

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

PAAB Docket No. 2018-099-00173D

Parcel No. 07-07-100-004

Jeffrey Wayne Mussman,

Appellant,

vs.

Wright County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 5, 2019. Jeffrey Mussman was self-represented. Wright County Attorney Eric Simonson represented the Board of Review.

Richard and Jeffrey Mussman own a property located at 2217 175th Street, Clarion. The property's January 1, 2018 assessment was set at \$794,400, allocated as \$90,500 in land value, and \$111,200 in dwelling value, and \$592,700 in improvement value. (Ex. A).

Mussman petitioned the Board of Review writing in the area of the form reserved for a claim that the assessment was not equitable as compared to the assessments of other like property under Iowa Code section 441.37(1)(a)(1). (Ex.D). However, the Board of Review acknowledged that the claim it considered was that the subject property was assessed for more than the value authorized by law under section 441.37(1)(a)(2). Mussman also asserted a claim that the property was misclassified under section 441.37(1)(a)(3). The Board of Review modified the assessment to a total value of \$725,800, allocated as \$96,900 in land value, \$96,000 in dwelling value, and \$532,900 in improvement value. The Board of Review declined to change the classification. (Ex. H).

Mussman reasserted his claims of over assessment and misclassification to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2018). 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 may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Findings of Fact

Mussman testified that he has lived on the subject property and operated a business there since 2001. The subject site is 9.40 acres and is located approximately five miles north of Clarion, Iowa. It is improved with Mussman's home and an extensive outbuilding complex Mussman uses in the operation of his snow shovel manufacturing business. Both he and his wife work in the business as do two full time and two part time employees. He and his wife reside in the home.

The property was classified as residential real estate until the 2017 assessment year. (Ex. A). For the 2018 assessment, the Assessor applied a dual-classification to

the property – industrial and residential. The Board of Review denied Mussman’s claim that the property should be classified solely as residential.

The residential portion of the subject site has a one-story home built in 1973, with 1352 square feet of gross living area, 850 square feet of rec-room quality basement finish, multiple porches, a patio, a deck , a detached garage plus an oversized detached garage/machine shed added in 2002. (Ex. A) In addition to physical depreciation, a 25% deduction has been applied to the residential improvements for obsolescence. (Ex. A).

The industrial portion of the site is accessed via a dedicated driveway off of 175th Street. It consists of three insulated steel utility buildings constructed between 2006 and 2016 that combine to total 36,000 square feet of gross building area, with eight overhead doors, and eave heights up to 22 feet. (Ex. A). Half of this structure is heated and half is unheated. Additionally, there is a 3240 square-foot office built in 1973 that is also considered part of the industrial property. All of the industrial improvements received physical depreciation deductions, but obsolescence deductions were only applied to office building (Building 1). (Ex. A, p. 4).

As alluded to throughout the hearing, PAAB previously adjudicated the 2017 assessment of Mussman’s property. *Mussman v. Wright Cnty. Bd. of Review*, PAAB Docket No. 2017-099-00075I (April 5, 2018). In that case, PAAB affirmed the assessment of Mussman’s property at \$794,400. PAAB did not consider a misclassification claim as part of that case.

When Mussman purchased the property the site consisted of the dwelling, garages, and the 3,240 square-foot steel office building. The property was classified as residential. (Ex. A). Thereafter in 2006 a 9,000 square foot steel utility building was added. In 2015 another 9,000 square foot steel utility building was added at a cost of \$100,000. In 2016 an 18,000 square foot steel utility building was added at a cost of \$225,000. (Ex. A, B & C). Exhibits B and C are aerial photographs showing the building additions between 2012 and 2018. The two most recent additions to the subject’s outbuilding complex total 27,000 square feet. The entire structure is used to either manufacture snow shovels or to warehouse raw and finished product and provide office, breakroom and restroom facilities for employees.

The relative sizes of the improvements on the subject property are summarized as follows:

- 1,352 SF Single-family home
- 528 SF Detached garage
- 1,680 SF Detached garage/Utility Building
- 39,240 SF Outbuilding complex

Given the above figures, Mussman agreed that the outbuilding complex was approximately 29 times the size of the dwelling. Wright County Assessor Shari Plagge testified that she changed the classification in 2017 from residential to industrial/residential based upon her view that the primary use of the property was industrial and because the law now authorized such dual classification of the property. From her review of the use of the property, the manufacturing use exceeds the residential use. For the 2018 assessment the classification was not changed, but the assessed value was reduced. (Ex. A)

Mussman asserts he has always used the property as a residence and as a business. He contends the classification was residential for 15 years and should remain the same. He claims the use of the property has not changed to justify the change in classification. Despite acknowledging his manufacturing facility being 29 times larger than the dwelling, he testified that the industrial/residential use was 50/50.

In his petition to the Board of Review, Mussman identified the Maasdam property, which is improved with a residence and a business operation that be believed to be comparable to his property. (Ex. G). The Maasdam property is a 4.5-acre site, improved with a 2290 square foot, one-story home built in 1978. It also has four utility buildings, an open pole barn, and a small shed totaling approximately 18,000 square feet. Three of the utility buildings were built in 1978. Mussman believes this property is nicer than his, although not as large; and the outbuildings are used as part of a business operation. Plagge explained the Maasdam property consists of older outbuildings, most without concrete flooring used to either store antiques or restore old tractors. She testified that no actual business is conducted on the property, but rather the owners run a museum in Clarion and provide antiques for it. Mussman challenged this description, stating the owners do operate a business and implied they were given

favorable treatment as former county officials. The Maasdam property was not analyzed in the appraisal submitted by Mussman as it had not sold recently. Plagge testified that she believed that property was properly assessed at \$373,600 and classified residential.

In support of his overassessment claim, Mussman submitted an appraisal of his property completed by James Herink of Rally Appraisal, LLC, Cedar Falls. (Ex. 1). Herink concludes the property's highest and best use as improved is for "continued use as an acreage property." (Ex. 1, p. 60). He believes Iowa Code section 441.21 necessarily limits the marketing period for valuation to one year. (Ex. 1, p. 40, 53, 78). Herink developed the sales comparison and cost approaches to value. He concluded a market value of \$400,000 as of January 1, 2018.

Herink described the subject property as a single-family acreage with an average quality outbuilding used for warehousing and light manufacturing. (Ex. 1, p. 38, 53, 56). The appraisal includes numerous photographs of the home and the manufacturing facility. (Ex. 1, pp. 10-35). He described the home as being in above-average condition for its age. (Ex. 1, p. 56). Herink delineated his description of the manufacturing facility by the construction phases. The older part of the complex consists of two buildings built between 1973 and 2006 with 12,240 square feet that are used for manufacturing and warehousing; a portion of this structure has a 350 square foot office and restroom area. The newest part of the facility was built in 2015 and 2016, and consists of 27,000 square feet. 9000 square feet is insulated and heated with a combination of in-floor radiant and ceiling-mounted radiant heaters; approximately 18,000 square feet is insulated but unheated and used for cold storage warehousing. There is also a finished break room and restroom. (Ex. 1, p. 56). Herink reports all 27,000 square feet as being heated and insulated, but according to both testimony from Mussman and the property record card, the 18,000 square feet built in 2016 is unheated.

Herink reported there are few buyers that would want a facility of this size but that it could potentially appeal to a user who wants to convert it to a different use such as seasonal storage, seed corn dealer, or equipment storage. (Ex. 1, p. 53). He further states "it is unlikely that a user would continue the present use of the outbuilding complex given its rural location." (Ex. 1, p. 53). In Herink's opinion, the market appeal of

the manufacturing facility is favorable due to its age, quality, and flexibility but it is larger than what is desired by most “acreage buyers” and therefore is considered an over improvement for the acreage market. (Ex. 1, p. 56). Although not identified in Herink’s report, based on the foregoing statements and the methodology employed throughout the report, it appears Herink assumes the typical buyer/user for the subject property would be primarily for residential use and not its current use as a homestead and a successfully operating light manufacturing facility.

Wright County Assessor Shari Plagge testified for the Board of Review. Plagge disagrees with Herink’s position and believes the manufacturing component of the subject property is “very useable and marketable.” She notes the subject is located on a paved road and is located five miles from a main highway.

To determine the subject’s site value, Herink relied on five land sales located in and around Wright County. (Ex. 1, p. 63). The following table summarizes the land sales.

Comparable	City	Sale Date	Price	Acres	Price/Acre
Subject	Clarion			9.40	
1 - Jackson Ave	Kanawha	Nov-17	\$124,000	9.25	\$13,405
2 - Union St	Dows	Sep-16	\$70,000	5.21	\$13,436
3 - 230th St	Clarion	Jun-16	\$40,000	4.98	\$8,032
4 - 140th St	Hampton	May-16	\$150,000	10.00	\$15,000
5 - Olive Ave	Iowa Falls	Aug-14	\$21,000	2.04	\$10,294

In his opinion, the sales are comparable to the subject site and have similar potential use as the subject site. He did not adjust them for any differences that may exist between them and the subject property. Herink selected the average price per acre of roughly \$12,000 to conclude an opinion of value for the subject’s site of \$113,000 rounded. (Ex. 1, p. 63). In comparison, the Board of Review modified the subject’s total site value to \$96,900. (Ex. A).

Plagge was critical of the land sales that Herink relied on for his conclusion of value. She reported that Sale 1 was improved with a dwelling at the time it sold that was subsequently razed.

Plagge testified that Sale 2 also had improvements and the purchaser was an adjoining land owner. After the purchase, a portion of the site was split-off and a hog confinement was built. The balance of the parcel is farmed.

Sale 3 was a family transaction and a subdivision of a larger site. Like Sale 2, the purchaser constructed a hog confinement facility on it, and continues to farm the adjoining land.

Plagge noted that Sales 4 and 5 are located outside of Wright County. Sale 4 was parceled off of a larger agricultural site that was subsequently improved with a house and utility building. Lastly, she noted Sale 5 was also a split from a larger site and was also a business reorganization between entities owned by the same person. Based on Plagge's research and testimony about Herink's land sales, we question the reliability of his analysis and conclusion of value for the subject site.

Herink relied on Marshall Valuation Service (MVS)¹ for his cost data. His analysis was completed by splitting the subject into two separate components. The first component consisted of the dwelling, garage, and an older outbuilding (residential improvements). He determined the replacement cost new (RCN) for the residential improvements to be \$244,838. (Ex. 1, p. 65 & 69). Herink estimated an effective age of 25 years for the residential improvements and an economic life of 55 years. Using the age/life, straight-line method, he concluded it had 45% (\$111,279) in physical depreciation. He also applied 25% (\$33,390) functional obsolescence because he considered the dwelling floor plan to be outdated. (Ex. 1, p. 68-69). After depreciation the estimated value of the residential improvements is roughly \$100,000. (Ex. 1, p. 69). In comparison, the Board of Review modified the dwelling value to \$96,000. (Ex. A.).

Plagge disagreed with Herink's assertion that the subject property's floor plan is outdated and pointed to the interior photographs in his report that show a remodeled home with open living areas, larger bedrooms, and a finished basement. (Ex. 1, p. 12-18). Additionally, Plagge noted that Herink reported the kitchen had been updated and that the property had new floor coverings, doors, trim, furnace, and roof. (Ex. 1, p. 56). Based on this, she questioned the appropriateness of a 25% functional obsolescence

¹ MVS is a national cost manual

adjustment. We agree. Herink’s appraisal lacked specificity about the cause of the functional obsolescence and he gave no documentation or support of the adjustment in his report.

The second part of Herink’s cost analysis was for the manufacturing facility (outbuilding complex). Here, Herink segregated the facility into two areas: the “older shop” and the “modern industrial.” (Ex. 1, p. 66). Based on MVS, he determined an indicated cost of \$20.87 per square foot and \$30.12 per square foot for each respective portion of the facility but he does not calculate the total cost new for each portion. Herink reported a total cost new, including soft costs, of \$929,589 for the manufacturing facility. (Ex. 1, p. 69). We are unable to determine how Herink arrived at this conclusion. Relying on Herink’s estimate of cost new (Ex. 1, p. 69) and applying it to the manufacturing facility as identified in his report (Ex. 1, p. 58), the correct calculation for the RCN is as follows.

	Building Size (SF)	Cost New/SF	Cost New
Older Shop	12,240	\$20.87	\$255,449
Modern Industrial	27,000	\$30.12	\$813,240
3% Soft Costs			\$32,061
Total RCN			\$1,100,750

Herink concluded a weighted effective age of 8 years for the manufacturing facility and an economic life of 40 years. The age/life, straight-line method resulted in 20% physical depreciation to these improvements.

Henrick states the “outbuilding complex is affected by both functional and external obsolescence as demonstrated by the difference in the cost new and its market value.” (Ex. 1, p. 68). He noted obsolescence “due to the subject’s size be[ing] larger than what is typical plus it[s] rural location.” (Ex. 1, p. 68). Therefore, he applied 40% functional obsolescence and 25% external obsolescence to the manufacturing facility. (Ex. 1, pp. 68-69). He states these adjustments are supported by market data in his appraiser file and by data in the sales approach to value. (Ex. 1, p. 68). After

depreciation, and relying on Herink's calculations, the estimated value of the outbuilding complex is roughly \$344,652. Based on PAAB's calculations using Herink's RCN costs, and applied depreciation and obsolescence, the estimated value of the complex would be \$396,270. In comparison, the Board of Review has assigned a value of \$532,900 to the industrial improvements. (Ex. A).

Herink believes he supported his obsolescence adjustments through his extraction analyses. (Ex. 1, pp. 73-74). Herink concluded an opinion of value of the land, residential, and outbuilding improvements by the cost approach of approximately \$550,000. (Ex. 1, p. 69).

Plagge was critical of the amount of obsolescence Herick applied. In her opinion, if marketed as an industrial or commercial building, she does not believe there would be any external obsolescence. And because the manufacturing facility consists of big, open buildings with good lighting, insulation, and heat, she does not believe the functional obsolescence is warranted.

For his sales approach extraction, Herink relied on four sales that closed after August 2016. (Ex. 1, p. 73). The reported sales have outbuildings ranging in size from 2250 square feet to just over 22,000 square feet and between roughly 10 and 40 years of age. In this analysis, Herink does account for site value and concludes a contributory value of the outbuildings per square foot, to be between \$4.23 and \$16.71, with an average of \$9.77 per square foot (Ex. 1, p. 74). Herink does not provide any information about the sales' outbuildings and we are unable to determine if they are reasonably similar to the subject property's facility which includes overhead doors, heated floors, office space, restrooms, and an employee break room.

Additionally, Plagge researched Herink's data and was unable to verify the existence of three of the sales he relied on for his sales approach extraction analysis. (Ex. 1, p. 73). She contacted the Assessor Office's in the jurisdictions for the sales located in Dike, Eldora, and Fredricksburg – all of which responded they were unable to locate any such sale for addresses that would match the street locations identified by Herink. The only sale she was able to verify was the property located in Dayton. (Ex. 1,

p. 73). Herink described this sale as having just over 150 acres of land which, in our opinion, renders it unpersuasive as support of contributory value for its outbuilding.

Lastly, Herink considered four sales of industrial buildings in rural areas. (Ex. 1, p. 74). He reported the sales as having buildings ranging from roughly 19,000 square feet to just over 44,000 square feet that sold between December 2015 and March 2017. No other information, such as age, construction quality, or amenities was submitted for us to determine if the buildings are comparable to the subject property. Plagge testified she was unable to find the Coon Rapids sale that Herink included in his analysis. (Ex. 1, p. 74). Based on this analysis, Herink determined a contributory value of \$5 per square foot for the subject's outbuildings, or \$195,000 rounded. (Ex. 1, p. 74).

Plagge was critical of Herink's conclusion of \$195,000 for the contributory value of the subject's manufacturing facility and testified that Mussman had provided her with information indicating costs of roughly \$325,000 for the two most recent additions of the facility.

Herink included five improved properties for his sales comparison analysis, which are summarized in the following table. (Ex. 1, pp. 72-78):

Address	Sale Date	Sale Price	Adjusted Sale Price
1 - 330th St, Woolstock	Nov-17	\$175,000	\$397,700
2 - Hwy 69, Clarion	Jan-17	\$165,000	\$317,910
3 - 10th Ave, Eagle Grove	May-17	\$159,900	\$362,480
4 - Lark Ave, Iowa Falls	Jun-17	\$235,000	\$390,740
5 - Calhoun Ave, Goldfield	Dec-16	\$170,000	\$321,500

All of the sales offer similar residential improvements compared to the subject property and are situated on sites ranging from just under 5 acres to slightly over 10 acres. Most are one-story homes like the subject, ranging from 39 to 69 years old; and all but one have basement finish. When considering only the residential improvements, these sales appear to offer many similarities and comparability to the subject. (Ex. 1, pp. 77-78; 80-82). When considering the outbuildings, however, the comparability of the sales is significantly reduced.

Herink reported he performed an extensive search of the market for acreage properties with outbuildings offering similar utility as the subject property but none were found. (Ex. 1, p. 72). This is consistent with Plagge's testimony, which indicated there are no comparable properties containing similar industrial use on an acreage in the County. In Herink's opinion, this lack of data indicates a "marginal demand" for properties like the subject. Herink stated his sales have a "wide range of outbuildings with varying degree of contributory value." (Ex. 1, p. 75). His adjustment for this single element of comparison ranges from \$135,000 to \$195,000. (Ex. 1, pp. 75-77). The outbuilding adjustment Herink made to Sale 1 and Sale 3 is greater than the actual sale price of each property. His conclusion of value by the sales comparison approach is \$360,000. (Ex. 1, p. 78).

Herink reconciled his developed approaches giving most consideration to the sales comparison approach. In his opinion, the reliability of the cost approach is limited due to "the subjective nature of measuring physical, functional, and external obsolescence." (Ex. 1, p. 83). His final conclusion of value is \$400,000. (Ex. 1, p. 84).

Analysis & Conclusions of Law

Mussman asserts his property is misclassified and assessed for more than the value authorized by law under section 441.37.

We address the classification issue first. The subject is dual-classified as industrial and residential. Mussman believes his property should be classified residential.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code R. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* The determination of a

property's classification "is to be decided on the basis of its primary use." *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989).

There can be only one classification per property, except as provided for in paragraph 71.1(5) "b". R. 701-71.1(1). That paragraph specifies that "Assessors shall use dual-classification on parcels where the primary use of the parcel is commercial or industrial and a portion or portions of the parcel are used for human habitation, regardless of the number of dwelling units." R. 701-71.1(5)(b). Prior to 2015, Iowa law did not permit dual-classification of property. See Iowa Code § 441.21(13). "If the primary use of the parcel is for human habitation and the parcel contains fewer than three separate dwelling units, it shall be classified as residential real estate." R. 701-71.1(5)(b).

"Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment." R. 701-71.1(7)"a"(1).(emphasis added). A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property...with the intent of selling the product for gain or profit. It also includes land and buildings used for storage of raw materials or finished products and also includes office space. *Id.* Whether property is used primarily as a manufacturing establishment...depends upon the extent to which the property is used for such activity. Property in which the performance of manufacturing activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. R. 701-71(7)"a"(2).

In contrast, residential property "shall include all land and buildings which are primarily used or intended for human habitation containing fewer than three dwelling units...including those buildings located on agricultural land." R. 701-71.1(4). It also includes garages, storage sheds or other structures used primarily as a part of, or in conjunction with, the dwelling. *Id.*

The subject property is indisputably used for both residential and industrial purposes. In such cases, the question of the correct property assessment classification can be difficult. Of course, in each case the resolution is dependent on the unique facts

of the case. Ultimately, it is Mussman's burden to demonstrate the property is misclassified. Iowa Code § 441.21(3).

Classification of property is to be determined based on the present use of the property and not its highest and best use. R. 701-71.1(1). Collectively, the administrative rules indicate classification is to be determined by the property's primary use. *Sevde*, 434 N.W.2d at 880: R. 701-71.1(4, 6). The terms "primarily used" are not specifically defined by the rules for the classification of real estate. For that reason the interpretation of the terms must come from the context in which they appear, giving each word its plain and common meaning. *Banilla Games, Inc. v. Iowa Dep't of Inspections & Appeals*, 919 N.W.2d 6, 14 (Iowa 2018). Resort to dictionary definitions can aid in consideration of a term's common meaning. Dictionary definitions equate primarily with principally, chiefly, mainly, and fundamentally. *Id.* at 15. See also *Primarily*, MERIAM-WEBSTER'S DICTIONARY, available at <https://www.merriam-webster.com/dictionary/primarily>; *Primarily*, COLLINS ENGLISH DICTIONARY, available at <https://www.collinsdictionary.com/us/dictionary/english/primarily>.

Similarly, the administrative rules provide guidance by example. According to R. 701-71.1(7)a(2), "[w]hether property is used primarily as a manufacturing establishment ...depends upon the extent to which the property is used for the activities..." Moreover, "[p]roperty in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment." *Id.*

Applied to the facts of this case, the extent of the industrial use of Mussman's property is significant. Further, Mussman's industrial use has increased in recent years, with the construction of 27,000 square feet of outbuildings since 2015. The Assessor testified this construction, along with the introduction of dual-classification, caused her to change the subject's classification from residential. Mussman contends the property has been used as his primary residence since its purchase, it is still used as such, and the prior residential classification creates a precedent.

The outbuilding complex consists of 39,240 square feet of property used almost exclusively for the manufacturing of snow shovels, the storage of finished and raw materials as well as an office. It comprises 5.4 acres of the 9.4 acre parcel and are

accessed via a dedicated driveway. Six people are employed in the business. According to Mussman's appraiser the undepreciated cost of the complex exceeds \$1,000,000. Conversely, the residential portion of the property consists of a 1,352 square foot dwelling with an attached and detached garage. It comprises 4 acres of the 9.4-acre parcel. Two people reside there and, according to Mussman's appraiser, the replacement cost new is \$244,838. Given the extensive use of the majority of the parcel as a manufacturing establishment and the cost of the facility relative to the residential improvements, we find the property's present and primary use is industrial and Mussman failed to show the subject property is misclassified.

Mussman also asserts his property is over assessed. His primary support for his over assessment claim is Herink's appraisal, which arrives at an opinion of value of \$400,000. In protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is different 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)(2) (2018). Competent evidence is that evidence which complies with the statutory scheme for valuation in section 441.21. *Compiano v. Bd. of Review of Polk Cty.*, 771 N.W.2d 392, 398 (Iowa 2009).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Assessors are permitted to consider the use of property as a going concern in valuation. *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985); *Wellmark, Inc. v. Polk Cnty. Bd. Of Review*, 875 N.W.2d 667, 670-71 (Iowa

2016). The Iowa Supreme Court has adopted the view that “value should be based on the presumed existence of a hypothetical buyer at its current use.” *Id.* at 683

While we take issue with certain aspects of Herink’s appraisal, he completed the sales comparison approach using sales he believed were comparable and also completed a cost approach. We find Herink’s appraisal complies with the statutory scheme and therefore the burden has shifted to the Board of Review to uphold its valuation. Although the Board of Review attempted to point to deficiencies in the appraisal, we find that insufficient to sustain its burden here. Aside from the assessment itself, which we cannot presume is correct pursuant to section 441.37A(3)(a), the Board of Review offered no evidence of comparable property sales or of other valuation methods to supports the assessment. Accordingly, we conclude Mussman’s ground for protest has been established.

If PAAB determines the ground for protest has been established, we must then endeavor to determine the correct value for the property. *Compiano*, 771 N.W.2d at 397. We make an independent determination based on all the evidence. *Id.* Although we found Herink’s appraisal competent, we nonetheless consider the appraisal’s deficiencies in evaluating the evidence of the property’s correct value.

Having reviewed the full record, we find there is no material difference between Herick’s appraisal and the assessment as it relates to the valuation of the land and the residential improvements. The primary difference between the assessment and the appraisal is the value attributed to the industrial improvements. More specifically, they differ substantially in the amount of obsolescence applied to those improvements.

Additionally, we believe substantial evidence indicates that the comparable sales approach cannot be solely relied upon to offer a credible opinion of value for the subject property. Plagge testified there are no comparable sales in the county for the subject. Herink’s appraisal states, “The appraiser performed an extensive search of the market for acreages with outbuilding utility similar to the subject. No comparable sales were found that feature outbuildings similar in size, location, appeal, and condition.” (Ex. 1, p. 72). Aside from the lack of availability of comparable sales, we find the sales included in Herink’s appraisal are unreliable. The appraisal contains very little information about the

sales and Plagge raised questions about them. Therefore, we consider the cost approaches for the subject's outbuildings that are in the record.

Plagge testified the outbuildings were valued using the IOWA REAL PROPERTY APPRAISAL MANUAL, which assessors are required to use. § 441.21(1)(h). Exhibit E shows MANUAL page 8-32 was used to arrive at the RCN for the outbuildings. Although Exhibit A does not include the adjustments to base cost, it appears the base cost for the outbuildings was determined in a manner consistent with the MANUAL. Physical depreciation was then applied to the industrial outbuildings. Additional functional or economic obsolescence was applied to office, but no obsolescence was applied to the outbuildings constructed in 2006, 2015, and 2016 (Ex. A, Bldgs 1, 3, 5, and 6).

Herink relied on MVS to determine the RCN for the industrial outbuildings. Unexplained in his report, we are unable to determine the square footage he ascribed to the "older shop" and "modern industrial" and we could not replicate his RCN determination. Our own calculations show that the RCN should be at least \$100,000 more than he concluded. For these reasons, we find Herink's RCN to be unreliable.

Herink then deducted 20% for physical depreciation and additional amounts for functional and external (economic) obsolescence. Although his report indicates a total obsolescence adjustment of 65%, the actual deduction is approximately 44% of his RCN $(594,937 - 185,918) / 929,589 = 44\%$ total obsolescence). He arrived at his estimates for obsolescence through extraction methods detailed in his sales comparison approach discussion and his opinion of the outbuildings' contributory value. As previously noted, Plagge detailed issues with the existence and the reliability of the sales transactions on which Herink's opinion is based. Moreover, we note there is lack of information in the report demonstrating the properties on which Herink relied to develop his opinion are actually comparable to the subject. Finally, we are also concerned that Herink's obsolescence opinion may have been influenced by his interpretation that section 441.21 requires a marketing time of one year and "would have to be priced aggressively" to be sold. (Ex. 1, p. 53). Such an interpretation is not supported by case law. *Compiano*, 771 N.W.2d at 396 ("Property is to be assessed at its actual value . . .

which is determined by the market value of the property in the year the property is valued.”).

Considering the foregoing and the entirety of the record, we believe it is reasonable to conclude the subject property, by virtue of its uniqueness in the market, would suffer from obsolescence. Depending on the market participants, the utility and value of the residence or the outbuildings may be diminished. § 441.21 (stating the availability or unavailability of persons interested in purchasing the property must be considered). However, we find the amount of obsolescence Herink applied appears excessive in light of the outbuildings’ age, condition, and current use. Weighing the Assessor’s opinion that the recently constructed outbuildings suffer from no obsolescence, which we find unsupported based on the lack of similar structures in the jurisdiction, against Herink’s opinion they suffer from 44% obsolescence, we conclude a 15% obsolescence deduction should be applied to outbuildings 3, 5, and 6.

Order

PAAB HEREBY AFFIRMS the classification of the Mussman’s property as determined by the Wright County Board of Review.

PAAB HEREBY MODIFIES the valuation of Mussman’s property as determined by the Wright County Board of Review. We order that a 15% economic (external) obsolescence deduction shall be applied to the subject’s outbuildings 3, 5, and 6 for the January 1, 2018 assessment.

The Board of Review shall revalue the property in a manner consistent with this Order and submit the property record card showing the new valuation to PAAB within 10 days of the date of this Order. Mussman shall have 10 days from the filing of the new valuation to object. Upon receipt of the new valuation and any objection, PAAB will issue an order setting the property’s final valuation for the January 1, 2018 assessment.

IT IS SO ORDERED.



Elizabeth Goodman, Board Member



Dennis Loll, Board Member



Karen Oberman, Board Member

Copies to:

Jeffrey Mussman by eFile

Wright County Board of Review by eFile