 151, ln. 5-15).

Lowes does not believe Land Sale 7 is a reasonable comparable because of its small site size. Manternach acknowledged it required an adjustment for the site size but that it is in a similar location and for that reason he included it in his analysis. (Tr. 148, ln. 25 to Tr. 149, ln. 8).

In addition to the above referenced land sales, Manternach considered three other sales in Cedar Falls. The first is a 17.52-acre site purchased by Menards in May 2012 for $1,000,000, or $1.31 per square foot. After the purchase, Menards spent $3,000,000 to level and fill the site for development. The effective sale price was $5.24 per-quare-foot. (Ex. B, p. 39).

The second sale was an 11.26-acre site that sold in March 2016 for $1.75 per-square-foot. Manternach reported this site required significant remediation due to expansive soils, which affected the sale price making it significantly lower than other land sales. (Ex. B, p. 39-40).

Lastly, Target purchased a 10.53-acre site in January 2008 for $2,000,000, or $4.36 per square foot. He did not include this sale because of its 2008 sale date. (Ex. B, p. 40).

Considering all of the above data, Manternach concluded a site value range of $3.77 to $4.53 per-square-foot. He reconciled a value of $4.00 per-square-foot, or $2,750,000 rounded for the site value as of January 1, 2017. (Ex. B, p. 40).

Manternach relied on MARSHALL VALUATION SERVICE (MVS) for his cost data. He identified the subject property as an above-average quality Class C Warehouse Discount Store in average condition. (Ex. B, p. 40 & 42). Based on this classification, he determined a base square foot cost of $57.54 for the main building. After adjusting for refinements, he concluded a replacement cost new (RCN) for this portion of the property to be $65.67 per-square-foot. He then added $1,234,641 for the RCN of the roofed sales area, garden center, canopies, and 3% soft costs. (Ex. B, p 42).

Lowes does not believe Manternach correctly calculated the RCN, noting that he determined the improvements were in above-average quality which is not an option in MVS. (Lowes Brf. p. 11; Ex. 2, Calculator Method). Manternach testified that he averaged the categories identified as average and good. (Tr. 142, ln. 11-12; Tr. 185, ln. 5-20). Lowes also asserted it was unable to replicate Manternach's cost estimates of $30 per square foot for the garden center in MVS. (Lowes Brf. p. 11). Manternach testified he believed he used something in MVS, but did not have it available at hearing to readily identify the pages. (Tr. 146, ln. 10 to Tr. 147, ln. 1).

Manternach estimated an effective age of 15 years and an economic life of 40 years. Using the age/life, straight-line method he determined the subject had 38% physical depreciation. Lowes asserts Manternach relied on an incorrect economic life citing the Life Expectancy Guidelines from MVS. (Ex. 2). Lowes noted this document indicates an economic life for a low-cost and average Class C warehouse discount store is 30 years. If this economic life were used, it would result in a higher level of physical depreciation and ultimately a lower conclusion by the cost approach. Manternach testified he did not use this source for his estimated life. (Tr. 138, ln. 11-12). Manternach explained that in his experience, similar comparable properties have a useful life of 40 to 45 years and he does not typically see such property being torn down before they are 30 years old without extenuating circumstances at play. He further testified there are numerous sales 50 to 60 years of age that are still used for retail purposes, including sales he used in his appraisal. (Tr. 154, ln. 3-15; 186, ln. 2-17). Because of the age of the comparables used by both appraisers, we find Manternach's conclusion that the subject's useful life will exceed 30 years is reasonable.

Manternach did not include any entrepreneurial incentive in his cost new because big-box retail stores are rarely built as speculative investments. (Ex, B, p. 40). He also applied 10% functional obsolescence, which he stated appears to be due to the building's relatively large size. He does not believe the subject suffers from significant obsolescence, noting it is a newer property in a good location. (Tr. 124, ln. 11-16). In his opinion there is no reason to assume there would be a large amount of obsolescence with the subject property stating: there have been no signs of distress for similar property types; the subject has been fully occupied since it was built, as have other home improvement stores; and there is a demand for this property type. (Tr. 124, ln. 11-21). After adding in the "as is" value of the site improvements and land value, Manternach concluded an opinion of value by the cost approach of $9,080,000. (Ex. B, p. 42).

2. Manternach's Sales Comparison Approach

Manternach included six improved properties for his sales comparison analysis, which are summarized in the following table. (Ex. B, pp. 44-46).

Address	Sale Date	Sale Price	Building Area (SF)	Sale Price/SF	Adjusted SP/SF
Subject			137,643		
1 - Ames, IA	Aug-15	$3,650,000	60,053	$60.78	$69.99
2 - Cedar Rapids, IA	Mar-10	$5,500,000	105,944	$51.91	$77.45
3 - Waterloo, IA	Dec-12	$3,426,000	66,900	$51.21	$69.01
4 - Johnston, IA	Dec-14	$5,900,000	146,003	$40.41	$55.01
5 - Omaha, NE	Apr-15	$5,000,000	66,937	$74.70	$78.98
6 - Urbandale, IA	Mar-16	$3,600,000	81,936	$43.94	$58.70

Manternach adjusted all of the sales upward 3% per year for date of sale, recognizing that retail values have been increasing for the past several years. (Ex. B, pp. 44-45). Sales 1, 2, and 5 were built and operated as grocery stores before they were sold.

Lowes criticized Manternach's sales because they all required upward adjustments. In its opinion, Sales 1, 3, and 5 are significantly smaller and by inference it asserts they are not comparable. (Lowes Brf. pp. 12, 19-20).

Sale 1 was a former Dahl's grocery store that sold to an investor group for $2 million in 2014, then was bought by Denny Elwell Family, LC for $2.4 million several months later, and finally was purchased by Walmart for $3.65 million in 2015 for assemblage. (Ex. B, Improved Sale 1). After the purchase, Walmart razed this parcel as well as its existing adjoining retail property to build a new Super Walmart on the combined sites. In Manternach's opinion, the existing Dahl's store could have been used by another buyer. (Ex. B, Improved Sale 1). Manternach adjusted this sale downward to reflect that it was purchased for assemblage. (Ex. B, p. 44).

Sale 2 was a former grocery store that was purchased by Theisen's, a farm supply store. (Ex. B, Improved Sale 2). After the purchase, Theisen gutted the interior and spent approximately $1,500,000 on renovations. (Ex. B, Improved Sale 2). Manternach did not adjust for the renovations, but did make 25% upward adjustment for age and condition. (Ex. B, p. 44). Prior to sale, the property was listed for asking rent of $6 per-square foot NNN "as is." (Ex. B, Improved Sale 2).

Sale 3 was a multi-tenant property with five years remaining on each of the tenants' leases. (Ex. B, Improved Sale 3). This is the only leased-fee sale Manternach included in his analysis. He applied a downward adjustment to reflect the remaining lease terms. (Ex. B, p. 44-45). In his opinion, the leases were close to market and were not long, therefore he only adjusted it downward for this factor by 5%. (Tr. 156, ln. 9-13).

Sale 4 was a former American TV & Appliance store that was purchased by Goodwill Industries. (Ex. B, Improved Sale 4). Goodwill converted the property into its corporate headquarters, a smaller retail store, warehouse, and training center. (Ex. B, Improved Sale 4).

Sale 5 was a former grocery store that had been vacant approximately two years prior to its sale. The sale was an auction sale conducted through a private sealed-bid process. (Ex. B, Improved Sale 5). It was purchased by Hobby Lobby, which spent roughly $1,500,000 on a full interior renovation and exterior façade updates. Manternach noted this property had excess land that could be subdivided and sold. (Ex. B, Improved Sale 5).

Sale 6 was a former K's Merchandise that appears to have been vacant since at least 2007. Hy-Vee purchased the store with the intent of "doing a major renovation" and using the property for an employee training center and possibly on-line store sales and delivery. (Ex. B, Improved Sale 6). He considered Sale 6 to be inferior in location compared to the subject property and, as a result, adjusted it upward 25%.

Manternach identified Sales 1, 2, and 5 as superior to the subject's location and adjusted them downward between 5% and 15%. (Ex. B, p. 44-45). Lowes questioned Manternach's location adjustments because he did not report the population within a one-, three-, and five-mile radius of each comparable and did not report any household demographic information for the sales. (Lowes Brf. pp. 12). Manternach explained that he has performed appraisals in all of the communities in which the comparables are located and there are numerous factors that need to be considered beyond traffic count, such as the surrounding use pattern and the subject's location backing to Highway 20. (Tr. 161, ln. 15 to 162, ln. 16).

Despite reporting that Sales 2, 4, 5, and 6 required renovations, Manternach did not adjust the sale prices to reflect the renovation costs. He considered Sales 2, 5, and 6 inferior to the subject in condition and adjusted them all upward by 25%. (Ex. B, p 44). We note the adjustments to Sale 2 appears to be consistent with the renovation and conversion costs he identified in his sale sheets. In addition to the renovations, Sales 4 and 6 are not solely used for retail purposes after purchase and renovation.

He found all of his comparable sales to have inferior land-to-building ratios compared to the subject property and adjusted them upward between 2% and 20%. (Ex. B, p. 44).

None of the sales had outdoor sales or garden shops, and Manternach adjusted each of them upward 4% to reflect this difference. (Ex. B, p. 44).

Lowes noted Manternach's comparable sales were vacant at the time they sold, with the exception of Sale 3; yet Manternach asserted he was not valuing the subject property as if it were vacant or a "dark store." (Lowes Reply Brf. p. 5; Tr. 180, ln. 9-18). Manternach explained that most home improvement stores are owner occupied resulting in few sales or leases of such properties. (Tr. 180, ln. 19-22). He testified that if there had been a sale near the subject property of a home improvement store with a lease in place, he would have included it in his analysis and adjusted as necessary. (Tr. 181, ln. 14-17).

After adjustments, Manternach reported a range of value between $55.01 and $78.98 per-square-foot and he reconciled to a value of $66.00 per-square-foot. Because he adjusted for the outdoor sales and garden areas in his analysis, he multiplied his reconciled price per-square-foot by the main retail building only. His conclusion of value by the sales comparison approach is $9,080,000 rounded. (Ex. B, p. 46).

3. Manternach's Income Approach

As previously noted, Manternach was critical of Allen for dismissing built-to-suit leases. (Tr. 118, ln. 4-14; Tr. 119, ln. 12-20). Manternach analyzed seventeen, triple-net leases of retail properties located in Iowa to establish a market rent for the subject property. (Ex. B, p. 47-49). The leased properties ranged in size from 12,000 square feet to just over 272,000 square feet of building area and were built between 1979 and 2015. Only three had building areas larger than 100,000 square feet. Like Allen, Manternach did not include a lot of information about his comparables. (Ex. B, p. 48).

Three of the lease comparables (11, 12, and 15) were build-to-suit leases. (Ex. B, p. 48; Tr. 164, ln. 13-18). The triple-net rent per square foot for these properties ranged from $10.44 to $11.25. Manternach notes these are newer buildings compared to the subject property, but his overall estimate of market rent is $6.50, so he considered this factor. (Tr. 165, ln. 21 to Tr. 166, ln. 2).

Focusing on lease comparables 1, 2, 5 and 6, which have building areas that range from roughly 90,000 square feet to 272,000 square feet, Lowes asserts the average rent was $5.58. In comparison, the remaining comparable leases that range from roughly 12,000 to 75,000 square feet generally have a higher per square foot lease rate. Lowes asserts there is a significant difference in lease rates between larger and smaller size properties, which is evidenced in both Manternach's and Allen's per square foot lease rates. Based on this, it believes Manternach did not make appropriate size adjustments in his sales comparison analysis. In response, Manternach explained that the differences are not based solely on size and that age and condition must also be considered. (Tr. 171-175).

Looking at all of Manternach's comparable leases, the rates ranged from $4.39 per-square-foot to $11.50 per-square-foot. (Ex. B, p. 48). Although Manternach noted the leases "would be adjusted" for numerous factors, he did not adjust them. Based on this data, he selected a triple-net market rent of $6.50 per-square-foot for the subject property's main building area and $2.00 per-square-foot for the outdoor sales and garden areas.

His research indicates the Waterloo/Cedar Falls area has vacancy levels between 5% and 10%. He estimated a stabilized vacancy and collection loss of 7%. (Ex. B, pp 48-49; Tr. 109, ln. 22 to Tr. 110, ln. 12).

Like Allen, Manternach also included leasing fees in his expenses. Manternach estimated 3% ($26,048) leasing fees to reflect the cost of locating and securing tenants. (Ex. B, p. 49 & 51). His total operating expenses were estimated at $106,105, and his NOI was estimated at $762,173. (Ex. B, p.51).

Manternach testified capitalization rates have been decreasing the past few years before the January 1, 2017 date of value. (Tr. 121, ln. 16-18). He relied on three major techniques to estimate his capitalization rate: market extraction, the mortgage-equity (band of investment), and investor surveys. (Ex. B, pp. 52-53). The following table is a summary of the data based on these techniques.

Method	Rate Estimate Data
Mortgage-Equity	7.31%
Market Extraction	6.10% to 9.20%
INVESTMENT BULLETIN (Survey)	Retail <$2M – 7.37% $2M to 5M – 7.12% $5M to $15M – 6.88%

The capitalization rates ranged from 6.10% to 9.20%. (Ex. B, p. 53). Manternach testified that the upper end of this range was set by a 2012 sale of a property built in 1966; moreover capitalization rates have gone down since 2012, as shown by the other sales on which he relied. (Tr. 177, ln. 3-8 to Tr. 178, 9; Ex. B, p. 52). The low end of the range was set by a multi-tenant property that was completely renovated in 1997. (Tr. 177, ln. 16-18). Based on the above analysis, Manternach selected a capitalization rate of 8.00% for the subject property. (Ex. B, p. 53). After adjusting for the tax rate, Manternach relied on an 8.25% loaded capitalization rate. (Ex. B, p. 53; Tr. 111, ln. 4-13). His conclusion of value by the income approach was $9,240,000 rounded, as of January 1, 2017. (Ex. B, p. 53).

4. Manternach's Reconciliation

Manternach reconciled the three approaches to value and gave all of them some consideration. Most consideration was given to the sales and income approaches and less weight to the cost approach. (Ex. B, p. 54). His final opinion of value as of January 1, 2017, is $9,100,000. (Ex. B, p. 54; Tr. 112, ln. 3-7).

Analysis & Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). 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).

Lowes argued the subject property is assessed for more than authorized by law, as provided under Iowa Code section 441.37(1)(a)(1)(b). 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 v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). First, the record must show the property is over assessed; and second, what the fair market value of the property should be. *Id*.; *see also Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 276-277 (Iowa 1995). If PAAB "determines the grounds of protest have been established, it must then determine the value or correct assessment of the property." *Compiano v. Bd. of Review of Polk County*, 771 N.W.2d 392, 397 (Iowa 2009). In that case, PAAB "makes its independent determination of the value based on all the evidence." *Id*.

I. General Principles of Assessment Law

a. Valuation under Iowa Code section 441.21

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a-b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer v. Floyd Cnty. 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 in arriving at market value." *Id*. Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id*.; *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision*, 457 N.W.2d at 597. "[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). Abnormal transactions include, but are not limited to, foreclosure or other forced sales, contract sales, discounted purchase transactions, or purchases of adjoining land or other land to be operated as a unit. *Id*.

The first step in this process is determining if *comparable* sales exist. *Soifer*, 759 N.W.2d at 783 (emphasis added). 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).

Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id*. (other citations omitted). "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.* (other citations omitted). Sales prices must be adjusted "to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments." *Id*. (other citations omitted). "[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).

b. Burden of Proof

Under Iowa law, there is no presumption that the assessed value is correct. § 441.37A(3)(a). Nonetheless, under section 441.21(3) (2017), the party contesting the assessment generally has the burden of proof.

> For assessment years beginning before January 1, 2018, the burden of proof shall be on the complainant attacking such valuation as excessive, inadequate or capricious. […] [W]hen the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

§ 441.21(3)(b)(1).

As noted in *Compiano*, the statute requires the evidence offered by the disinterested witnesses to be competent to shift the burden of proof. 711 N.W.2d at 398. To be competent, the evidence must comply with the statutory scheme for property assessment valuation. *Id*. The statutory scheme begins with valuation using sales of comparable properties. *Id.*

Lowes did not offer competent evidence from two disinterested witnesses. Therefore, it bears the burden of proof.

c. Consideration of Other Factors Valuation under section 441.21(2)

"A party cannot move to other-factors valuation unless a showing is made that the market value of the property cannot be readily established through market transactions." *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 677, 682 (Iowa 2016). Where PAAB is convinced comparable sales do not exist or cannot *readily* determine market value, then other factors may be used. § 441.21(2); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlon Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). If sales cannot readily establish market value, "then the assessor may determine the value of the property using the other uniform and recognized appraisal methods," such as income and/or cost. § 441.21(2).

The parties agree that the sales and income approaches can offer a reliable indication of value for the subject property. Lowes asks PAAB to set the subject's assessment at Allen's reconciled value, which gave weight to the sales and income approaches. The parties disagree, however, about the reliability of the cost approach generally and, in particular, the accuracy of Manternach's cost approach.

Lowes argues that consideration can be given to the income approach, if necessary, but no weight should be given to the cost approach in this case. Iowa law recognizes no preference between the income approach and cost approach. § 441.21(2). Thus, the weight to be given the cost approach under section 441.21(2) is dependent on its reliability in a particular case. Where there is a question as to whether the other approaches properly value the property in fee simple, however, we note there may be a benefit to consideration of the cost approach. As we previously stated, the cost approach "produces a value indication of the fee simple estate of a property at market rent and stabilized occupancy." THE APPRAISAL OF REAL ESTATE at 638.

As will be discussed, there are issues with the quality and reliability of sales each appraiser used in his analysis and, consistent with the appraisers' opinions, we believe consideration should be given to the other valuation approaches in this case. However, we do give consideration to the sales we find comparable and reliable. *Equitable Life Ins. Co. v. Bd. of Review of City of Des Moines*, 281 N.W.2d 821, 825-26 (Iowa 1979).

Ultimately, however, any consideration of the cost approach in this case has no impact on the final resolution of this matter.

d. Prohibition Against Special Use Value in section 441.21(2)

Iowa Code section 441.21(2) provides that if the value cannot be determined as provided in subsection (1), then the value can be determined "using the other uniform and recognized appraisal methods, including its productive and earning capacity . . ." However, the following shall not be taken into consideration: "Special value or use value of the property to its present owner; and the goodwill or value of a business which uses the property as distinguished from the value of the property as property." § 441.21(2).

Iowa courts have narrowly interpreted this provision of Iowa code section 441.21(2). *See Wellmark,* 875 N.W.2d at 680 (providing an overview of cases interpreting this subsection). In *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 421-22 (Iowa 1997), the Iowa Supreme Court considered the assessment of a mall subject to a below-market lease to an anchor tenant. The mall argued the valuation improperly included business enterprise value. *Id*. at 423. The Court stated that "Unless consideration of the intangibles is prohibited by section 441.21(2), i.e., special use values and goodwill, intangibles may be considered in valuing the real estate with which they are associated." *Id*. at 424 (citing *Post-Newsweek Cable, Inc. v. Bd. of Review*, 497 N.W.2d 810, 814 (Iowa 1993). It then rejected the mall's business enterprise theory. *Id*. at 424-25.

The Court also applied narrow interpretations of section 441.21(2) in *Ruan Center Corp. v. Bd. of Review*, 297 N.W.2d 538 (Iowa 1980) and *Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973). In *Ruan*, the Court found that tenant improvements "increased the building value and were not of special value to the particular tenants who installed them." 297 N.W.2d at 541. It noted that "if the tenants sold their leasehold interest, they could charge for the improvements. Upon expiration of the leases, Ruan could charge higher rent because of the improvements than it could if the property remained at building standard construction." *Id*. at 541.

The *Maytag* Court considered the special use provision of section 441.21(2) as it related to machinery. 210 N.W.2d at 590. In rejecting Maytag's argument that the assessment included special or business value, the Court first noted the assessor's duty to value the going concern. *Id*. It noted that subsection 441.21(2) "comes into play when sentiment, taste, or other facts, frequently subjective, give property peculiar value or use to its owner that it does not have to others." *Id*. at 590-91. The Court concluded that "another competent home appliance manufacturer could step into Maytag's shoes and operate this plant." *Id*. at 591.

More recently in *Soifer*, the Court noted that it had adopted a narrow interpretation of subsection 441.21(2). 759 N.W.2d at 786 n. 6 (Iowa 2009). Addressing the subject's fast-food restaurant, the Court stated "the configuration of the building and its placement on the site give this property value for use as a fast-food restaurant. This value is not peculiar to the present owner. It would also have use and value to a purchaser of the property." *Id*.

Here, Lowes implies that arguments made by the Board of Review counsel indicates "[t]he County's predilection to value the business conducted on the property more than likely led to [the appraiser's] hyper-inflated conclusions in his three approaches to value." (Lowes Brf. p. 15). Aside from this generalized assertion, Lowes does not indicate how Manternach's valuation or the assessment violates the narrow prohibition in section 441.21(2). Moreover, after reviewing the appraisals, we are unable to find such a violation. The difference in value between the appraisers is due to other aspects of their reports and not because of any violation of section 441.21(2).

II. Other fundamental valuation issues

a. Fee Simple

"[T]he proper measure of the value of property is what the property would bring if sold in fee simple, free and clear of any leases." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988) (emphasis added); *Merle Hay Mall*, 564 N.W.2d 419; *Oberstein v. Adair Cnty. Bd. of Review*, 318 N.W.2d 817 (Iowa Ct. App. 1982).

Both appraisers used definitions of fee simple from THE DICTIONARY OF REAL ESTATE APPRAISAL, published by the Appraisal Institute. That text defines Fee Simple Estate as: "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat." APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 78 (5th ed. 2010). The same text defines Encumbrance as: "Any claim or liability that affects or limits the title to property. An encumbrance can affect the title such as a mortgage or other lien, or it can affect the physical condition of the property such as an easement. An encumbrance cannot prevent the transfer of possession, but it does remain after the transfer." *Id*. at 67.

We are careful to acknowledge that definitions used by appraisers may sometimes differ from definitions used by Iowa Courts, in Iowa law, or the legal profession generally. As a corollary, appraisers commonly use some terms that have no legal definition, e.g., leased fee.

Black's Law Dictionary defines fee simple as "an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs." BLACK'S LAW DICTIONARY (10th ed. 2014), fee simple. Fee Simple "represent[s] the entire and absolute interest and property in the land. No one can have a greater interest. The holder of a fee simple holds property clear of any condition, limitation, or restriction." 28 Am. Jur. 2D *Estates* § 13 (2019). A fee simple estate has a potentially infinite duration. *Id*. An owner of a fee simple estate "has the unlimited power to sell, transfer, alienate, or bequeath the property in any lawful manner." 31 C.J.S. *Estates* § 13 (2019). The owner of fee simple estate "can burden it with a lease . . . and he can receive the land in fee subject to such burdens." *Moore v. McKinley*, 69 N.W.2d 73, 84 (Iowa 1955).

Iowa courts have repeatedly held that existing leases may be evidence of a property's value, but unfavorable leases should not be used to lower assessments. *Merle Hay Mall*, 564 N.W.2d 419 (holding that an unfavorable lease does not reduce a property's assessed value); *Oberstein*, 318 N.W.2d at 819; *I.C.M. Realty*, 433 N.W.2d at 762.

The *Oberstein* Court considered the valuation of a built-to-suit post office location subject to a below-market rent lease. 318 N.W.2d 817. The property owner argued the below-market lease "would be of paramount importance to anyone interested in acquiring the property and detrimental to any sale thereof." *Id*. at 818. It sought a reduction of the assessment as a result of the unfavorable lease, but the Court of Appeals rejected its argument. *Id*. at 818-19. In doing so, the Court surveyed case law supporting its conclusion that the value contemplated by section 441.21 includes the lessor's and lessee's interests. *Id*. at 819-21. It found that "rental income which might be received from a particular lease is some evidence" of the property's value, but "may only be considered in determining what that value would be independent of the existing lease." *Id*. at 821.

Similarly, in *Merle Hay Mall*, the Iowa Supreme Court evaluated the effect of the Mall's long-term, below-market lease to Younkers in the income capitalization approach. 564 N.W.2d at 422. Citing section 441.21(2), the Court noted "production and earning capacity" of the property is a factor to be considered. *Id*. It identified that the Younkers lease is evidence of the property's earning capacity, but acknowledged the property's earning capacity is substantially greater than the amount it presently earns. *Id*. It held that the assessment includes both the lessee's and the lessor's interests and affirmed. *Id*. We note *Merle Hay Mall* discusses leases in the context of the income approach permitted by section 441.21(2), but we find no basis to conclude the actual value contemplated by section 441.21(2) should be any different than the value sought by section 441.21(1). Thus, we find the foregoing case law instructive on our evaluation of adjustments to properties under the sales comparison approach.

In considering a retail store subject to a below market lease in *Foreman & Clark of Iowa, Inc. v. Bd. of Review of City of Cedar Rapids*, the Iowa Supreme Court concluded "the effect of the lease must be considered as a factor in determining adjustments to the contract sales price." 286 N.W.2d 169, 173 (Iowa 1979). The Court adjusted the sale "by considering the economic terms of the existing lease." *Id*. The Court went on to note that other matters must be considered regarding adjustments. *Id*. The Court referenced testimony indicating "commercial property is usually purchased subject to a lease." It stated, "[t]he fact the premises had a lease, guaranteeing a reasonable income for several years, has to be weighed as a positive factor" against evidence of the negative impacts of a new mall and new retail space. *Id*. Ultimately, the Court found no error in the assessment, despite the failure to consider "the effect of the lease on the sale price . . . when weighing whether the contract sale price should be adjusted upward, downward, or left undisturbed in determining the property's market value." *Id*.

In determining whether the sales comparison approach could readily establish value in *Wellmark*, the Iowa Supreme Court recognized that one of the Board of Review's experts relied on some comparable properties sold subject to long term leases. 875 N.W.2d at 682. The Court stated this fact "cloud[ed] comparability and rais[es] the question of whether the buyer was interested in the property or the income stream generated by an advantageous lease." *Id*. The Court then concluded the district court properly considered other factors in valuing the property. *Id*.

THE APPRAISAL OF REAL ESTATE indicates that "[i]f the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate of another property, the comparable sale can only be used if reasonable and supported market adjustments for the differences in rights can be made." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 406 (14th ed. 2013). It gives the following example:

> For example, consider the appraisal of the fee simple estate in real estate that is improved with an office building. A similar improved property was fully leased at the time of sale, the leases were long-term, and the credit rating of the tenants were good. To compare this leased fee interest to the fee simple estate of the subject property, the appraiser must determine if the contract rent of the comparable property was above, below, or equal to market rent. [] If the market rent for office space is $25 per square foot net and the average contract rent for the comparable property is $20 per square foot net, then the difference between market and contract rent is $5 per square foot.

Id.

THE APPRAISAL OF REAL ESTATE notes the challenges with making adjustments for property rights. "Calculations of appropriate adjustments reflecting differences in property rights may be difficult to develop and support. Properly developed adjustments require significant research and diligence." *Id*. at 407. At the same time, it notes the cost approach "produces a value indication of the fee simple estate of a property at market rent and stabilized occupancy." *Id*. at 638. Similarly, when the fee simple interest of a property is valued using the income capitalization approach, "the presumption is that the property is available to be leased at market rates." *Id*. at 441. Thus, there may be some wisdom in giving consideration to the other valuation approaches where there is a question of whether the adjusted sales fairly reflect the fee simple value sought by Iowa law.

Relying on language from *I.C.M. Realty*, Lowes argues that Manternach's appraisal departs from fee simple valuation because he valued the property under the income approach as if it had stabilized occupancy. (Lowes Brf. P. 15-16). We think Lowes focuses too narrowly on isolated phrases in *I.C.M Realty*. Iowa case law indicates that an existing lease can serve as some evidence of the property's value. *Oberstein*, 318 N.W.2d at 821; *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513 (Iowa 1985) (authorizing use of percentage rent in determining economic rent in income approach). Within the income approach specifically, the ultimate question is what the subject property's productive and earning capacity would be if exposed to the market.

Aside from semantic differences, we do not find significant distinctions in the general methodology between the appraisers' income approaches. Each valued the property based on their own opinion of the potential market rents and costs and the risk associated with the subject property.

b. Value-in-Use or Value-in-Exchange

"[A]ssessors 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). In *Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973), an expert opined that the assessed value of Maytag's machinery should be based on its secondary resale value. The Iowa Supreme Court rejected that approach, noting "the rule is that an assessor must also consider conditions existing at the time and the condition of the property in which the owner holds it." *Id*. at 589. 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.*, 210 N.W.2d at 590). 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*.

The Iowa Supreme Court recently reaffirmed this principle in *Wellmark,* 875 N.W.2d at 670-71. In that case, Wellmark's experts valued the single-occupant corporate headquarters "by using an analysis of multitenant office buildings," reasoning that a purchaser would likely convert the property to a multitenant use. *Id*. at 671. The *Wellmark* Court detailed the conceptual and legal arguments surrounding value-in-use and value-in-exchange. *Id.* at 673-75. After surveying case law and statutory mandates, the Supreme Court "embrace[d] the view that the property should be based on its current use." *Id.* at 682. The Court did not explicitly adopt or reject the value-in-use premise. Instead, based on the lack of readily available market for Wellmark's building, the Court stated the ""value should be based on the presumed existence of a hypothetical buyer at its current use." *Id*. at 683. It noted that "[c]urrent use is an indicator that there is demand for such a structure." *Id*. The Court rejected Wellmark's experts' opinions valuing the property as a multitenant office building and, instead, concluded the property should be valued based on its current use as a single-occupant office building. *Id*. at 682-83.

Lowes argues that Iowa Admin. Code R. 701-71.1(1) is in direct conflict with Iowa Code section 441.21's command that the assessment be at market value. (Lowes Reply Brf. p. 4). Rule 701-71.1(1) states that "[t]he assessor *shall classify* property according to its present use and not according to its highest and best use." (emphasis added). First, and as recognized by Lowes, we note that the rule speaks to classification of property and not valuation. Because the statute and the rule relate to different steps in the processing of assessing property, we question whether they are capable of conflicting. Second, the above-mentioned case law interpreted and applied section 441.21 and continuously emphasized that the statute authorizes consideration of the property's present use in valuation. Lastly, Lowes has lodged no argument that the subject's highest and best use (HBU) is different than its current use. Allen conducted a perfunctory HBU analysis, but did not express any opinion that the subject's HBU differed from its current use. In contrast, Manternach concluded the subject's HBU, as improved, "would be for continued use of existing improvements for retail use." (Tr. 101, ln. 9-12). To the extent there is a conflict between the rule and the statute, we find no reason to dwell on it in this case as there is no reasonable basis to conclude the subject's HBU differs from its current use.

III. Analysis of Appraisals

Lowes asserts that Manternach's appraisal is unsupported, inconsistent, and therefore not reliable. It believes Allen's appraisal is the only appraisal valuing the subject's fee simple, fair market value in its present use. It asks PAAB to set the subject's assessment at Allen's reconciled value of $5,480,000.

The Board of Review contends that Allen's appraisal amounts to a "dark store" valuation and is inconsistent with Iowa law's direction that the property must be valued in its present use. It believes Allen's appraisal is not competent evidence of value, and that PAAB should affirm the assessment.

a. Allen Appraisal

Lowes has not offered the competent testimony of two disinterested witnesses showing the subject's assessment is excessive, therefore it retains the burden of proof under section 441.21(3). The sole evidence in support of Lowes' position is Allen's appraisal, valuing the subject property at $5,480,000; roughly $3.4 million less than its 2017 assessed value.

Before addressing the substance of his sales and income approaches, we find flaw in Allen's failure to acknowledge any contributory value of the garden center and other outdoor sales area existing on the subject property. He insinuated that the garden center may be considered personal property, which is not assessable under Iowa law. However, Lowes has not raised a claim the assessment includes non-assessable property under Iowa code section 441.37. Further, the subject's garden center and outdoor sales area is currently used and is likely to continue to be used. Manternach testified similar garden centers exist at other big-box stores, suggesting a desire in the market for these structures. As a result, we find Allen's failure to account for this value departs from the valuation of the property in its current use. *See Ruan Center Corp. v. Bd. of Review of City of Des Moines*, 297 N.W.2d 538 (Iowa 1980) (holding tenant improvements should be assessed because they could have value to subsequent occupant).

Allen also asserts that the garden center need not be valued because he has not seen a garden center rented and there is no added value for having a garden center. We are of the opinion that Allen's conclusion is dubious in light of the fact that such garden centers exist at other big-box stores. Moreover, PAAB has heard a case involving a former Menards home improvement store property whose secondary owner rented similar structures for storage purposes. *Safari II, LLC v. Polk Cnty. Bd. of Review*, PAAB Docket No. 2015-077-00897C (Sept. 5, 2017) (affirmed in *Safari II, LLC v. Property Assessment Appeal Bd*., No. CVCV054974 (April 12, 2018)). The appraisers in that case applied an income approach to those storage spaces. Because we find that Allen erred by failing to acknowledge any contributory value of the garden center and outdoor sales areas in his sales and income approaches, we believe his appraisal undervalues the subject.

In his sales approach, Allen considered seven sales. In addition to his transactional adjustments, Allen adjusted for physical characteristics. Upon review, there are some material differences in land size and land-to-building ratio between the subject and some of the comparables. Allen neither made adjustments for these differences nor explained his rationale for not doing so.

Comparable Sales 1 and 6 were sold under circumstances indicating duress. He adjusted Sale 6 for sales conditions, but did not adjust Sale 1. Sale 6, however, was purchased with the intent to subdivide the property. Having adjusted the sales price for the anticipated outlot sales, it is unclear whether Allen considered the impact the subdivision will have on the original parcel's utility. These factors reduce the persuasiveness of these sales and we ultimately give them no weight.

Comparables 4 and 5 sold from Lowes with deed restrictions. We believe Allen's use of sales subject to deed restrictions impairs the reliability of his appraisal as an accurate reflection of the subject's fee simple value in its current use. In *Soifer*, the taxpayers claimed the market value of their property should be reduced because "McDonald's requires buyers of McDonald's properties to agree to a noncompete clause that prevents use of the property for a fast food restaurant for twenty years." 759 N.W.2d at 788. The Iowa Supreme Court rejected that argument, stating, "To eliminate [franchise-to-franchise] sales because McDonald's insists on noncompete clauses when selling properties would ignore the requirement that real estate be valued based on its present use." *Id*. at 789.

At face value, there can be no question that a deed restriction is antithetical to fee simple valuation. Allen attempted to support his lack of adjustment for property rights through a paired-sales analysis and by testifying that Lowes does not believe the deed restrictions it imposes affects the sales prices of properties it sells. First, we are less inclined to be persuaded by what effectively amounts to a self-serving statement from an interested party.

Second, and most importantly, we find flaws in Allen's paired sales analysis. He relies upon three paired sales of big-box stores. (Ex. 1, p. 71). He believes the fact that the properties without use restrictions sold for less per-square-foot than properties with use restrictions supports his lack of adjustment. However, that conclusion is only reasonable if the properties are sufficiently alike and the sales transactions are equivalent and normal. Allen did not adjust the comparables for differences that may exist to isolate the element of comparison being analyzed. Therefore, it is impossible to draw a conclusion regarding the effect of the deed restriction. The Home Depot sale used in the second set of paired sales occurred under questionable circumstances and was converted to multi-tenant use. (Ex. 1, p. 65). As it relates to the third set of paired sales, we do not believe the properties are sufficiently alike or the sales transactions are equivalent. The properties differ significantly in size, making an unadjusted per-square-foot comparison questionable. Further, the sale of the Former American TV occurred after American TV declared bankruptcy and vacated the building. (Ex. 1, p. 63). We have concerns about the reliability of that transaction. Lastly, we note that Sales 4 and 5 appear to be comparables in their own right. Sale 4 sold for $26.06 per-square-foot and subject to a twenty-year deed restriction. (Ex. 1, p. 66). Sale 5 sold for $38.02 per-square-foot, subject to a five-year deed restriction. (Ex. 1, p. 67). These sales indicate there may be some market reaction to the deed restrictions.

Of the remaining sales, Sale 3 was converted to multi-tenant use after purchase. Sale 7 required the most adjustments for physical characteristics of all of Allen's sales comparables and was converted to multi-tenant use after the purchase. The change in use reduces the persuasiveness of these sales. *Hy-Vee, Inc. v. Dallas Cnty. Bd. of Review*, 2014 WL 4937892 (Iowa Ct. App. Oct. 1, 2014) (noting that the use of comparables need not be identical to the subject, but a difference in use affects the persuasiveness of the sale) (citations omitted).

Allen also did not make adjustments for post-sale expenditures made by purchasers to any of his sales. In his opinion, those expenditures were particular to the retailer and were not due to deferred maintenance. (Ex. 1, p. 70).

"A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because those costs affect the price the buyer agrees to pay." THE APPRAISAL OF REAL ESTATE 412. These expenditures can include, but are not limited to, costs to cure deferred maintenance, costs to demolish and remove a portion of the improvements, and costs for additions or improvements to the property. *Id*. "The relevant figure is not the actual cost that was incurred but the cost that was *anticipated* by both the buyer and seller." *Id*. (emphasis added).

Notably, THE APPRAISAL OF REAL ESTATE does not limit the application of a post-sale expenditure adjustment only to instances of deferred maintenance. Without adjustments, these comparable sales prices essentially reflect the value of vacant buildings potentially in need of remodeling or renovation for retail use. As such, we do not believe they reflect the current use of the subject property.

We note that the lack of post-sale expenditure adjustment might have been partially remedied by accounting for differences in condition between the subject property and the comparables. THE APPRAISAL OF REAL ESTATE 413 (discussing differences in adjustments for expenditures made immediately after purchase and condition). Allen's age/condition adjustment, however, was essentially limited to differences in age between the subject and comparables. His report fails to identify the condition of some of his comparables at the time of sale.

Finally, Sale 2 demonstrates single occupant use pre-sale and post-sale, there are no apparent signs of a distressed transaction or deed restrictions, and the property appears to be a reasonable comparable to the subject. Adjusted to $26 per-square-foot, this comparable would support Lowes overassessment claim. We again note, however, that Allen made no adjustments for land size, land-to-building ratio, and the garden center. Therefore, we believe the adjusted sales price for this property would undervalue the subject.

In his income approach, because he valued the subject property as vacant and available for lease, Allen applied a $186,780 below-the-line, leasing commissions deduction for "the cost of putting a tenant in place." (Ex. 2, p. 82).[5]

Our primary concern with Allen's income approach is his selection of comparable rents and derivation of capitalization rates. His appraisal contains very little information about his comparable rentals, identifying only their tenant, location, size, and year built. The majority of the properties are older than the subject, some of them significantly so. All of them are smaller in size than the subject. Based on the names, the tenants appear to be second-generation occupants. Most of the leases are dated; he provides only one lease comparable with a lease start date after January 1, 2015. Allen did not make any quantitative adjustments to these comparables. To the extent his appraisal implies he made qualitative adjustments, there is very little information about his process for doing so. In total, we do not believe these comparables represent a similar use as the subject and do not accurately represent the subject's market rent as of January 1, 2017.

In deriving a capitalization rate for the subject, Allen considered the band-of-investment technique, investor surveys, and market sales. We find absolutely no reliance can be placed on the capitalization rates Allen derived from the sales he considered. Five of the sales involved dated leases to Kmart, which has been the subject of well-known financial difficulties and store closures. In addition, the sales on which he relied are dated. Lastly, there is no information about these properties and we are unable to conclude they represent a similar risk as the subject.

Although we have no reason to discount his investor survey or band-of-investment technique, we note that, in total, the average figures from the investor surveys and band-of-investment suggest his capitalization rate estimate of 9.75% is too high.

Allen's capitalization rate determination was informed by his opinion about the risks associated with the property were it to become vacant. We comment specifically to

[5] Manternach also accounted for leasing commissions in his income approach. In contrast to Allen, he included leasing commissions as an annual expense. "In direct capitalization, leasing commissions are either treated as a normalized annual expense or included below the line in the reconstructed operating statement, depending on local market convention." THE APPRAISAL OF REAL ESTATE 484.

note how perceptions of risk can allow an appraiser to increase the capitalization rate and stray from the directive to value the property at its present use. We believe Allen inflated the risk associated with the subject to a degree that exceeds its current risk as an owner-occupied property with no anticipated vacancy, but might also exceed the risk profile of the subject even if it were to become vacant. Based on his testimony, Allen seems to believe that a vacant property is always more risky than an occupied property. While that may be true as a general rule, there are exceptions and we are careful not to accept an unsupported presumption. THE APPRAISAL OF REAL ESTATES states: "In comparing properties that are encumbered by long-term leases or are essentially fully leased with quality tenants, the appraiser must recognize that these leased properties may have significantly less risk than a competitive property that has shorter-term tenants at market rental rates." *Id*. at 407. However, "the reverse may be true in expanding markets" where sufficient tenants are available for shorter-term leases at higher rental rates. *Id*. This is not to say that we are of the opinion that the subject property would not involve risks if it were to become vacant. We do, however, believe that Allen did not support his opinion of the risks associated with the subject property if it were to become vacant and may have unreasonably inflated those risks.

b. Manternach's Appraisal

Manternach considered six sales in his comparable sales approach. (Ex. B, p. 44). We find Sale 1 represents a land sale and give it no weight. We find Sales 4 and 6 represent distressed transactions and Manternach did not make an adjustment to account for any distortion to the sales prices as required by section 441.21(1). Thus, we do not give these sales any consideration.

Sale 3 is a significantly older, multi-tenant property with five-years remaining on each of the tenants' leases. (Ex. B, Improved Sale 3). Even though he adjusted for the lease terms and the age, we give this sale less weight.

Of Manternach's sales, we find Sales 2 and 5 offer the best representation of the subject's fair market value in its current use. Although both sales were vacant prior to their purchase, there is no indication the vacancy was the result of a forced sale or the prior owner's financial distress. The properties were used for single-tenant retail use after purchase, which enhances their persuasiveness, and they were not leased at the time of sale. Sale 2 is a similar size as the subject.

The average adjusted sales price per-square-foot of these two sales is $78.22, which suggests the subject property's market value is roughly $10,700,000. Even if we exclude all adjustments, except the market conditions adjustment, the sales have a median sales price of $70.37 per-square-foot; indicating a market value of for the subject of approximately $9,680,000.

Lowes asserts Manternach's size adjustments are inadequate and upward condition and land-to-building adjustments are unsupported. In comparison, Lowes points out that "Allen's approach was to find stores that matched the subject's character and make as few adjustments as possible." (Lowes Reply Brf. p. 7).

We note that "[f]actors 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 (citing *Bartlett & Co. Grain*, 253 N.W.2d at 94). Sales prices must be adjusted "to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments." *Id*. (other citations omitted). It would be wrong to assume, as a matter of course, that a property is more comparable to the subject because it received fewer adjustments. While the amount of adjustments may be indicia of comparability, the adjustments themselves are made based on the judgment, opinion, and expertise of the appraiser. An unscrupulous appraiser might make fewer adjustments to the comparables to enhance the appearance of comparability even though real and important differences between the subject and comparable exist that warrant adjustment. As such, although we are sometimes necessarily called to rely on the appraiser's judgments, it is also sometimes necessary for us to reject them.

Here, while we acknowledge and, in some respects, agree with Lowes' critiques, we believe the problems with Manternach's sales and his adjustments are less severe than the problems with Allen's sales. We can question the support for and degree of some of Manternach's adjustments, but we must also recognize that Allen failed entirely to make adjustments that were necessary in valuing the fee simple interest of the subject property in its current use.

In his income approach, Manternach considered sixteen existing leases and one listing. (Ex. B, p. 48). Like Allen's report, Manternach's appraisal also lacks substantial detail regarding these properties. However, we find his lease comparables offer a better indication of the subject's current use and January 1, 2017 market value than those selected by Allen. The buildings are of more similar age as the subject and the tenants appear to consist mostly of first-generation occupants. Notably, Manternach accounted for the value of the roofed sales area and garden center in his income analysis.

To estimate a capitalization rate, Manternach considered comparable sales, mortgage equity analysis, and investor surveys. While limited in detail, we acknowledge that Manternach's comparable sales' capitalization rate estimate did not rely upon tenants with well-documented financial difficulties, such as those Allen used. His capitalization rate conclusion of 8.0% is slightly above the investor survey data and mortgage equity technique estimate.

Manternach also completed the cost approach. In its briefs, Lowes heavily criticized his approach. In this case, we note the cost approach takes account of the garden center area and, as indicated by THE APPRAISAL OF REAL ESTATE, can be a useful technique when valuing fee simple interests. Nonetheless, we find little reason to dwell on the cost approach in this case. Manternach gave the cost approach minimal weight in his final reconciliation and his sales and income approaches also exceed the 2017 assessed value of the property.

IV. Conclusion

Having considered the evidence, testimony, briefs, and the record in full, we find that Manternach's appraisal offers the most persuasive evidence of the subject property's market value as of January 1, 2017. Therefore, we affirm the assessment.

Order

PAAB HEREBY AFFIRMS the Black Hawk County Board of Review's action for the January 1, 2017 assessment.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

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.

____
Karen Oberman, Board Member

____
Dennis Loll, Board Member

____
Elizabeth Goodman, Board Member

Copies to:

Ryan Gibbs for Lowes by eFile

Michael Treinen for Black Hawk County Board of Review by eFile