

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

PAAB Docket No. 2017-078-00068C

Parcel No. 774004400004

Menard, Inc.

Appellant,

vs.

Pottawattamie County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on May 9, 2019. The parties submitted post-hearing briefs and the record was closed on May 24, 2019. Attorney Terry Booth represented Menard, Inc. (Menard). Assistant Pottawattamie County Attorney Leanne Gifford represented the Board of Review.

Menard owns a commercial property located at 9 East Street, Shelby. The property's January 1, 2017 assessment was set at \$30,571,600, allocated as \$2,496,300 in land value, and \$28,075,300 in improvement value. (Ex. A).

Menard 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. Menard reasserted its claim to PAAB.

Findings of Fact

The subject property is located at the southeast corner of the East Street interchange off of Interstate 80. (Ex. D, p. 10, 15). The improvements consist of a manufacturing and warehouse/distribution facility built in 2007–2011. It has multiple buildings totaling 1,063,277 square feet of gross building area (GBA) and a 90-foot by 10-foot truck scale. The 139.8-acre site is also improved with 1,636,000 square feet of paving. (Ex. A).

Menard asserts the size of its property, coupled with its location and custom design makes it unique and adversely affects its marketability. Based on these factors, it asserts the assessment is for more than its market value. (Menard Summary of 5/9/19 PAAB Hearing, p. 1).

The record includes two appraisals valuing the property as of January 1, 2017. Duane Heins of Financial Values, LLC, in Brookfield, Wisconsin, completed a Restricted Appraisal Report for Menard and testified on its behalf. (Ex. 1). Russ Manternach of Commercial Appraisers of Iowa, Inc. in West Des Moines, completed an Appraisal Report for the Board of Review. (Ex. D). Manternach did not testify.

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
Heins	\$23,400,000	\$18,500,000	Not Developed	\$22,000,000
Manternach	\$29,770,000	\$30,650,000	\$37,070,000	\$30,500,000

Menard also called George McKinney of McKinney Appraisal Services, Ltd., in Big Bend, Wisconsin, to testify on its behalf. McKinney completed an Appraisal Review Report dated March 2019. (Ex. 3). Prior to his review, McKinney reported that he inspected the subject property in September 2018 and subsequently completed an appraisal as of January 1, 2017.¹ (Ex. 3, Letter of Transmittal & p. 11). Despite having

¹ Prior to the hearing, Menard offered McKinney's 2018 Appraisal as an Exhibit but the Board of Review objected and filed a Motion to Strike or Exclude (Motion). PAAB ruled on and granted the Motion, excluding McKinney's appraisal. (Order on Motion to Strike or Exclude filed April 26, 2019). Menard renewed its offer of McKinney's appraisal at hearing and requested that McKinney be allowed to testify about the document and his opinions therein. The Board of Review renewed its objection and PAAB

previously appraised the subject property, McKinney did not provide an opinion of value of as part of his review and stated his review “cannot replace a fully developed Appraisal Report.” (Ex. 3, p. 11).

Heins Appraisal

Heins completed a Restricted Appraisal Report², specifically for his client WIPFLI and its legal counsel. (Ex. 1, p. 3). Heins testified that the development of a Restricted Appraisal Report involves the same work and analysis as an Appraisal Report but with more limited reporting requirements. His report contains only nine pages of description, explanation, analysis, and conclusion. At the time he prepared his report it was to be used for an ad valorem appeal, but Heins stated he was directed by his client to prepare a Restricted Appraisal Report. He acknowledged his fee is less for a Restricted Report than an Appraisal Report. For this reason, his client just wanted him to “quickly do the work and present the data.”

Heins did not physically inspect the subject property but viewed exterior photos and aerials as part of his analysis.³ (Ex. 1, p. 4, 6 & 16). He testified that the majority of his knowledge about the property was gleaned from public records. He stated his analysis was of comparable properties that included distribution, manufacturing, and warehouse space. He reported the use of the subject property solely as a distribution facility. (Ex. 1, Transmittal Letter). When questioned about the use of the subject property by the Board of Review, he clarified it was not entirely used for distribution but in his opinion the next user would use it for distribution.

referred to its April 2019 Order; the appraisal was excluded from the record and testimony on the document was not permitted.

² The Restricted Appraisal Report is for client use only. Before entering into an agreement, the appraiser should establish with the client the situations where this type of report is to be used and should ensure that the client understands the restricted utility of the Restricted Appraisal Report. UNIFORM STANDARDS OF PROFESSION APPRAISAL PRACTICE (USPAP) 2018-2019, Standard Rule 2(b)(i). p. 22. USPAP is the generally recognized ethical and performance standards for the appraisal profession.

³ Heins did not identify his lack of personal inspection as an Extraordinary Assumption. (Ex. 1 p. 4). An Extraordinary Assumption is “an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser’s opinions or conclusions.” USPAP, 2018-2019. Definitions p. 4; Standard Rule 2-2(b)(xi), p. 24.

Heins did not complete an interior inspection of the subject property and appears to have relied on “an exterior viewing as well as assessor records” to describe the subject improvements. (Ex. 1, p. 6). He testified he only reviewed photographs and aerials of the subject property obtained from the Assessor’s records. Heins reported the improvements as being in “average overall condition with no material items of deferred maintenance.” (Ex. 1, p. 6). Heins also testified that Menard has an on-going maintenance program for all of its properties and if there is an issue with a property it is typically taken care of.

The Board of Review noted that Heins’ report is replete with factual errors. He describes the roof as “pitched and covered with asphalt shingles.” (Ex.1, p. 6). The Assessor’s records, however, indicate the roofs are rubber membrane over steel or metal over steel, and the photographs show the majority of the buildings have a flat roof. (Ex. A). Heins also reported that “the building is served by ceiling hung heat units” (Ex. 1, p. 6), but Exhibit A indicates the majority of the property’s heating, ventilation, and air conditioning (HVAC) system is hot water radiant, with one forced air unit, and one suspended gas unit.

Heins acknowledged he did not have the ceiling height listed in his report. He testified he did not consider this a factor when adjusting his comparable properties. In his opinion, because the subject is a distribution facility this factor is less important than it would be for a warehouse facility.

Because Heins did not inspect the subject property or rely on building plans and specifications, the Board of Review asserts he could not correctly identify the property to be appraised. Therefore, he cannot make appropriate adjustments between it and other sales or rentals to determine a credible opinion of market value or market rent. The Board of Review, therefore, moved to disqualify him as an expert witness for lacking competence. Menard asserted Heins is a qualified expert because he routinely reviews appraisal reports of appraisers seeking licensure in Wisconsin. PAAB allowed his testimony.

Heins did not complete the cost approach. He testified that because facilities like the subject are specifically located for the owner, he does not believe cost is an

important factor. His report asserted subject's "multiple ages" rendered it unreliable. (Ex. 1, p. 4).

He did develop the sales comparison and income approaches to value.

In describing the subject property, Heins noted the aerial of the subject property indicates a long loading dock area that serves as part of the distribution area. (Ex. 1, Appendix, p. ix). In his opinion, this is an important characteristic of a distribution facility. When selecting sales, he sought distribution facilities rather than general warehouse or manufacturing sales. He testified that the type of construction and layout are important factors to consider when selecting comparable sales. We note that based on the aerials of the properties he selected as comparable, none appear to have a similar elongated docking area like the subject property. (Ex. 1, Appendix, pp. iii-vii).

Heins also testified that distribution facilities like the subject are typically larger properties. He explained the size of property is important and that there are fewer potential users of properties over 300,000 to 500,000 square feet. Additionally, the larger properties are often located in an area particular to the owner based on their customers and transportation needs. Heins testified that owners of properties like the subject develop algorithms to determine the very specific locations for their facility and design them specifically to their needs. This is because the cost of real estate is far less significant than transportation costs. Therefore, based on a particular business, an owner will invest in building a facility based on their own individual needs. Based on this, the type and size of a building were important factors in Heins' selection of comparables.

Heins testified that he considered location when selecting his comparable sales, noting that properties in closer proximity to metro areas would have more appeal than a property like the subject that is not located near a metropolitan area. When the Board of Review asked Heins if he knew how far Shelby was from Omaha and Des Moines, or its proximity to transportation routes such as I-29, he was unable to recall but testified he was aware of the proximities when he conducted his analysis.

Heins relied on five sales located in Mississippi, Illinois, and Tennessee that are summarized in Table 1. (Ex. 1, pp. 7-10).

Table 1

Comparable	Sale Date	Sale Price	Site Size (Acres)	GBA	Year Built	Land to Building Ratio ⁴	SP/SF	Adjusted SP/SF ⁵
Subject			139.80	1,063,241 ⁶	2007-2011	5.73		
H1 - Champs Blvd, IL	Jul-14	\$11,200,000	32.00	500,000	1989	2.79	\$22.40	\$21.87
H2 - Pontotoc County, MS	Mar-14	\$10,750,000	3.10	1,036,400	1998	0.13	\$10.37	\$15.00
H3 - Smith Ln, TN	Jun-15	\$12,302,103	53.68	771,000	2004	3.03	\$15.96	\$15.68
H4 - Tuggle Rd, TN	Aug-16	\$29,300,000	60.35	1,135,453	1991	2.32	\$25.80	\$24.36
H5 - Wabash Ave, IL	Apr-14	\$34,500,000	71.55	1,221,000	1969 r2014	2.55	\$28.26	\$27.79

Heins indicated the comparable properties “reportedly involved the transfer of the fee simple interest” (Ex. 1, p. 8), yet his data sheets indicated four were conveyed as leased-fee sales. (Ex. 1, Appendix, pp. iii-vii). He did not analyze or adjust any of the sales for property rights conveyed. During cross examination, he stated he meant that the sales were “fee simple equivalent,” although he admitted he did not review the leases.

Heins adjusted all of the sales upward 1.5% per year from the date of sale, stating that “market conditions have improved modestly over the past few years.” (Ex. 1, p. 8 & 10).

When questioned about the relevance of land-to-building ratio, Heins testified it could have an impact. However, he believes the adjustments can vary based on the location and site value of a comparable property. Although Heins did not report the subject property’s land-to-building ratio in his report, he acknowledged larger land-to-building ratios allow for potential expansions and additional site amenities compared to properties with smaller ratios. (Ex. 1, p. 9). He only adjusted Sales H2 and H4 as having an inferior ratio. Heins acknowledged that Sale H2’s land-to-building ratio of 0.13 is abnormally low for this type of property and could not explain why that would be. We note his calculation for Sales H3, H4, and H5’s land-to-building ratios were incorrect.

⁴ Land to building ratio is calculated as GBA/Site(SF). Heins’ reported land-to-building ratios for Sales, H3, H4, and H5 were not correctly calculated. (Ex. 1, p. 7). Table 1 lists the correct calculation.

⁵ This column reflects Heins’ physical comparison adjustments. (Ex. 1, p. 10).

⁶ Heins reported the GBA as 1,063,241, which appears to be a typographical error. The actual GBA is 1,063,277.

With the exception of Sale H3, all of his sales have land-to-building ratios roughly half or less than the subject property. Failing to apply this adjustment would result in an artificially depressed adjusted value.

Heins considered Sales H1 and H3 similar in overall location, Sale H2 was identified as inferior and adjusted upward 20%, and Sales H4 and H5 were superior with negative 10% adjustments. (Ex. 1, p. 10). Heins testified that he considered proximity to major metropolitan areas, transportation routes, and development around the property as factors he considered in his location adjustment.

Sale H1 is a multi-tenant distribution center that was 40% leased as of the date of sale. We note that Heins reports this property is located in Illinois. However, this property is in Arkansas. (Ex. 4, p. 66). Heins reported Sale H1 as inferior to the subject in age/condition adjusting it upward 10%, yet his data sheet indicates the sale price included approximately \$5,000,000 in upgrade costs for roof replacement, parking lot resurfacing, exterior painting, new guard gates, and other tenant improvements. (Ex. 1, Appendix, p. iii). Moreover, he states the property was in “average to good condition at sale.” (Ex. 4, p. 67). He did adjust Sale 1 downward 5% for quality, but he does not provide any explanation of what makes it superior to the subject property. He also adjusted it downward 10% for its smaller building area. (Ex. 1, p. 9-10).

Sale H2 is a distribution center built in 1998 with additions in 2003, 2005, and 2008; the last addition having a construction cost of \$9,000,000. (Ex. 1, Appendix, p. iv).⁷ We note the sales sheet indicates a marketing period of 15 days, which is a significant departure from Heins’ stated marketing period for the subject of 9 to 12 months. (Ex. 1, p. 5 & Appendix, p. iv). This, along with the fact that the sales price per square foot is an outlier from the other sales, causes us to question the reliability of this transaction. Heins adjusted Sale H2 upward 5% for age/condition. For comparison, he also adjusted Sale 5 upward 5% and it was built in 1969. (Ex. 1, Appendix, p. vii). The Board of Review noted that Heins identified Sale H2 as a corporate headquarters, manufacturing, and distribution facility, yet it was reported as having no finished area.

⁷ This sale was also included in Exhibit 4. Compared to Heins’ appraisal, Exhibit 4 reports a land area of 95.03 acres and a land-to-building ratio of 4.0. If correct, it means these figures were misreported on Heins’ appraisal. Exhibit 4 also notes this property was “only on the market briefly. The seller reportedly initiated an IRS tax-deferred 1031 exchange with the up-leg property not identified.”

(Ex. 1, p. 10; Appendix, p. iv). Heins asserts that if this is a headquarters for a distribution facility it could be minimally finished. We give this sale no weight.

When Sale H2 transferred, Heins reported it had 12 years remaining on its lease, with two 10-year renewal options. When questioned if this would affect the purchase price if it was to be owner occupied, Heins replied it would not be purchased for a buyer's own use.

Sales H3 and H4 were multi-parcel sales. Heins reported that Sale H3 was part of a seven state, 22-property portfolio. (Ex. 1, Appendix, p. v). According to Exhibit 4, Sale H3's listed purchase price was the amount allocated to the property from the total \$317 million purchase price. (Ex. 4, pp. 70-71). Heins adjusted Sale H3 downward for its smaller building area. (Ex. 1, p. 9-10). Given the nature of the sales transaction, we are not inclined to give this sale significant weight.

Sale H4 was one building of a four-property sale, all occupied with short remaining lease terms. (Ex. 1, Appendix, p. vi). This was the only sale adjusted for having finished area.

Sale H5 is a 1.2-million-square-foot distribution center built in 1969 and renovated in 2014. He identified it as superior in location adjusting it downward 10% adjustment; and as previously noted, he considered it inferior in age/condition with an upward 5% adjustment. (Ex. 1, p. 10). The Board of Review asked if this property had been updated and Heins testified it had been renovated for the tenants in place. He asserts the renovations and securing a tenant for the property occurred prior to the sale. He then acknowledged he listed the sale as fee simple but described it as a leased fee transaction.

Heins did not provide a summation of his adjusted prices per square foot and testified he did not include it because he prepared a Restricted Appraisal Report. Regardless, he did provide the line adjustments and the result of the calculations have been summarized as seen in Table 1. From this adjusted range, Heins relied on his calculated average and median adjusted sale prices to arrive at a conclusion of value of \$22.00 per square foot for the subject property. (Ex. 1, p. 9). His rounded opinion of value by the sales comparison approach is \$23,400,000. (Ex. 1, p. 10).

In his income approach, Heins reported three rental rates of \$1.05, \$1.14, and \$2.42 per square foot, which were obtained from his Sales H2, H3, and H5. (Ex. 1, Appendix, pp. iv-v & vii). Heins identified these rental rates as the net operating income (NOI) per square foot. He asserts that the NOI is equivalent to market rent for larger properties such as the subject. However, after forming an opinion of subject's market rent based on comparable NOI market data, he then adjusts the estimated market rent to arrive at the subject's NOI. We note this is incorrect methodology since the NOI indicated by the comparables would have already had expenses removed. Heins' analysis considers the expenses twice and would artificially lower his conclusions. Based on this data and given limited rent comparables "of the subject size in the local market," he reported \$1.50 per square foot as his opinion of a market rent. (Ex. 1, p. 11). However, in his actual calculations, he used \$2.00 per square foot as the market rent and testified that the reported \$1.50 per square foot was an error. (Ex. 1, p. 12)

Heins reported that market reports reflect vacancy rates of 5% for industrial properties but given the subject's size he concluded a 10% vacancy rate. (Ex. 1, p. 11). After adjusting his estimated effective gross income for vacancy and operating expenses, Heins concluded a NOI of \$1,662,909. (Ex. 1, p. 12).

Heins' capitalization rates ranged from 7.2% to 10.1%. From this data he selected a 9.00% capitalization rate. (Ex. 1, p. 11). He did not load the capitalization rate for taxes. His opinion of value by the income approach is \$18,500,000 rounded. (Ex. 1, p. 12).

Heins 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 \$22,000,000. (Ex. 1, p. 13).

Manternach Appraisal

Manternach inspected the subject property in September 2018. (Ex. D, p. 4). He provides a detailed description of the subject's site and its improvements. (Ex. D, pp. 15-28). Manternach noted the assessment records indicate the subject GBA as 1,063,277 square feet but plans the property owner provided to him indicate a GBA of 1,069,446 square feet. He explained the owner's plans included some other small

structures such as a gatehouse and visitor center. For his analysis, he relied on the assessment records. He noted the subject has 26,527 square feet (2.5%) of finished office area, 210 overhead doors at dock height, and an average eave height of 30 feet. In his opinion, the subject is an above-average quality industrial facility and the buildings are in average condition. (Ex. D, pp. 26-28).

Manternach developed a highest and best use analysis “as vacant” and “as improved” concluding the current highest and best use, as improved, is for continued industrial use. (Ex. D, p. 30).

To determine the contributory site value, Manternach analyzed and adjusted six land sales located in Iowa, two of which were in Shelby. (Ex. D, pp. 31-33; Land Sale 1- Land Sale 6 Data Sheets). These sales are summarized in Table 2.

Table 2

Comparable	Site Size (Acres)	Sale Date	Sale Price	SP/Acre	Adjusted SP/Acre
1 - DeSoto	108.66	Aug-17	\$2,539,855	\$23,374	\$21,037
2 - Grinnell	63.33	Nov-12	\$1,583,250	\$25,000	\$21,250
3 - Nevada	24.41	May-13	\$610,250	\$25,000	\$18,750
4 - Clinton	26.83	May-13	\$1,126,814	\$41,998	\$25,199
5 - East St, Shelby	28.65	Oct-12	\$990,000	\$34,555	\$25,916
6 - Industrial Rd, Shelby	115.31	Apr-18	\$2,394,000	\$20,761	\$22,609

Land Sale 6 is the most recent sale, the most similar in size, and is adjoining the subject site. It was purchased by Menard for potential expansion. (Ex. D, Land Sale 6 Data Sheet). After adjusting the land sales for differences between them and the subject site, Manternach concluded an opinion of site value of \$21,000 per acre or \$2,940,000 rounded. (Ex. D, p. 33).

Manternach relied on MARSHALL VALUATION SERVICE (MVS) for his cost data. He identified the subject property as above-average quality but noted MVS does not have an above-average cost category; therefore, he averaged the average and good quality base costs to arrive at his estimates. (Ex. D, p. 34). Based on this classification, he determined a base square foot cost of \$45.63. After adjusting for refinements, he concluded a replacement cost new (RCN) to be \$59.72 per square foot. He then added 2% soft costs, concluding a total RCN of \$64,768,880. (Ex. D, p. 36). Manternach did

not include any entrepreneurial incentive in his cost new because in his opinion, properties like the subject are rarely built for speculative profit. (Ex. D, p. 34).

Manternach estimated an effective age of 9 years and an economic life of 45 years. Using the age/life, straight-line method he determined the subject had 20% physical depreciation. He also applied 40% functional obsolescence due to the size of the subject property in a smaller Iowa community. (Ex. D, p. 34). Manternach does not provide an explanation in his report of how he arrived at this adjustment. After adding in the depreciated value of the site improvements and land value, Manternach concluded an opinion of value by the cost approach of \$37,070,000. (Ex. D, p. 36).

Manternach also reported and considered the actual cost of construction for the subject property, which was approximately \$64,654,000, excluding the cost of the site. He notes his RCN, including site improvements, is approximately \$69,880,000. Considering increasing construction costs, he believes his estimate is reasonable. (Ex. D, p. 37).

Manternach included six improved properties for his sales comparison analysis, which are summarized in Table 3. (Ex. D, pp. 39-42).

Table 3

Address	Sale Date	Sale Price	Building Area (SF)	Year Built (Average)	Sale Price/SF	Adjusted SP/SF
Subject			1,063,277	2008		
M1 - Sioux City	Sep-15	\$14,000,000	444,706	2000	\$31.48	\$28.22
M2 - Ames	Jul-14	\$26,250,000	576,476	1999	\$45.54	\$33.27
M3 - Ottumwa	May-12	\$7,100,000	352,860	1976	\$20.12	\$31.36
M4 - Army Post Rd, Des Moines	May-17	\$16,200,000	407,938	2002	\$39.71	\$26.14
M5 - NE 46th St, Des Moines	May-17	\$9,000,000	445,221	1972	\$20.21	\$24.64
M6 - Indianola	Jan-15	\$6,700,000	265,740	1999	\$25.21	\$27.79

Menard was critical of Manternach's comparable sales because with the exception of Sale M2, all are less than half the size of the subject property. Sale M2 is just over half the size and Sale 6 is roughly 75% smaller when compared to the subject. Manternach adjusted all of the sales downward from 5% to 15% to account for their smaller size.

Manternach adjusted all of the sales upward 1% per year for date of sale, recognizing that industrial property values have been increasing for the past several years. (Ex. D, pp. 40).

Sales M4 and M6 were fee simple sales; the remaining sales were leased fee. Sales M1 and M5 had relatively short remaining lease terms; therefore Manternach concludes they did not require adjustment for property rights conveyed. (Ex. D, p. 40). Sale M1 had approximately two years remaining on its lease and the purchaser intended to occupy at the end of the lease. (Ex. D, Improved Sale M1 Data Sheet). Sale M5 had less than four years remaining on its lease at the time of sale. (Ex. D, Improved Sale M5 Data Sheet).

He adjusted Sales M2 and M3 downward 5% and 15% respectively for having longer remaining lease terms with credit-worthy tenants. (Ex. D, pp. 39-40). Sale M2 had three tenants with remaining lease terms of two- to six-years; Sale M3 had a new negotiated ten-year lease in 2012. (Ex. D, Improved Sale M2 and Improved Sale M3 Data Sheet).

Manternach identified Sales M3 and M6 as having a similar location to the subject property; Sales M1, M2, M4, and M5 were all considered to have a superior location and adjusted downward between 15% and 30%. (Ex. D, p. 39). He considered all six sales as having inferior age/condition compared to the subject property and adjusted them upward between 15% and 75%.

Sales M1, M2, and M4 were considered to have superior quality and adjusted downward 5%; Sale 3 was considered inferior quality and adjusted upward 10%. Menard was critical of Manternach's Sale M1 and M2 asserting they are concrete structures compared to the subject being a metal structure; and part of Sale M1 was fully air-conditioned and heated. Menard also asserts Sale M4 is significantly superior to the subject property because it is primarily warehouse space, which it believes is more valuable than a distribution center like the subject. For these reasons, Menard asserts these sales are much more valuable than the subject property and Manternach failed to sufficiently account for this in his analysis. (Brf. p. 4). Menard did not submit any evidence of what the correct adjustments should be.

All of Manternach's comparable sales have inferior land-to-building ratios compared to the subject property and he adjusted them upward between 5% and 7%. (Ex. D. p. 39). He explained that as the land-to-building ratio increases, there is more land available for green space, parking, other amenities, and future expansion. (Ex. D, p. 41).

After adjustments, Manternach reported a range of value from approximately \$25 and \$33 per square foot and reconciled to a value of \$28 per square foot. His conclusion of value by the sales comparison approach is \$29,770,000 rounded. (Ex. D, p. 42)

Turning to his income approach, Manternach analyzed thirteen, triple-net leases of retail properties, most of which are located in Iowa, to establish a market rent for the subject property. (Ex. D, p. 44). The leased properties ranged in size from roughly 100,000 square feet to just over 1,100,000 square feet of building area and were built between 1961 and 2009. Manternach did not include a lot of information about his comparables.

The comparable leases ranged from \$1.60 per square foot to \$4.12 per square foot. (Ex. D, p. 44). Although Manternach noted the leases "would be adjusted" for numerous factors, he did not report any adjustments to them. Based on this data, he selected a triple-net market rent of \$3.25 per square foot for the subject property. (Ex. D, p. 44).

Manternach estimated vacancy and collection loss at 13%, and approximately \$420,000 in expenses. He included leasing fees in his expenses. Manternach estimated 3% (\$90,192) leasing fees to reflect the cost of locating and securing tenants. (Ex. D, pp. 46-47). His total operating expenses were estimated at \$446,882, and his NOI was estimated at \$2,559,533. (Ex. D, p. 47).

Manternach relied on three major techniques to estimate his capitalization rate: market extraction, the mortgage-equity (band of investment), and investor surveys. (Ex. D, pp. 48-50). The following table is a summary of the data based on these techniques.

Method	Rate Estimate Data
Mortgage-Equity	7.90%
Market Extraction	6.40% to 10.3%
INVESTMENT BULLETIN (Survey)	Industrial \$5M to \$15M – 6.80% \$15M to 25M – 6.60% >25M – 5.60%

The capitalization rates ranged from 5.60% to 10.30% (Ex. D, p. 50). Based on this analysis, Manternach selected a capitalization rate of 8.00% for the subject property. After adjusting for the tax rate, he relied on an 8.35% loaded capitalization rate. (Ex. D, p. 50). His conclusion of value by the income approach was \$30,650,000 rounded, as of January 1, 2017. (Ex. D, p. 50).

Manternach reconciled the three approaches to value and while he gave all of them some consideration, he gave least weight to the cost approach. His final opinion of value as of January 1, 2017, is \$30,500,000. (Ex. D, p. 51).

McKinney Appraisal Review

Menard called McKinney as a rebuttal witness.⁸ McKinney stated the purpose of his review was to determine if Manternach’s value opinions were credible and if his report conformed to USPAP. McKinney “read and analyzed the appraisal for accuracy, completeness, adequacy and relevance of the data, methodology, logic and compliance with standards and regulations.” (Ex. 3, p. 11).

McKinney’s review is based on his inspection of the subject property in August 2018; a study of demographics, and supply and demand forces impacting the subject property; a review of building sketches; and an analysis of recent comparable sales and

⁸ Prior to his March 2019 Appraisal Review Report, McKinney completed an appraisal of the subject property as of January 1, 2017. (Ex. 3, Letter of Transmittal & p. 11). His appraisal was excluded as direct evidence by PAAB in its April 26, 2019 Order on Motion to Strike or Exclude. That order also excluded the appraisal as rebuttal evidence at that time because there was no suggestion as to what evidence it intended to rebut. When the exhibit was again offered in rebuttal at hearing, the Board of Review objected and the exhibit was submitted as an offer of proof. (Ex. 2) Again PAAB found the appraisal was not proper rebuttal evidence as controverting or disproving the evidence submitted by the Board of Review, but rather was Menard seeking to support its claim of the property’s value. Thus, Exhibit 2, except for excerpts that were admitted as Exhibits 4 and 5, was excluded. McKinney did not conclude an opinion of value as part of his review and stated his review “cannot replace a fully developed Appraisal Report.” (Ex. 3, p. 11).

rentals in the market area. He did not provide any of this aforementioned data in his review. Based on his analysis, it is his opinion that Manternach's conclusions of the highest and best use, as vacant, as well as his conclusions of value in the cost, sales comparison, and income approaches are not credible or supportable.

In McKinney's opinion, Manternach's conclusion of the highest and best use, as vacant, is not credible "due to insufficient support." (Ex. 3, p. 5). Actually, if we rely on what Manternach reported, he thinks it should be light industrial until development is feasible, with an agricultural interim use. (Ex. D, p. 30). McKinney does believe that Manternach's conclusion of the highest and best use, as improved, and his opinion of site value are credible and supported. (Ex. 3, Transmittal Letter; pp. 5).

McKinney testified he believes development of the cost approach is inappropriate for a property like the subject. He testified that there are a "multitude" of reasons why an appraiser would exclude this as an appropriate approach to value the subject property. However, no such conclusion was included in his review report. McKinney's review, while concluding the cost approach was not credible, makes no assertion that the approach should not have been developed. Moreover, McKinney's report identified Manternach's "Scope of the Appraisal"⁹ as credible. (Ex. 3, p. 2). An appraiser's scope of work includes "the type and extent of analyses applied to arrive at opinions or conclusions." (USPAP, 2018-2019, Scope of Work Rule, p. 14). Concluding Manternach's scope of work credible directly conflicts with his testimony that the cost approach should not have been developed.

McKinney testified he believes Manternach's estimated average clear height of 30 feet for the subject was too high, and resulted in an excessive height multiplier. He offered no reason or support for this belief. (Ex. 3, p. 6). Second, in his opinion Manternach offered "minimal/negligible" support for the 40% functional and external obsolescence.

He testified that the subject property was built-to-suit for Menard. He asserts there are portions of the subject property that would "never be used by an alternate user." He also testified that if the subject property was "vacant and available" another distribution operator would likely not use many portions of the improvements. In his

⁹ More commonly referred to as Scope of Work.

opinion, the subject property's future "inutility" cannot be quantified. This testimony suggests that McKinney is not considering the subject's current use, as Manternach did; rather, he is considering it for a hypothetical future use.

Because of McKinney's belief that there would be few operators that would want to lease a distribution facility of this size and that it was not built specifically for their use, the subject property's proximity to Omaha does not really matter. He believes the economic or external obsolescence of the subject property would be difficult to estimate because of this location.

In McKinney's opinion, Manternach's comparable sales, which range between approximately 265,000 square feet to just under 577,000 square feet, are too small and do not accurately reflect the subject property's final value estimate by the sales comparison approach. (Ex. 3, p. 7). In McKinney's opinion, properties under 500,000 square feet are not "in the same market" as the subject property. He further noted the per-unit price for larger properties will be dramatically lower, which he attributes to fewer prospective buyers and therefore less demand. He asserts this is common sense. He identifies two types of users, an investor or an owner-operator.

McKinney testified that Manternach's size adjustments are "drastically, drastically low," "woefully inadequate," and "woefully unsupported" given they were adjusted in a quantitative form. While he provided no basis for these opinions, he asserts Manternach's low size adjustments result in his value conclusion being too high.

Although not mentioned in his report, McKinney testified about several of Manternach's adjustments. McKinney was critical of Manternach's quality and design adjustment to Sale M1 and M4. McKinney explained this considers the type of construction such as whether the improvements are built with corrugated steel or concrete. Without providing evidence to support his opinion, he testified there is a 40% difference in costs between the two types of construction.

McKinney noted a 5% downward adjustment was applied to Manternach's Sale M4 for quality and design. He testified this was "obscenely inaccurate" because Sale M4 has concrete walls and gas-forced heat and central air when the subject has metal construction and only the office area is air-conditioned. McKinney does not believe this

property should be included as a comparable and in his opinion is more akin to a corporate headquarters.

Concerning property rights conveyed, McKinney was critical that Manternach did not make an adjustment for all leased fee transfers. McKinney believes Sales M1 and M5 should have been adjusted downward for the value of the remaining leases. As previously noted, Manternach provided details of the leases in his report and explained these properties had short remaining leases and therefore no adjustments were required. Further, Manternach's data indicates that Sale M1 was to be owner occupied after the two years of the lease that remained. McKinney asserts the length of the lease is not relevant. He believes if there is a tenant in the building there is a strong possibility they may stay or the owner may locate a different tenant. Therefore there is value in the existing lease and it should have been adjusted downward.

Regarding the downward property right adjustments to Sales M2 and M3, McKinney does not believe there is support for the specific quantitative¹⁰ adjustments that Manternach made. He then testified that he believes both sales require greater adjustment for this element of comparison without any data supporting his conclusion.

Manternach's land-to-building ratio adjustments were all upward between 5% and 7%. McKinney compared Manternach's land-to-building ratio adjustments to his building size adjustments. Using Sale M2 as an example, which is half the building size of the subject property, McKinney noted that Manternach adjusted it downward 5% compared to his land-to-building ratio adjustment of an upward 7% and in his opinion this is just wrong. He believes Manternach's land-to-building ratio adjustment, in relation to the other adjustments, is too high because the subject's site is "worth \$15,000 to \$20,000 an acre" as a corn field. He believes the land in four of Manternach's comparable properties have a value of "five to ten times" the value of the subject property on a per-acre basis. Therefore, McKinney does not believe Manternach's adjustments for the land-to-building ratios are consistent in relation to his other adjustments. McKinney's criticism of land-to-building ratio was not addressed in his review report.

¹⁰ A quantitative adjustment in the sales comparison approach is a numerical adjustment to the sale price of a comparable property. (THE DICTIONARY OF REAL ESTATE APPRAISAL, 5th ed. p. 156).

Lastly, McKinney was critical of Manternach’s lack of a location adjustment to Sale M6, which is located in Indianola compared to his 30% adjustment to Sale M5 that is located in Des Moines. Based on this comparison, he does not believe the adjustments are reliable.

Menard submitted nine sales as rebuttal evidence, proffering the sales as evidence of more similar size properties that were available for analysis. (Ex. 4). These sales are summarized in Table 4. MC2, MC4, MC5, and MC8 were all used by Heins as well.

Table 4

Comparable	Sale Date	Sale Price	GBA	Year Built	Site Size (Acres)	SP/SF
Subject			1,063,277	2007-2011	139.80	
MC1 - Hickory Hill Rd, Memphis, TN	Jan-15	\$14,500,000	646,160	1986	28.20	\$22.44
MC2 - Ecu, MS	Mar-14	\$10,750,000	1,036,400	1998	95.03	\$10.37
MC3 - Maumelle, AR	Jul-14	\$11,200,000	500,000	1989	32.00	\$22.40
MC4 - Fond Du Lac, WI	Dec-16	\$16,000,000	611,564	1978	37.21	\$26.16
MC5 - Jackson, TN	Jul-15	\$12,302,103	711,000	2004	53.68	\$15.96
MC6 - Southridge Blvd, Memphis, TN	Jan-16	\$16,500,000	640,000	1995-1999	25.60	\$25.78
MC7 - Effingham, IL	Apr-14	\$34,500,000	1,221,000	1978	71.55	\$28.26
MC8 - Tuggle Rd, Memphis, TN	Aug-16	\$29,300,000	1,135,453	1991	60.35	\$25.80
MC9 - Wauwatosa, WI	Mar-18	\$31,250,000	2,022,825	1958-2000	73.67	\$15.45

Menard believes this data demonstrates Manternach’s sales are not comparable to the subject and supports McKinney’s conclusions that the adjustments are in error. While the properties in Table 4 are more similar in size to the subject property than those offered by Manternach, they are all much older than the subject property; and the land-to-building ratios range from 1.59 to 3.99, with an average ratio of 2.54 compared to the subject property’s land-to-building ratio of 5.73.

Exhibit 4 contains cursory comments for each transaction, but without further information we are unable to determine if these sales are arm’s-length or if there were other factors that may have impacted the sale prices requiring adjustment. For example:

- Sale MC2 was reported as being initiated as an IRS tax-deferred 1031 exchange;
- Sale MC3 was reported as being 59% vacant at the time it sold;

- Sale MC4, which was built in 1978, is reported as having “narrow” improvements (200 feet wide and 2800 feet in length) with limited on-site parking and truck staging;
- Sale MC5 was part of a 22-property transfer, with the purchase price allocated to the property;
- Sale MC7 was not verified and included as “informational” only
- Sale MC9 was sold from JC Penney, after deciding to close its obsolete furniture outlet operation. It was reportedly expected to be subdivided, renovated and repositioned to a different use.

Finally, none of these properties were adjusted for differences between them and the subject to arrive at an opinion of value.

We give no consideration to Sales MC2 and MC5 because of the conditions of their sales. We give little weight to Sale MC9, as it appears the purchase price reflected the cost of renovating the property to a multi-tenant use that is not consistent with the subject’s current use. Though older than the subject and with inferior land-to-building ratios, the remaining sales suggest the subject’s fair market value would exceed the \$22 per-square-foot Heins concluded.

McKinney had similar critique of Manternach’s comparable leases asserting they are again too small to be reliable in determining market rent for the subject property and that his conclusion of market rent of \$3.25 per square foot is not supported. (Ex. 3, pp. 8-9).

McKinney was critical of Manternach’s market rent conclusion asserting he gave no indication of the expenses for which the tenants are responsible. We note, however, that Manternach’s analysis indicates that the market rent is on a triple net basis with the tenant responsible for most expenses, including insurance, real estate taxes, repairs/maintenance and utilities. (Ex. D, p. 44). With no explanation or support for his opinion, McKinney simply asserts Manternach’s conclusion of market rent is too high.

McKinney noted that Manternach’s lease comparables range from approximately 100,000 square feet to just over 1,100,000 square feet, with an average size of under 410,000 square feet. McKinney does not believe Manternach appropriately adjusted his

leases for the differences in size and testified that size is the most important factor in selecting comparable properties for a rent analysis. (Ex. 3, p. 9)

Although not mentioned in McKinney’s review, Menard submitted six leases it obtained from his 2018 appraisal as evidence of more similar size properties that were available for analysis. (Ex. 5). Table 5 is a summary of these leases.

Table 5

Comparable	Total Building Area (SF)	Comments
1 - Albert Lea, MN	462,000	50% vacant; Asking \$2.75/SF NNN
2 - Watertown, WI	266,500	Space Available 10,000 to 266,000 SF; Asking \$2-\$3/SF NNN
3 - Davenport, IA	800,000	Approximately 21,500 to 296,000 SF available in 4 spaces; Asking \$2.30-\$2.50 N/MG
4 - Gillett, WI	200,000	100% Vacant; Asking \$1.10/SF NNN
5 - Faribault, MN	295,740	100% Vacant; Asking \$3.75/SF NNN
6 - Milwaukee, WI	400,000	50% Vacant; asking \$2.75-\$3.25/SF NNN

First, we note that while Menard complains Manternach’s lease comparables are too small, its own evidence consists of properties with less than 800,000 square feet of total building area and roughly 400,000 square feet on average. Moreover, the actual space available for lease is less than 300,000 square feet for each comparable.

Like McKinney’s sales comparables proffered by Menard as rebuttal evidence, we find the information about the lease comparables to be inadequate and fail to convince us they are superior to those selected by Manternach; and offer little worth in ascertaining the actual market rent for the subject property as of January 1, 2017.

Lastly, McKinney asserts the Manternach’s opinion of an 8.00% capitalization rate prior to loading it for taxes, is “acceptable” but low. Based on the forgoing, McKinney concludes Manternach’s income analysis is not credible. (Ex. 3, p. 9).

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).

Menard argues 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 vs. 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 vs. 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. 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).

In this case, there are two appraisals – one from Menard and one from the Board of Review – that value the subject property for less than its current assessed value. Thus, we find substantial evidence support’s Menard’s claim that the property is assessed for more than authorized by law. Our remaining task is to determine which appraisal is most consistent with the value required by Iowa law.

b. 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, 779 (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 t 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).

“[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, Inc. v. Polk County Board of Review*. 875 N.W.2d 636, 670-71 (Iowa 2016). 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. In evaluating the theories of value-in-use and value-in-exchange pertaining to Wellmark’s property, the Iowa Supreme Court adopted the view that “value should be based on the presumed existence of a

hypothetical buyer at its current use.” *Id.* at 683. 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.

Menard contends the size of its property, its location, the fact that it was custom-built, and that there would be a limited number of possible purchasers dictate that the assessed value is too high. Therefore, it believes Heins’ appraisal should be relied on to value the subject property. (Menard Summary of 5/9/19 PAAB Hearing, p. 1). However, as the Board of Review points out, Menard’s position appears to be in direct conflict with the Court’s holding in *Wellmark*. (Appellee’s Closing Statement. p. 2). The *Wellmark* Court noted that the “property is currently being successfully used” and, “[c]urrent use is an indicator that there is demand for such a structure.” *Id.* at 683. Here, Menard spent approximately \$64 million to purchase the site and build the facility a decade ago. It has added buildings since then and recently purchased adjacent land to expand the property. (Ex. A; Ex. D, p. 31). The property is being successfully used as manufacturing/distribution center.

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*, 875 N.W.2d at 682. 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); *Carlson 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).

Here, Menard argues that it has offered sufficient sales data to value the subject property and asks the Board to adopt Heins’ valuation. The Board of Review makes no argument regarding the availability or unavailability of sales. Its expert gave most weight to the sales and income approaches, but did not testify about the availability or reliability of the sales approach on this property. Nor does such a discussion appear in his report.

In this case, while the parties argue that the opposing party's expert's sales approach is flawed, neither has sufficiently shown that other factors, such as cost or income, should be considered. In agreeing with some of the criticisms of the sales comparison approaches offered, we question if it would be more prudent to also give consideration to the income and cost approaches. Nonetheless, we are confined to the arguments and evidence offered in this case. Therefore, we consider only the sales comparison approaches.

II. Analysis of Appraisals

Menard asserts that Manternach's appraisal is unsupported and not reliable. It contends Heins' appraisal is the only appraisal that should be relied on to value the subject property. (Menard Summary of 5/9/19 PAAB Hearing, p. 1). It asks PAAB to set the subject property's value at \$22,000,000.

The Board of Review contends Heins' Restricted Appraisal is replete with errors and cannot be relied upon to value the subject property as of the assessment date, and that PAAB should affirm the assessment.

a. Heins

Menard offers Heins' report in support of its position. Heins valued the property based on the sales and income approaches. He gave each weight and arrived at a reconciled opinion of value of \$22,000,000.

Menard asks that PAAB modify the assessment to Heins' reconciled value. We note this is below Heins' value indicated by the sales comparison approach (\$23,400,000) and Menard is simultaneously asserting that the sales comparison approach can readily establish the property's value.

Heins did not physically inspect the subject property. Although a physical inspection is not required to adequately complete an appraisal assignment, we find Heins' report is misleading because he stated the physical characteristics of the subject property is based on "exterior views," but later testified he only reviewed photographs and aerials of the subject property obtained from the Assessor's records. He also stated in the certification section of the report that no physical inspection of the subject property was completed. More importantly, Heins misidentified key construction components of

the subject property and acknowledged that his report contained many typographical errors. We consider the lack of property inspection along with these errors in evaluating the reliability of Heins' report.

Heins also had numerous errors in the development and reporting of the sales comparison approach. He reported that all of his comparable sales were conveyed as fee simple sales, but testified that he meant they were conveyed as fee simple equivalent even though he did not review the leases. He then contradicted himself on at least one comparable (Sale H3) testifying that it was a leased fee transaction.

Heins acknowledged that a property's land-to-building ratio can have an impact on its value. Despite this, he did not report the land-to-building ratio of the subject property in his report; and it appears he misreported several of the comparable properties' land-to-building ratios. With the exception of Sale H3, all of his sales have land-to-building ratios half or less than the subject property.

Having reviewed the sales data, we believe Heins undervalued the subject property by the sales comparison approach. We give no consideration to Sale H2 because we find it is not comparable to the subject and because of our concerns about the reliability of the sale transaction. Of the remaining sales, Sales H4 and H5 are approximately the same size as the subject and indicate an adjusted per-square-foot value between \$24.36 and \$27.79. Sale H5 appears most similar to the subject and its adjusted value supports Manternach's sales comparison approach conclusion. Nonetheless, in certain respects, these properties are inferior to the subject and thus we find Heins' concluded value per-square-foot of \$22 is too low. We believe this is supported by the most reliable and comparable sales included in Exhibit 4.

Acknowledging our conclusion that the evidence and arguments suggest the property can be readily valued by the sales comparison approach alone, we acknowledge other issues with Heins' income approach and his decision not to complete the cost approach. In his income approach, Heins reported the NOI per square foot of three properties and, with no further analysis, considered these to represent the market rent on a per square foot basis. Heins relies on NOI data from the market to form his opinion of market rent and then deducts for expenses to arrive at an opinion of the subject's NOI. This methodology is unrecognized and results in a double-

dipping of expenses which would result in an artificially low conclusion of value. His reported capitalization rate is within his reported range for sales, but due to his restricted report, lacks any analysis or support.

Heins did not develop the cost approach asserting it was unreliable due to the “multiple ages” of the subject improvements. He testified that facilities like the subject property are specially located for users like Menard and for this reason does not believe cost is an important factor. Because the primary motivation for a user of a property like the subject would be where it could be located and the associated costs of building it specific to their needs, we disagree with Heins’ conclusion that the cost approach would not be considered by the market. In fact, Heins’ own testimony indicates that was a motivating factor to locate and build the subject improvements.

Based on the foregoing, we find Heins’ report lacks credibility. His conclusions by the sales comparison approach are unpersuasive and not a reliable indicator of market value for the subject property as of January 1, 2017.

b. Manternach

Manternach did not testify. Manternach developed all three approaches to value: cost, sales comparison, and income.

Manternach developed a highest and best use analysis for the subject property as vacant, and as improved; and fully developed a conclusion of site value. His cost approach is detailed and explained. Moreover he compared and reconciled his conclusions to the actual costs of the subject property, which provide further support for his conclusions. (Ex. D, p. 34-35). We do, however, share Menard’s concern regarding Manternach’s obsolescence. While a range for obsolescence is given in his report, no additional information or support is given in his report.

Menard is critical of Manternach’s comparable sales because all but one were less than half the size of the subject property’s improvements. (Menard Summary of 5/9/19 PAAB Hearing, p. 3). On page 3 of its Summary of 5/9/19 PAAB Hearing, Menard cites to a prior PAAB decision in which PAAB questioned the comparability of sales based on their size. *Menard, Inc. v. Linn Cnty. Bd. of Review*, PAAB Docket Nos. 2017-057-00023C & 00024C (Sept. 17, 2018), available at

<https://paab.iowa.gov/decision/menard-inc-vs-linn-county-board-review/2017-057-00023c-00024c>. Having reviewed this order, we note our concerns regarding those sales were not solely limited to their size, but also included concerns about their age, location, vacancy, change in use post-sale, and the nature of the sales transactions.

Size is a factor, among many, that we consider in evaluating the comparability and reliability of sales. Manternach's sales, although much smaller than the subject property, include some of the most recent sales in the record, similar in location, and the most similar in age. His adjustments are explained, consistent, and he provided rationale for his conclusions. Moreover, we believe sales offered by Heins and McKinney support Manternach's sales comparison approach opinion.

Although given no weight in our final conclusion, we find Manternach's cost and income approaches were reasonably applied and generally reliable. In his income approach, Manternach considered thirteen existing leases. (Ex. D, p. 44). While Manternach's appraisal lacks detail regarding these properties, we find his lease comparables offer a better indication of the subject's current use and January 1, 2017 market value than any other lease analysis in the record.

To estimate a capitalization rate, Manternach considered comparable sales, mortgage equity analysis, and investor surveys. While limited in detail, we again note his report offers the most documented analysis of a capitalization rate in the record.

In estimating the subject's land value, Manternach relied on six land sales. He then estimated the replacement cost new, applied physical depreciation and functional/external obsolescence before concluding an opinion of value by the cost approach of \$37,070,000. Additionally, Manternach reported and analyzed the actual costs of the subject improvements and then reconciled that with his conclusion. We find Manternach's cost approach was reasonably applied and offers a reliable indication of the subject's value.

We find Manternach's appraisal to be thorough in its reporting of factual data, presentation and rationale of his analyses, and he provided supported conclusions.

c. McKinney

McKinney's review of Manternach's appraisal did not include his own opinion of market value as of January 1, 2017. The purpose of the review was to determine if Manternach's opinions were credible and if his report conformed to the 2018-2019 edition of USPAP. McKinney opines that Manternach's conclusions in each approach to value were not credible or supported. We are not persuaded by McKinney's opinion and do not believe the record supports it.

McKinney testified there were a "multitude" of reasons why an appraiser would not develop the cost approach for the subject property. However, his review report concluded the cost approach to be not credible, but made no assertion that it should not have been developed.

McKinney testified about Manternach's adjustments asserting they were incorrect or unsupported. However, he offered no evidence to discredit Manternach or support his testimony.

Acknowledging it was not his task to critique Heins' report, we recognize that many of the criticisms McKinney makes of Manternach's report are equally applicable to Heins' report. If one of McKinney's primary concerns is a lack of support for adjustments within the appraisal, considered against each other, Manternach's report provides an equivalent, if not greater, amount of support for his sales adjustments than Heins' appraisal.

As rebuttal evidence, Menard offered nine sales it asserts McKinney considered in his review that support his opinion of errors in Manternach's adjustments. (Ex. 4). In the end, however, we believe these sales undermine Heins' value conclusion as much, if not more, than Manternach's. The most reliable and comparable of these sales show Heins' value conclusion of \$22 per-square-foot is too low and the subject's actual value may be more in line with Manternach's conclusion by the sales comparison approach.

McKinney offered similar criticisms of Manternach's income approach, and again failed to provide any support for his opinions. His primary criticism was Manternach's lease comparables that on average are under 410,000 square feet, were too small compared to the subject. He testified that size is the most important factor in selecting comparable properties for a rent analysis.

Menard again offered rebuttal evidence it asserts was considered by McKinney during his review. (Ex. 5). Despite his criticism of the size of Manternach's lease comparables, his own lease evidence was of properties with roughly 400,000 square feet on average; and less than 300,000 square feet of space actually available for lease. McKinney's lease comparables fail to convince us they are superior to those selected by Manternach and offer little worth in ascertaining the actual market rent for the subject property as of January 1, 2017.

McKinney's review lacks support for his opinions and fails to persuade us that Manternach's analyses and conclusions are not credible or reliable. Having considered McKinney's review, we do not find it persuasive.

III. Conclusions

Menard primarily argues that Manternach's comparable sales are too small or are otherwise not comparable and therefore should be given no consideration. In contrast, the Board of Review contends Heins' report provides cursory explanation for his adjustments in his sales approach, is replete with errors, and he failed to inspect the property.

Having considered the evidence, testimony, and arguments, we find the flaws in Heins' appraisal outweigh our concerns with Manternach's sales. Based on the lack of property inspection, errors in his report, lack of support and detail in his report, and the sales evidence showing his conclusion is too low, we find Heins' report is not the most persuasive evidence of value in the record. Conversely, we find Manternach's conclusion by the sales approach is more persuasive and is supported by the most reliable and comparable sales used by Heins and McKinney.

We conclude Manternach's value as indicated by the sales comparison approach of \$29,770,000 is the most reliable indication of the subject property's market value as of January 1, 2017.

Order

PAAB HEREBY MODIFIES the January 1, 2017 assessment set by Pottawattamie County Board of Review to \$29,770,000.

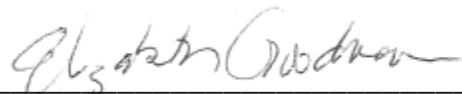
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

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



Elizabeth Goodman, Board Member



Dennis Loll, Board Member

Copies to:

Roddy Rogahn and Chad Zeznanski for Menard, Inc. by eFile

Leanne A. Gifford for Pottawattamie County Board of Review by eFile

Pottawattamie County Auditor
227 South 6th Street
Council Bluffs, IA 51501