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

PAAB Docket Nos. 2016-077-00117C & 2017-077-00563C

Parcel No. 181/00800-403-001

Wal-Mart Real Estate Business Trust,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

This consolidated appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 24, 2018, with a continuance for additional expert testimony on May 31, 2018. The parties filed post-hearing briefs and the record was closed as of November 2, 2018. Attorneys Paul Burns and Matthew Barnd represented Wal-Mart Real Estate Business Trust (Walmart). Assistant Polk County Attorney David Hibbard represented the Board of Review.

Walmart owns a commercial property located at 1002 SE National Drive, Ankeny. The following table summarizes the subject property's January 1, 2016 and January 1, 2017 assessments. (Exs. A & B).

Assessment Year	Land	Buildings	Total
2016	$5,310,000	$9,347,000	$14,657,000
2017	$6,372,600	$9,527,400	$15,900,000

Walmart 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). (Exs. 3, 6). The Board of Review denied the petitions. (Exs. 4, 7). Walmart reasserted its claim to PAAB. (Exs. 5, 8).

Findings of Fact

The subject property is a large commercial retail store built in 1999. It has 211,986 square feet of gross building area (GBA), which includes a greenhouse/garden center, and an auto care center. The 20.98-acre site is also improved with 528,000 square feet of paving. (Exs. A & B).

Byron Tack, Director of Real Estate with the Polk County Assessor's office, testified for the Board of Review and provided a history of the subject's most recent assessments. Tack explained that in 2015 Walmart sold a portion of the existing parcel, which included an out-lot and an access drive. This sale resulted in a change from the 2015 assessment to the 2016 assessment. In 2017, the assessment changed again based on a countywide re-valuation. As part of the re-valuation, a sales-ratio study was conducted which resulted in an 8.5% increase to all commercial properties in Polk County.

The record includes three appraisals valuing the property as of January 1, 2016, and January 1, 2017. Walmart submitted two appraisals, one completed by Chris Jenkins, CBRE, West Des Moines, Iowa (Ex. 1); and the other by Mike MaRous, MaRous & Company, Park Ridge, Illinois (Ex. 2). The Board of Review submitted an appraisal completed by Ranney Ramsey, Nelsen Appraisal Associates, Inc, Urbandale, Iowa. (Exs. C & D). All of the appraisers are qualified to appraise the property and testified at hearing.

All of the appraisers concluded the highest and best use of the subject property, as improved, for both January 1, 2016, and 2017, is for continued single-tenant retail use. (Ex. 1, p. 68; Ex. 2, p. 12; Ex C, p. 66; & Ex. D, p. 66). Jenkins concluded the subject property is a good quality property in average condition; whereas in Ramsey's opinion, it is an average quality property in good condition. (Ex. 1, pp. 39 & 76; Ex. C, pp. 56-57; & Ex. D, pp. 56-57). MaRous did not offer an opinion on the quality of the property, but believed it was in average condition. (Ex. 2, p. 11).

January 1, 2017 Appeal

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

2017				
Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jenkins	$12,700,000	$12,100,000	$12,100,000	$12,300,000
MaRous	$8,250,000	Not Developed	Not Developed	$8,250,000
Ramsey	$15,500,000	$15,000,000	$15,000,000	$15,500,000

Jenkins Appraisal (2017)

Jenkins identifies that the subject is located in a major retail corridor with nearby retail properties, including big-box stores, strip centers, convenience stores, and restaurants. (Ex. 1, p. 31). Based on demographics, he indicated demand for both comparable surrounding area retail properties and the subject will continue to be favorable. (Ex. 1, p. 44). He noted its size limits the potential pool of users. (Ex. 1, p. 10).

Jenkins developed the sales comparison, income, and cost approach to value in developing his January 1, 2017 opinion of fair market value.

Jenkins included seven improved properties for his sales comparison analysis. He testified that he focused on large, single-tenant retail stores in his search for comparable properties. He tried to avoid sales with long-term leases to national credit tenants, as well as vacant retail stores. On cross-examination, he stated he was attempting to value the property at market occupancy, market rent, and not assuming it's vacant. In terms of tenancy, he was looking at a typical credit tenant. He indicated his sales included first-generation and second-generation sales.

In Jenkins' opinion, all of the sales were similar quality to the subject property. The following table is a summary of the comparables he relied on for his analysis. (Ex. 1, pp. 79 & 84).

Address	Sale Date	Sale Price	Building Area (SF)	Sale Price/SF	Adjusted SP/SF
Subject			211,986		
1 - Agency St, Burlington, IA	Apr-12	$8,542,000[1]	131,644	$64.89	$62.49
2 - NW 86th St, Johnston, IA	Dec-14	$5,900,000	146,003	$40.41	$51.94
3 - Crest View Dr, Hudson, WI	May-15	$3,800,000	89,557	$42.43	$51.90
4 - 32nd St, Port Huron, MI	Feb-13	$9,796,179	193,590	$50.60	$62.85
5 - Golf Rd, Rolling Meadows, IL	Sep-15	$24,300,000	259,302	$93.71	$65.63
6 - St. Patricks Dr, Perry, GA	Jun-13	$13,861,500	152,720	$90.76	$67.74
7 - Willow Trail Pkwy, Norcross, GA	Dec-15	$13,446,047	141,284	$95.17	$57.76

In Jenkins' opinion, lease terms, length of the lease, and quality of the tenant significantly impact the price paid for a property. (Ex. 1, p. 80) He explained the quality of a tenant is more important to a buyer than the real estate itself when a long-term lease is in place. He contends the sale price has nothing to do with the fee-simple interest as they are buying into an income stream. In his opinion a shorter lease term lessens the impact of the lease and gets closer to the value of the real estate. The Board of Review asserts the market rent of the subject property would also be based on the length of the lease, which it believes would not be a short-term lease. Jenkins testified that a building like the subject property, if built-to-suit, would likely have a longer-term lease; however, if Walmart vacated the subject property, he believes it could be occupied on a short-term lease. Jenkins acknowledged that Walmart has occupied the subject property since it was built and to his knowledge they have no intent on vacating the property in the near future.

Due to a lack of fee-simple sales, Jenkins explained he had to consider sales with leases in place.

Sale 1 was a Lowes situated on a 31.85-acre site. Jenkins reported the existing 20-year lease was renegotiated into a 30-year lease at the time of sale, resulting in a remaining lease term of roughly 14 years. (Ex. 1, p.80)

Sale 2 was a vacant former American TV store that "went dark in February 2014." (Ex. 1, p. 81). Jenkins adjusted this sale upward 20% for conditions of sale

[1] Sale 1 sold for $8,887,000 but was adjusted downward $345,000 to reflect capital improvement costs resulting in a net adjusted sale price of $8,542,000. (Ex. 1, p. 80).

because it “was sold by an owner under distress who went out of business and the price was believed to be discounted.” (Ex. 1 pp. 81 & 84-85).

Sale 3 is Jenkins’ only sale under 100,000 square feet of building area. (Ex. 1, p. 84). Despite its size and Jenkins’ testimony that smaller properties tend to sell for more on a per square foot basis, we note this property’s sales price per square foot is the second lowest amongst Jenkins’ sales. At the time of sale it was 100% occupied and leased by Walmart, which had just exercised its first of five, 5-year renewal options extending its lease to January 2020. (Ex. 1, p. 81). This is the only lease that Jenkins adjusted upward, which he believed was necessary because of its lower than market lease rate. (Ex. 1, p. 84). He testified the shorter lease term lessens the impact of the tenant quality/lease terms on the sale price.

Sale 4 is the most similar in size to the subject property and was a built-to-suit in 1992 for Super Kmart, which occupied the property. At the time of sale, there was just over 5 years left on the lease but with multiple 5-year options available. (Ex. 1, pp.81-82). This sale required the lowest gross adjustment. (Ex. 1, p. 84). We note this sale had a significantly higher capitalization rate than any of the other sales Jenkins considered. We assume this is due to the well-known issues regarding Kmart store closures, which the other appraisers referenced in their appraisals and testimony.

Sale 5 is a multi-building and multi-tenant property located in a suburb of Chicago and Jenkins adjusted it downward 30% for its larger market. (Ex. 1, pp. 84 & 86). The sale includes two buildings, one occupied by Walmart and the other vacant, but leased by Sam’s Club. Jenkins considered it 100% economically leased, but just over 50% physically occupied. The sale included an extension of Walmart’s lease and a buyout of the Sam’s Club lease. The buyer had plans to re-configure the Sam’s Club building for multi-tenant use. (Ex. 1, p. 82).

Sale 6 is Super Walmart with approximately 14 years remaining on its lease at the time of its 2013 sale with an indicated capitalization rate of 6.06%. This property had previously sold, in 2011, with an 8-year lease and a capitalization rate of 8.71%. After the 2011 sale, the buyer re-negotiated the lease term to expire in 2027. (Ex. 1, pp. 82-83). As a result of the lease extension, Jenkins explained the decrease in the capitalization rate between the sale dates is due to the longer-term lease to a good credit tenant, and shows the impact the lease terms have on the price paid for large retail store sales.

Sale 7 is an At Home store with 9 years remaining on the lease and multiple options for extensions at the time it sold.

Sales 1, 3, 6, and 7 had leases in place and Jenkins adjusted them to reflect the differences in the property rights conveyed. Sales 1, 6, and 7 were adjusted downward between 15% and 25% for the leases in place at the time of sale, which ranged between 9 to 14 years. Sale 3 had a remaining lease term of 5 years; however, Jenkins reported the rent was significantly lower than the rent estimated for the subject property and therefore he adjusted it upward 25%. (Ex. 1, pp. 84-85).

After adjustments, the sales indicated a range of value of $51.90 to $67.74 per square foot. Jenkins gave all the sales some consideration and concluded an opinion of value by the sales comparison approach of $60 per square foot; or $12,700,000 rounded, as of January 1, 2017. (Ex. 1, p. 87).

For his income approach, Jenkins analyzed the leases of eight comparable properties to establish a market rent for the subject property. The comparable properties' building areas ranged from roughly 95,000 to 230,000 square feet. However, two of the properties (Rent Comparables 1 and 5) were multi-tenanted with leased areas ranging from 7500 to just under 60,000 square feet; and one property's space (Rent Comparable 2) was not 100% leased. (Ex. 1, p. 88). Jenkins testified he used the multi-tenanted properties to demonstrate that smaller spaces command higher rents and rents decrease as the size of a building/rentable space increases.

The remaining rent comparables, all single-tenant and occupied 100% of the building space, are summarized in the following table.

Rent Comparable	Year Built	Building Size (SF)	Tenant	Lease Term (Years)	Base Rent/SF
3 - Ankeny, IA	2013	94,872	Hy-Vee	20	$10.44
4 - O'Fallon, Ill	1998	141,641	At Home	15	$5.00
6 - Lincoln, NE	1993	192,929	Home Depot	18.9	$4.30
7 - Des Moines, IA	1991	231,168	Walmart	5	$3.11
8 - Bloomfield Hills, MI	1993	120,650	At Home	10	$5.60

Jenkins testified that Rent Comparables 6 and 7 demonstrate decreased rent for buildings near, or greater than 200,000 square feet. But he also noted these properties were older and inferior in location compared to the subject property. (Ex. 1, p. 92). Rental 7 is a Walmart located in Des Moines. Jenkins testified its base rent rate of $3.11 per square foot originated in 1991. His report indicates Walmart has four additional five-year renewal options with no changes in base rent. (Ex. 1, p. 91).

In addition to the comparable rent rates, Jenkins explained he relied on the opinion of a broker who specializes in retail properties and was familiar with the subject property. The broker indicated the most likely rental rate of the subject property to a single-tenant user would be between $4.00 and $5.00 per square foot.

Based on this data, Jenkins concluded an opinion of fair market rent for the subject property of $5.25 per square foot. (Ex. 1, p. 93). He estimated a total vacancy/credit loss of 6% and total operating expenses of $366,391. (Ex. 1, pp. 95 & 98). He estimated a net operating income (NOI) of $994,277. (Ex. 1, p. 99).

Jenkins considered six of the comparables he relied on in his sales comparison approach for his capitalization rate analysis; they ranged from 6.06% to 12.53%. (Ex. 1, p. 99). The lowest two capitalization rates were set by single-tenant properties (Sales 1 and 6). Sale 1 a Lowes and Sale 6 a Walmart, both with 14 years left on their leases at the time of sale with lease extensions available. The higher rate was set by the 2013 sale of a Kmart in 2013 (Sale 4). Jenkins testified that tenant quality and a shorter lease term contributed to the higher capitalization rate for Sale 4. (Ex. 1, p. 100).

Jenkins also considered investor surveys, the band of investment, and his conversation with a local broker in his capitalization rate analysis. (Ex. 1, pp. 92, 100-102). Ultimately, Jenkins reconciled a capitalization rate of 8.00%. After adjusting for the tax rate, and considering vacancy/credit loss, Jenkins relied on an 8.23% loaded capitalization rate. (Ex. 1, p. 103). His conclusion of value by the income approach was $12,100,000 rounded, as of January 1, 2017. (Ex. 1, pp. 103).

To begin his cost approach, Jenkins analyzed and adjusted five land sales located in the greater Des Moines market. (Ex. 1, pp. 70-74). He concluded an opinion of site value, as of January 1, 2017, of $6,850,000 rounded. (Ex. 1, pp. 74).

Jenkins relied on Marshall Valuation Service (MVS), a national cost manual in developing his replacement cost new (RCN). He testified that because the subject property is over 200,000 square feet he considered it a mega-warehouse based on the descriptions found in MVS; he cites MVS section 13, page 30 for a good quality, Class C property. (Ex. 1, p. 76). Based on this classification, he determined a base square foot cost of $60.62. (Ex. 1, p. 76).

After adjusting the base cost for refinements he arrived at a RCN for the building of $63.20 per square foot, or $13,398,554. He then adds the cost of signage, landscaping, and parking/walks, as well as indirect costs to arrive at a RCN estimate of $17,158,000 rounded. (Ex. 1, p. 76).

Jenkins did not include a line item for entrepreneurial profit because he believes the subject would not be built for speculation. In his opinion, there is no expectation of entrepreneurial profit because buildings like the subject are built-to-suit for the occupant.

Jenkins estimated an effective age of 16 years. (Ex. 1, p. 77). He relied on MVS's determination of an economic life of 35 years. Using the age/life, straight-line method he determined the subject had 45.7% physical depreciation. (Ex. 1, p. 77). In his opinion the subject does not suffer from any functional obsolescence. However, he believes the subject suffers from external obsolescence because of its size. He asserts there would be few potential users resulting in less demand, and a lower rent that would not be able to provide a reasonable return on construction costs. He estimated external obsolescence by capitalizing[2] the difference between the cost feasible NOI and the pro-forma stabilized NOI. (Ex. 1, pp. 77-78). He calculated the external obsolescence to be $4,083,208; or 23% of the RCN of the improvements. His conclusion of value by the cost approach is $12,100,000 rounded, as of January 1, 2017. (Ex. 1, p. 78).

Jenkins reconciled the three approaches to value, giving most weight to the sales comparison approach and income approach to value. He gave minimal consideration to the cost approach to value. His final opinion of value as of January 1, 2017, is $12,300,000.

<u>MaRous Appraisal</u>

MaRous completed a Restricted Appraisal Report[3], specifically for Walmart Stores, Inc.; however, he also identified PAAB as an intended user. (Ex. 2, p. 1).

MaRous testified that while he considered the income approach and cost approach to value, he had only a two-week timeline to complete the appraisal and for this reason did not develop these approaches. The short timeline also influenced his decision to complete a Restricted Appraisal Report. In his opinion, the sales comparison approach is the most relevant approach.

Like Jenkins, MaRous identified that the subject property is located in a retail corridor containing a number of big-box stores, including SuperTarget, Home Depot, Kohl's, Menards, Staples, Mills Fleet Farm, Sam's Club, and Best Buy. MaRous testified the big-box market has evolved over the last decade towards e-commerce, resulting in less demand for large retail space. (Ex. 2, pp. 5-6). In his opinion, because the subject property has over 200,000 square feet of GBA, it is a mega-big-box store. In addition to its large size, MaRous explained the subject building's depth creates significant issues for any alternative users or uses.

[2] To do so, Jenkins utilized the capitalization rate he estimated in his income approach to value. If his capitalization rate is in error, his results by the cost approach will also be affected.

[3] 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 use and should ensure that the client understands the restricted utility of the Restricted Appraisal Report. (UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, 2016-2017. p. 25, Standard 2(b)(i)).

He explained that buyers/users of improvements like the subject property, such as Costco, Ikea, Meijer, "build from the ground up, they don't want somebody else's floor plan." This results in buyers of these larger buildings having additional costs to renovate the improvements to multi-tenant.

In completing the sales comparison approach to value, MaRous relied on the sale of five "primary" comparable properties, adjusting them using qualitative analysis. (Ex. 2, pp. 13-22). The following table summarizes his sales comparison analysis.

Address	Sale Date	Sale Price	Main Building Size (SF)	Price/SF of Main Building
Subject			211,986	
1 - 86th St, Urbandale	Feb-16	$3,600,000	81,936	$43.94
2 - Brady St, Davenport	Aug-15	$2,950,000	110,380	$26.73
3 - Elmore Ave, Davenport	Dec-14	$6,250,000	147,749	$42.30
4 - Crossroads Blvd, Waterloo	Oct-14	$1,350,000	30,787	$43.85
5 - Kimberly Rd, Davenport	Jan-14	$950,000	79,431	$11.96

MaRous testified that he has been completing appraisals on several big-box stores recently in Illinois, Wisconsin, Minnesota, Iowa, and South Dakota. He searched these areas for comparable properties because they offer similar demographics. He did not find any sales with over 200,000 square feet of GBA in any of these states.

He reported Sales 1 and 3 were former American TV & Appliance retail stores.[4] (Ex. 2, p. 15 & 17). MaRous did not mention the circumstances regarding these sales, or adjust them for condition of the sales, and therefore we decline to rely on them. § 441.21(1) (discussing necessity of adjustment for sales to eliminate the factors which distort market value).

Sale 2 was a former K-Mart converted to a three-tenant building. All of the leases were expiring at the time of the sale and were not being renewed. The improvements were built in 1963. (Ex. 2, p. 16).

[4] In his testimony, Ramsey explained that MaRous misreported Sale 1 as a former American TV retail store. It was actually a former K's Merchandise store that closed and was vacant for a long period of time. Regardless, it was a failed retail location and therefore Ramsey did not use the sale.

Sale 4 was a former Toys R Us with only four-months remaining on the lease at the time it sold, but was vacant at the time it sold. (Ex. 2, p. 18). It is roughly seven times smaller than the subject property.

Sale 5 was a former K's Merchandise, which sat vacant for several years. It was purchased by investors who intended to renovate it into a two-tenant building. (Ex. 2, p. 19).

MaRous gave most consideration in his analysis to these five comparable properties, stating that "after all market-supported adjustments are made, a fairly narrow range of value was indicated." (Ex. 2, p. 21). However, he does not provide the adjustments or the adjusted range of value within his analysis.

MaRous testified he was valuing the fee-simple and he relied on sales that were vacant or had only short-term leases, therefore he did not need to adjust for property rights. He also determined there was no need for a market (time) adjustment. MaRous is the only appraiser in the record to assert there is no need for time adjustments.

MaRous reported that the comparable sales he relied on "had use restrictions placed on them prior to their respective sales." (Ex. 2, p. 20). However, he does not explain what the restrictions were for any of the sales. Despite not identifying what the restrictions are, he concluded that "they do not have any measurable impact on the property, either in terms of marketability, market perception, or, ultimately, market value." (Ex. 2, p. 20). In his opinion, an adjustment for this factor is "not supported by the market nor are they appropriate for the comparable improved sales' use restrictions." (Ex. 2, p. 20). Notwithstanding this opinion, he goes on to apply a "minor positive adjustment to the comparable improved sales for any use restrictions that were in place." (Ex. 2, p. 21). He testified the use restriction adjustments ranged from 5-10%.

MaRous made downward adjustments for size to all of the sales, believing the subject's size and depth "are the most limiting factors affecting the subject property in terms of its overall market appeal and market value." (Ex. 2, p. 19). He identified the size adjustments "were of larger magnitude than adjustments made for location, age, or use restrictions." (Ex. 2, p. 20).

He testified all of the comparable properties are “very good locations,” yet he found them to be inferior to the subject’s location requiring upward adjustments. In his opinion, all of the sales required “significant” adjustments. He testified that he adjusted the comparable sales upward 5-10%, with the exception of Sales 1 and 5, which he “probably adjusted upward 15%.”

We note that when MaRous explained the sales required “significant” upward adjustments for location, his testimony was that he adjusted them between 5-10%, with two at 15%. Comparatively, when only “minor adjustments” were required for use restrictions, his testimony was also that the adjustments ranged between 5-10%.

In addition to the aforementioned sales, MaRous included twenty-one improved sales of big-box retail stores as a secondary set of comparable properties. (Ex. 2, pp. 22-24). The average unadjusted sale price per square foot of these properties is $24.48. There is limited information about these sales, which occurred between 2008 and 2016 with sale prices from $1,100,000 to $6,500,000; sixteen of the sales were for less than $3,500,000 and twenty of the sales were for less than $4,006,000. Nineteen of the sales were vacated big-box stores. Eleven of the sales were former Lowe’s that had been vacated between 2009 and 2011, but did not sell for one to three years after they were vacated. One of the sales was reported as being a “former Menards … and converted to a used car lot.” (Ex. 2, p. 23). Another is identified as a former Home Depot store that was vacant for five years prior to being sold to a metal fabrication company.

Ultimately, MaRous concluded a range of value for the subject property of $38 to $40 per square foot; or roughly $8,000,000 to $8,500,000. (Ex. 2, p. 25). He selected the midpoint of this range and opined a market value of $8,250,000 for the subject property for January 1, 2017. (Ex. 2, p. 25).

Ramsey Appraisal (2017)

Ramsey valued the property in fee simple and indicated the use reflected in this report is for “continued use as Walmart Superstore.” (Ex. D, p. 5). He testified it was built for Walmart and has been continuously occupied by Walmart.

In his report, Ramsey stated the property is located in “a cluster of retail commercial developments.” (Ex. D, p. 54). He recognized the “site has features desired by the typical user of a primarily destination retail site: access to and/or frontage along major arterials, populated and affluent demographic trade area, useable site for commercial structures.” (Ex. D, p. 55).

Identifying that the subject is used as a Walmart Supercenter, Ramsey’s research showed the subject is above the average size of a typical supercenter. (Ex. D, p. 60). He believes this reflects the strength and potential growth in the Ankeny market. He also suggested the store’s size reflects the fact that it combines a traditional discount store with a complete grocery store. (Ex. D, p. 60). Noting Walmart is reported as being the nation’s largest supermarket by volume, Ramsey believes “Walmart’s focus was the development of the supercenter as its primary US retail vehicle and continued this trend from 2013 to 2017.” (Ex. D, pp. 60-61).

Ramsey developed the sales comparison, income, and cost approach to value in concluding an opinion value for the subject property as of January 1, 2017. (Ex. D).

The following table summarizes the eight improved properties Ramsey relied on for his sales comparison analysis. (Ex. D, pp. 79-99).

Comparable	Sale Date	Sale Price	Building Size (SF)	Price/SF	Adjusted Price/SF
1 - Blaine, MN	Jan-16	$5,200,000	140,684	$36.96	$41.40
2 - Davenport, IA	Dec-14	$6,250,000	145,516	$42.95	$80.75
3 - Cedar Rapids, IA	Mar-10	$5,500,000	106,113	$51.83	$58.57
4 - Burlington, IA	Apr-12	$8,542,000[5]	131,644	$64.89	$55.50
5 - Valdosta, GA	May-13	$15,105,000	176,712	$85.48	$57.27
6 - West Carrolton, OH	Sep-11	$11,650,000	125,367	$92.93	$89.21
7 - Timonium, MD	Dec-16	$18,300,000	133,859	$136.71	$98.43
8 - Pueblo, CO	Dec-10	$15,000,000	202,847	$73.95	$73.95

Ramsey testified the subject property is a large retail box store. Ideally, he would rely on the sale of a similar box store from one retail user to another retail user, but this

[5] Sale 4 sold for $8,887,000 but was adjusted downward $345,000 to reflect capital improvement costs resulting in a net adjusted sale price of $8,542,000. (Ex. D, pp. 86-87, 96). This sale was also relied on by Jenkins, who adjusted it similarly. (Ex. 1, p. 80).

does not occur very often. Therefore, he relied on sales of large box improvements that were built between 1984 and 2001, some of which were leased-fee sales and others that sold in the fee-simple. On cross-examination, he acknowledged that a property's purchase price can be affected by an existing lease. He explained that the leased-fee sales he relied on were from investor to investor. Ramsey testified he considered a lot of sales, but chose not to use vacant sales or sales that were distressed.

Sale 1 was a former Walmart purchased by At Home for single-tenant retail use. Ramsey's remarks indicate Walmart relocated to a new, larger store nearby. (Ex. D, p. 81). At Home will occupy 115,000 square feet of the space and will lease the remaining space to another tenant. (Ex. D, pp. 80-81). Ramsey adjusted this sale for its partial occupancy because the buyer had leasing expenses associated with the space it was not using. (Ex. D, p. 96).

Sale 2 is a former American TV & Appliance store. Despite American's well known business struggles, Ramsey did not identify this as a distressed sale. Ramsey reported the sale occurred in December 2014 but it was not occupied until late 2015. Ramsey identified that $2.1 million in building permits were taken out for interior remodeling in 2015 and he adjusted the sale upward for that fact. It was reported to be used for retail and distribution, with multiple tenants. (Ex. D, pp. 82-83). Because this was a former American TV & Appliance retail store we decline to rely on it. § 441.21(1) (discussing necessity of adjustment for sales to eliminate the factors which distort market value).

Sale 3 was built in 1984 and is the oldest sale Ramsey considered. Based on Ramsey's remarks, it appears the property was vacant for roughly 5 years prior to its 2010 sale. It was purchased by a local discount chain for single-tenant, retail use. (Ex. D, pp. 84-85).

Sale 4 was a 2012 sale between two investors, with a re-negotiated lease in place to Lowe's. Jenkins also relied on this sale; like Jenkins, Ramsey adjusted the sale to reflect capital improvements. (Ex. D, pp. 86-87, 96).

Sale 5 was a recently remodeled building with a lease in place that was extended to 2026, plus twelve, 5-year options to renew. It is occupied by Walmart. (Ex. D, pp. 88-89)

Sale 6 is occupied by Lowe's as a single-tenant user. The lease was extended prior to the sale for an additional 10 years. (Ex. D. pp. 90-91).

Sale 7 was occupied by Sam's Club as a single-tenant user. The lease had more than 10 years remaining, with six, 5-year options to renew. (Ex. D, pp. 92-93).

Sale 8 was occupied by Walmart as a single-tenant user. (Ex. D, pp. 94-95).

Sales 4-8 were adjusted downward 8% to 34% for the quality of the lease in place at the time of sale based on capitalization rates. He also made location adjustments, which were based on an analysis of the number of households and income associated for each market. Location adjustments ranged from -10% to +10%. Ramsey also adjusted the comparable properties for differences between them and the subject for size, age/condition, and land-to-building ratio. (Ex. D. p 96).

After adjustments, Ramsey reported a range of value between $41.40 and $98.43 per square foot; with an average price per square foot of $69.39 and a median price per square foot of $66.26. He believed the property was going to be better than the average and median. In his opinion, the indication of value from the fee simple sales tended to be a little low because a couple of those sales were properties where Walmart left the store and the subsequent use was not as good, or the properties were only partially occupied after the sale. He concluded a value of $75 per square foot of net rentable area (206,362 square feet); or, $15,500,000 rounded. (Ex D. p. 99). Walmart was critical of Ramsey for selecting an opinion of value per square foot, higher than the adjusted average and median sale prices per square foot. Ramsey testified it was his responsibility to use judgment as to where the subject property fits within the range of the data presented; not simply to select the average or median from within a range.

To complete his income approach, Ramsey analyzed the leases of seven comparable properties to establish a market rent for the subject property. He testified he sought out comparable rent properties that were as similar in use, size, and age. The comparable properties overall building areas ranged from roughly 80,000 to 225,000 square feet. (Ex. D, p. 100). The following table is a summary of his rent comparables.

Rent Comparable	Year Built	Building Size (SF)	Tenant	Base Rent	Adjusted Rent
1 - Clive, IA	1991	91,030	At Home	$6.39	$5.87
2 - Burlington, IA	1996	131,644	Lowe's	$4.65	$5.58
3 - Plainwell, MI	1992r2002	94,839	Home Depot	$8.36	$9.30
4 - Des Moines, IA	1991e2001	224,689	Walmart	$3.20	$3.93
5 – W. Des Moines, IA	1971	78,388	Gordman's	$5.85	$6.42
6 - Bettendorf, IA	1963r2008	79,158	Burlington Coat Factory	$7.93	$7.87
7 - Timonium, MD	2000	133,859	Sam's Club	$8.35	$7.14

Walmart asserted Ramsey should have given greatest consideration to Rent Comparable 4, a Walmart located in Des Moines. Ramsey testified it was his understanding the negotiation of this rent was set in the 1991 lease. Jenkins also relied on this rent comparable and confirmed the rent per square foot was the original rent terms from the 1991 lease.

Ramsey adjusted the leases for differences between them and the subject property, which resulted in a rent range from $3.93 to $9.30 per square foot. From this range, he selected a fair market rent of $6.25 per square foot for the subject property. (Ex. D, Amended[6] p. 109). He believed this represented the most likely market rent for the property on a net basis for a 20-year term. (Ex. D, Amended p. 109).

Ramsey estimated a total vacancy/credit loss of 1.20%, which is significantly lower than Jenkins' opinion of 6.00%. Ramsey's report includes a table derived from a table completed by CBRE Hubbell Commercial indicating vacancy in the Ankeny big-box market of 2.7%. (Ex. D, p. 26). Ramsey stated he was not appraising the market, but was appraising this property and, in his opinion, this property would realize below market vacancy. He explained he assumed further occupancy of the subject property for 20 years, which he reported and testified, was "consistent with the typical long leases

[6] Ramsey testified he failed to replace the first adjustment table on page 109 of Exhibit D. Amended page 109 of Exhibit D includes the correct table.

signed by this type of tenant for this type of space." (Ex. D, p. 110). His total operating expenses were estimated at $513,325, and his NOI was estimated at $1,168,732. (Ex. D, Amended p.109).

Ramsey relied on three major techniques to estimate his capitalization rate: the mortgage-equity (band of investment), market extraction, and investor surveys. (Ex. D, pp. 111-118). The following table is a summary of the data based on these techniques.

Method	Rate Estimate Data
Mortgage-Equity	7.75%
Market Extraction	5.02% to 7.25%
Investor Surveys	
PwC RE Investor	Net Lease Market: Min: 5.25%; Max: 9%; Avg: 6.75%
RERC Regional	Second Tier Properties: 8% to 8.3% Third Tier Properties: 8.7% to 8.9%
Boulder Group Net	Big Box Q4 2016: 6.5% Median for Large Format Big Box: 6.58% Median Big Box Midwest: 7%

Ramsey considered multiple sales in his market extraction method, which occurred between 2010 and 2016. The tenants included Lowe's, Home Depot, Sam's Club, and Walmart. In his opinion the market extraction method sets the low end of the range due to the credit influence of these tenants. (Ex. D, p. 112). He also reported that some of the surveys are focused on multi-tenant properties, noting that the Boulder Group Survey is specific to net retail leases. (Ex. D, p. 118). The Boulder report indicates the median asking capitalization rate for big-box stores in the Midwest was 7% and the nationwide median asking capitalization rate for large format stores, like the subject, was 6.58%. (Ex. D, p. 116). Ultimately, Ramsey reconciled a capitalization rate of 7.75%. After adjusting for the tax rate, Ramsey relied on a 7.80% loaded capitalization rate. His conclusion of value by the income approach was $15,000,000 rounded, as of January 1, 2017. (Ex. D, p. 119).

For his cost approach, Ramsey analyzed and adjusted six land sales located in the greater Des Moines market. (Ex. D, pp. 67-76). He concluded an opinion of site value, as of January 1, 2017, of $5,500,000 rounded. (Ex. D, p. 76). This was an increase of $475,000 from the land value he concluded as of January 1, 2016. (Ex. C, p. 74).

Ramsey testified that he relied on MVS for his cost data; he cites MVS section 13(319) – discount stores, for an average quality, Class C property. (Ex. D, p 78). He identified the subject as having 206,362 square feet of selling area with 167,168 square feet identified as a discount store. The remaining selling area included 3996 square feet for the tire/lube shop and 35,198 square feet of warehouse space. Based on this classification, he determined a base square foot cost of $64.40 for the selling area of the subject property. After adjusting for refinements, he concluded a RCN for this portion of the property to be $66.03 per square foot. He concluded a cost of $70 per square foot for the tire/lube center and $30 per square foot for the 35,198 warehouse space. (Ex. D, p. 78).

Walmart asserts Ramsey should have relied on the mega-warehouse stores classification rather than the discount store classification in determining his base costs. Ramsey explained that his report delineated the selling area into different components, and his total RCN for the improvements, which included entrepreneurial incentive and soft costs, of $67.12 per square foot, or $14,229,827. (Ex. D, p. 78). We note this is comparable to Jenkins' determination of an adjusted base cost for the improvements of $63.20 per square foot, or $13,398,554, which does not account for entrepreneurial profit. (Ex. 1, p. 76). Walmart was critical of Ramsey for including 10% entrepreneurial profit in his cost analysis. Ramsey acknowledged that he has not seen a big-box store built for speculative purposes. Nonetheless, he testified that, even for built-to-suit properties like the subject, the cost approach recognizes the opportunity cost associated with constructing the building and that is what entrepreneurial incentive is designed to account for.

Ramsey estimated an effective age of 17 years and an economic life of 55 years. Using the age/life, straight-line method he determined the subject had 30.9% physical depreciation. Walmart was critical of Ramsey because he did not rely on MVS to determine the economic life of the subject property. Ramsey acknowledged that MVS has a table with estimated economic life expectancies for different types of properties, but he does not rely on MVS for an economic life. He turned to the market and analyzed how participants use these types of properties and how far out do they go to recapture their investment. He testified the typical big-box lease is about 20 years, followed by four to six, 5-year renewal options, which results in roughly 50 to 55 years. In his experience, this has been a good indicator of the economic life for big-box retail properties.

Walmart asserted that because Ramsey relied on MVS for his cost estimates, he should also rely on MVS' determination of the economic life to determine his physical depreciation. Ramsey disagreed and testified that physical depreciation is not an observable number like actual cost numbers and reiterated his market research and again reasserting the MVS economic life for this property type is not reliable based on his analysis.

Ramsey determined 13.9% total obsolescence based on the same calculations that Jenkins relied on by capitalizing the shortfall of the required NOI compared to the forecasted NOI. (Ex. D, p. 77).

He then adds the depreciated cost of site improvements and the site value to arrive at his conclusion of value by the cost approach of $15,000,000 rounded, as of January 1, 2017. (Ex. D, p. 78).

Ramsey reconciled the three approaches to value. He gave all of the approaches some consideration, but most weight was given to the sales comparison approach. His final opinion of value as of January 1, 2017 is $15,500,000. (Ex. D, p. 120).

January 1, 2016 Appeal

The following table summarizes the appraisers' approaches to value and their respective conclusions as of January 1, 2016.

2016				
Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jenkins	$12,500,000	$12,100,000	$12,100,000	$12,100,000
MaRous	$8,250,000	Not Developed	Not Developed	$8,250,000
Ramsey	$15,000,000	$14,500,000	$14,500,000	$15,000,000

Jenkins Appraisal (2016)

Jenkins developed the sales comparison, income, and cost approach to value in developing his opinion value as of the January 1, 2017, which he then adjusted to conclude an opinion of value as of January 1, 2016.

Jenkins relied on the same analysis for his 2016 opinion of value by the sales comparison approach; however he modified his market condition and age/condition adjustments. His conclusion of value for January 1, 2016 is $12,500,000. (Ex. 1, pp. 110-111).

He relied on the same data and analysis for his 2016 income approach to value. Despite some slight differences, his rounded conclusions were the same as his 2017 conclusions. His conclusion of value by the income approach, as of January 1, 2016 was $12,100,000 rounded. (Ex. 1, pp. 112-116).

Jenkins analyzed and adjusted five land sales located in the greater Des Moines market. He concluded an opinion of site value of $6,670,000 as of January 1, 2016. (Ex. 1, pp. 104-105). Jenkins estimated an effective age of 15 years for his 2016 opinion of value. (Ex. 1, p. 107). Using the age/life, straight-line method he determined the subject had 42.9% physical depreciation for 2016. (Ex. 1, p. 107).

Despite the variation in the site value from 2016 to 2017, and some slight changes in depreciation, his conclusion of value by the cost approach was the same as his 2017 conclusions. His conclusion of value by the cost approach, as of January 1, 2016, was $12,100,000 rounded. (Ex. 1, pp. 104-108).

Jenkins reconciled the three approaches to value, giving most weight to the sales comparison approach and income approach to value. He gave minimal consideration to the cost approach to value. His final opinion of value is $12,100,000. (Ex. 1, p. 117).

MaRous Appraisal (2016)

MaRous relied entirely on his 2017 valuation of the subject property in his January 1, 2016 market value conclusion. In his opinion, the market had been “flat” and he concluded the same opinion of value, $8,250,000, as of January 1, 2016. (Ex. 2, p. 25).

Ramsey Appraisal (2016)

Ramsey developed the sales comparison, income, and cost approach to value in concluding an opinion value of $15,000,000 for the subject property as of January 1, 2016. (Ex. C).

The following table summarizes the seven improved properties Ramsey relied on for his sales comparison analysis. (Ex. C, pp. 77 & 92).

Comparable	Sale Date	Sale Price	Building Size (SF)	Price/SF	Adjusted Price/SF
1 - Blaine, MN	Jan-16	$5,200,000	140,684	$36.96	$42.51
2 - Nashville, TN	Sep-10	$12,700,000	136,860	$92.80	$74.24
3 - Davenport, IA	Dec-14	$6,250,000	145,516	$42.95	$70.87
4 - Cedar Rapids, IA	Mar-10	$5,500,000	106,113	$51.83	$61.68
5 - Burlington, IA	Apr-12	$8,542,000	131,644	$64.89	$58.40
6 - Valdosta, GA	May-13	$15,105,000	176,712	$85.48	$60.69
7 - West Carrolton, OH	Sep-11	$11,650,000	125,367	$92.93	$76.20

Sale 1 and Sales 3-7[7] were included and discussed in Ramsey's 2017 sales comparison analysis.

Sale 2 was purchased by Lowes HM Ctrs. Inc. in 2010. It is leased and occupied as a Lowe's for single-tenant use. The lease expires in 2019, but there are six 5-year renewal options with rent escalations beginning in 2024. (Ex. C, pp. 80-81).

Ramsey adjusted the sales using the same criteria and methods as his 2017 valuation. After adjustments, his conclusion of value for January 1, 2016, is $72 per square foot of net rentable area (206,362 square feet); or, $15,000,000 rounded. (Ex. C. p. 95).

He also relied on much of the same data and analysis from his 2017 report for his 2016 income approach to value. His estimated market rent for 2016 was $6.00 per square foot for the subject property. (Ex. C, p. 96). His total operating expenses were estimated at $511,778, and his NOI was estimated at $1,119,307. (Ex. C, p.102). His opinion of the subject's loaded capitalization rate remained unchanged from his 2016 to

[7] Sales 3-7 for Ramsey's 2016 analysis were identified as Sales 2-6 in his 2017 analysis.

2017 analysis. His conclusion of value by the income approach as of January 1, 2016 was $14,500,000 rounded. (Ex. C, p. 107).

Ramsey analyzed and adjusted five land sales located in the greater Des Moines market. (Ex. C, pp. 67-74). He concluded an opinion of site value, as of January 1, 2016, of $5,025,000 rounded. (Ex. C, 74). He estimated an effective age of 15 years and an economic life of 55 years for his 2016 opinion of value, resulting in 27.3% physical depreciation. Ramsey determined 12% total obsolescence for his 2016 analysis. (Ex. C, p. 75).

As a result of the variation in the site value from 2016 to 2017, and some slight changes in depreciation, Ramsey's conclusion of value by the cost approach was slightly lower than his 2017 conclusion. (Exs. C, p. 76 & D, p. 78). His conclusion of value by the cost approach, as of January 1, 2016, was $14,500,000 rounded. (Ex. C, pp. 76).

Ramsey reconciled the three approaches to value. He gave all of the approaches some consideration, but most weight was given to the sales comparison approach. His final opinion of value is $15,000,000 as of January 1, 2016. (Ex. C, p. 108).

Analysis & Conclusions of Law

Walmart asserts the subject property is assessed for more than authorized by law, as provided under Iowa Code section 441.37(1)(a)(1)(b) (2017). In support of its claim, Walmart submitted appraisals by MaRous and Jenkins. The Board of Review submitted an appraisal by Ramsey in support of its position.

The following tables summarize the assessments at issue and the experts' opinions of value as of January 1, 2016, and January 1, 2017.

Assessment Year	Land	Buildings	Total
2016	$5,310,000	$9,347,000	$14,657,000
2017	$6,372,600	$9,527,400	$15,900,000

2016				
Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jenkins	$12,500,000	$12,100,000	$12,100,000	$12,100,000
MaRous	$8,250,000	Not Developed	Not Developed	$8,250,000
Ramsey	$15,000,000	$14,500,000	$14,500,000	$15,000,000

2017				
Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jenkins	$12,700,000	$12,100,000	$12,100,000	$12,300,000
MaRous	$8,250,000	Not Developed	Not Developed	$8,250,000
Ramsey	$15,500,000	$15,000,000	$15,000,000	$15,500,000

A. General Principles of Assessment 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).

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

> *"Market value"* is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

§ 441.21(1)(b)(1).

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 v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 398 (Iowa 2009); *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). "[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. 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 party cannot move to other-factors valuation unless a showing is made that the market value of the property cannot be readily established through market transactions.” *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 667, 682 (Iowa 2016). Where PAAB is convinced comparable sales do not exist or cannot *readily* determine market value, then other factors may be used. § 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlon Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2). 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).

[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 667. 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 multi-tenant 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.

B. Burden of Proof

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

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

§ 441.21(3)(b)(1).

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

Walmart contends it has shifted the burden of proof because it has offered two competent opinions of value from MaRous and Jenkins that indicate the property's assessment is excessive. (Walmart Post Hearing Brief p. 3). It asserts the Board of Review has not met its burden of upholding the assessment.

The Board of Review asserts that neither of Walmart's appraisers have complied with Iowa law in valuing the subject property and therefore their opinions are not competent. (Board of Review Post Hearing Brief p. 7). It asserts that Ramsey complied with Iowa in valuing the property and his opinion supports the assessment.

Because we find that MaRous' appraisal does not comply with the statutory scheme, we conclude Walmart has not provided competent evidence from two disinterested witness to shift the burden of proof.

All of MaRous' sales were vacant at the time of purchase, under circumstances indicating distress. MaRous appears to have misidentified the seller of Sale 1. Regardless, the property was vacant at the time of sale. Sale 2 was a multi-tenant property that included a vacant Kmart unit. Kmart's store closures are well-known.[8] Sale 3 is a former American TV & Appliance store. In other Walmart property assessment litigation, PAAB has recognized that this sale is an abnormal transaction. *See Wal-Mart Real Estate Business Trust v. Johnson Cnty. Bd. of Review*, PAAB Docket No. 2015-052-00558C & 2016-052-00055C (Sept. 29, 2017); *Wal-Mart Stores East, LP vs. Dallas Cnty. Bd. of Review*, 2015-052-00452C & 2016-025-00057C (Sept. 29, 2017). Sale 4 was leased but was physically vacant, having been formerly operated as a Toys R Us. Toys R Us stores' closures have also been well-publicized. Sale 5 was a vacant, former K's Merchandise store. MaRous noted the store had been vacant for many years.

Aside from not reflecting the current use value required by Iowa law, these sales transactions were abnormal transactions under Iowa Code section 441.21(1)(b)(1). MaRous made no adjustments to eliminate the factors which distorted market value as required by section 441.21(1)(b)(1) and therefore his appraisal does not comply with the statutory scheme.

We note MaRous also identified that his sales were subject to use restrictions, but he did not identify what the restrictions were. He testified he made slight upward adjustments to the sales to recognize the use restrictions, even though he believed they did not affect the sales price. The Iowa Supreme Court discussed the impact use

[8] MaRous identified Kmart amongst a list of big-box retailers that have closed stores in the past several years. (Ex. 2, p. 5).

restrictions may have on a valuation in *Soifer*. 759 N.W.2d at 788. There, the Court impliedly concluded that the use of sales subject to a non-compete clause or use restriction “would be contrary to the principle that assessed property is to be valued on its present use.” *Id*. at 788-89. The Court stated that its case law did not “support a reduction in market value based on a property owner’s self-imposed restrictions.” *Id*. at 789. Without more information regarding the use restrictions and without having quantified his adjustments, we have no faith that MaRous’ valuation is consistent with a current use valuation.

Even if we had found MaRous’ appraisal complied with the statutory scheme, due to the lack of comparability of his sales, the nature of the sales transactions, failure to quantify adjustments, the lack of other valuation approaches to support his conclusions, and errors in his report, we would find his appraisal to be the least persuasive in the record and would give it no reliance. Even Walmart appears to discount the conclusions reached by MaRous, as its post-hearing brief requests the property’s value be set based on the conclusions reached by Jenkins. (Walmart Post-Hearing Brief pp. 20-21). At the end of the day, MaRous’ report appears to be a perfunctory effort designed to shift the burden of proof, rather than a serious attempt at providing a reliable valuation of the subject property. For these reasons, we give the MaRous appraisal no further consideration.

We now turn to the remaining experts’ opinions and a determination of whether the evidence shows the subject property is over assessed.

C. Jenkins’ and Ramsey’s Appraisals

Unless otherwise stated, the following discussion focuses on Jenkins’ and Ramsey’s appraisals opining the subject property’s January 1, 2017 valuation. Even though some data and conclusions may differ between the years, we find the approaches used in their 2016 and 2017 reports to be substantially similar. Therefore, while not separately stated, the following discussion applies equally to their 2016 reports, as we have considered the parties’ arguments, evidence, and appraisers’ testimony concerning the 2016 valuations.

We first consider whether the property's value can be reliably established by the sales comparison approach alone. As previously noted, the party seeking to use other valuation approaches bears the burden of showing the property's value cannot be reliably established by market transactions. *Wellmark*, 875 N.W.2d at 682.

Walmart argues that all appraisers completed the sales comparison approach, the sales comparison approach can readily establish market value, and that the sales approach is all that PAAB should consider. (Walmart Post-Hearing Brief pp. 5-6). Oddly though, in discussing Ramsey's sales, Walmart goes on to state: "there are few, *if any* purchasers interested in properties like comparable properties 1 and 3. There are even fewer potential buyers for the much larger subject Property." (Walmart Post-Hearing Brief p. 10). Walmart further notes that PAAB is required to consider the lack of potential purchasers for the property under section 441.21(1)(b).

Walmart's argument about the reliability of the sales comparison approach is contradictory. On one hand, it argues the approach can reliably establish value. On the other, it argues there is a lack of potential buyers for the subject. It stands to reason that a lack of potential buyers interested in the subject would indicate a shortage of normal, comparable sales transactions to create a reliable opinion of value, suggesting consideration should be given to other valuation approaches.

In *Wellmark*, the Court noted that "[c]urrent use is an indicator there is demand for such a structure." *Id*. at 683. The Court indicated that failure to identify a specific potential buyer does not mean there is no market, but rather that there is no active market. *Id*. Moreover, *Wellmark* adopted the view that the value can be "based on the presumed existence of a hypothetical buyer at its current use." *Id.*

Aside from the logical disconnect in Walmart's argument, its appraiser, Jenkins, did not give the sales comparison approach full weight in his reconciliation. His reconciled value is below his sales comparison approach based on the lower cost and income approach estimates of value. Nonetheless, Walmart requests PAAB modify the subject's value based on Jenkins' sales comparison approach conclusions. (Walmart Post-Hearing Brief pp. 20-21).[9]

Conversely, Ramsey reconciled to a value consistent with his sales approach, suggesting he gave his cost and income approaches little, if any, weight.

1. Sales Comparison Approach

Both appraisers submitted multiple comparable properties adjusted for differences between them and the subject property.

After adjustments, Jenkins' comparables ranged in value from $51.90 to $67.74, as seen in the following table. (Ex 1, p. 84).

Address	Sale Date	Sale Price	Building Area (SF)	Sale Price/SF	Adjusted SP/SF
Subject			211,986		
1 - Agency St, Burlington, IA	Apr-12	$8,542,000	131,644	$64.89	$62.49
2 - NW 86th St, Johnston, IA	Dec-14	$5,900,000	146,003	$40.41	$51.94
3 - Crest View Dr, Hudson, WI	May-15	$3,800,000	89,557	$42.43	$51.90
4 - 32nd St, Port Huron, MI	Feb-13	$9,796,179	193,590	$50.60	$62.85
5 - Golf Rd, Rolling Meadows, IL	Sep-15	$24,300,000	259,302	$93.71	$65.63
6 - St. Patricks Dr, Perry, GA	Jun-13	$13,861,500	152,720	$90.76	$67.74
7 - Willow Trail Pkwy, Norcross, GA	Dec-15	$13,445,047	141,284	$95.16	$57.76

Jenkins gave all the sales some consideration and concluded an opinion of value by the sales comparison approach of $60 per square foot; or $12,700,000 rounded, as of January 1, 2017. (Ex. 1, p. 87).

The Board of Review contends Jenkins valued the property as vacant, even though it is not currently nor is it expected to be vacant in the foreseeable future. (Bd. of Review Post-Hearing Brief p. 5). It asserts he improperly relied on vacant property sales. When he used sales subject to leases, the Board of Review argued Jenkins made unnecessary property rights adjustments. (Bd. of Review Post-Hearing Brief pp. 5-6).

[9] Walmart's Post-Hearing brief misstates Jenkins' conclusion by the sales comparison approach, suggesting he arrived at an estimate by that approach of $12,500,000 for both 2016 and 2017. In actuality, he concluded a sales approach value of $12,500,000 for January 1, 2016 and $12,700,000 for January 1, 2017. (Ex. 1, p. 117).

Ramsey submitted eight properties for his 2017 sales comparison analysis, which are summarized in the following table. (Ex. D, p. 96).

Comparable	Sale Date	Sale Price	Building Size (SF)	Price/SF	Adjusted Price/SF
1 - Blaine, MN	Jan-16	$5,200,000	140,684	$36.96	$41.40
2 - Davenport, IA	Dec-14	$6,250,000	145,516	$42.95	$80.75
3 - Cedar Rapids, IA	Mar-10	$5,500,000	106,113	$51.83	$58.57
4 - Burlington, IA	Apr-12	$8,542,000[10]	131,644	$64.89	$55.50
5 - Valdosta, GA	May-13	$15,105,000	176,712	$85.48	$57.27
6 - West Carrolton, OH	Sep-11	$11,650,000	125,367	$92.93	$89.21
7 - Timonium, MD	Dec-16	$18,300,000	133,859	$136.71	$98.43
8 - Pueblo, CO	Dec-10	$15,000,000	202,847	$73.95	$73.95

Ramsey concluded a value of $75 per square foot of net rentable area (206,362 square feet); or, $15,500,000 rounded as of January 1, 2017.

Walmart argues Ramsey failed to adequately adjust the sales on which he relied. (Walmart Post-Hearing Brief pp. 7-10). It asserts he should have made larger adjustments to his leased-fee sales and for size; that he improperly adjusted for occupancy and for renovation costs. It also argues Ramsey should have given greater weight to the Blaine, Minnesota sale (Sale 1, Ex. D, p. 96), and he arbitrarily increased his reconciliation above the average of his adjusted sales prices. Walmart does not contend Ramsey's sales comparison approach takes into consideration any special use value prohibited by Iowa Code section 441.21(2).[11]

[10] Sale 4 sold for $8,887,000. The buyer had some capital improvement costs, which were slightly offset by a higher rental rate for the first four years of the lease term, resulting in a net adjusted sale price of $8,542,000. (Ex. D, pp. 86-87, 96). This sale was also relied on by Jenkins, who adjusted it similarly. (Ex. 1, p. 80).

[11] On pages 12 to 13 of its post-hearing brief, Walmart argues Ramsey's cost approach violates the special use prohibition in section 441.21(2). Iowa Courts have narrowly interpreted the special use prohibition in section 441.21(2). *Wellmark*, 875 N.W.2d at 681 (Iowa2016) (citing *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775 (Iowa 2009)). Intangibles must be excluded only if they have value to the owner that "simply would not be enjoyed by another party." *Id*. Walmart does not argue Ramsey's sales comparison approach violates that directive.

a. Adjustments of Sales Subject to Leases

The parties' briefs spent considerable time discussing the necessity of making adjustments to properties sold subject to a lease within the construct of fee simple valuation.

"[T]he proper measure of the value of property is what the property would bring if sold in fee simple, free and clear of any leases." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988) (emphasis added); *Merle Hay Mall v. City of Des Moines Board of Review*, 564 N.W.2d 419 (Iowa 1997); *Oberstein v. Adair Cnty. Bd. of Review*, 318 N.W.2d 817 (Iowa Ct. App. 1982). The Iowa courts have repeatedly held that unfavorable leases should not be used to lower assessments. *Merle Hay Mall*, 564 N.W.2d 419 (holding that an unfavorable lease does not reduce a property's assessed value); *Oberstein*, 318 N.W.2d at 819.

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

Similarly, in *Merle Hay Mall*, the Iowa Supreme Court evaluated the effect of the Mall's long-term, below-market lease to Younkers in the income capitalization approach. 564 N.W.2d at 422. Citing section 441.21(2), the Court noted "production and earning capacity" of the property is a factor to be considered. *Id*. It identified that the Younkers lease is evidence of the property's earning capacity, but acknowledged the property's earning capacity is substantially greater than the amount it presently earns. *Id*. It held that the assessment includes both the lessee's and the lessor's interests and affirmed. *Id*.

We note *Merle Hay Mall* discusses leases in the context of the income approach permitted by section 441.21(2), but we find no basis to conclude the actual value contemplated by section 441.21(2) should be any different than the value sought by section 441.21(1). Thus, we find the foregoing case law instructive on our evaluation of adjustments to properties under the sales comparison approach.

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

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

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

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

Id.

“In comparing properties that are encumbered by long-term leases or are essentially fully leased with quality tenants, the appraiser must recognize that these leased properties may have significantly less risk than a competitive property that has shorter-term tenants at market rental rates.” *Id*. at 407. However, “the reverse may be true in expanding markets” where sufficient tenants are available for shorter-term leases at higher rental rates. *Id*.

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

Ultimately, in adjusting sales subject to leases, we believe the appraiser should make any necessary adjustments to estimate the market value of the subject property consistent with section 441.21(1). This task may involve consideration of the subject's market earning capacity as identified in section 441.21(2) and could require making positive, negative, or no adjustments, as the situation may dictate. Adapting a frame of analysis from *Wellmark*, the valuation, and the adjustments made to arrive at that valuation, should be based on the presumed existence of a hypothetical renter at its current use. *Wellmark*, 875 N.W.2d at 683 (adopting the view that the value of Wellmark's single tenant corporate headquarters should be "based on the presumed existence of a hypothetical buyer at its current use.").

In our opinion, neither of the appraisers offered sufficient support for their property rights adjustments. The appraisers made general statements explaining their reasons for adjusting sales in specific ways, but did not provide the underlying data or information on which they relied to come to that conclusion. This impairs our ability to critique the property rights adjustments they made, as the parties ask us to do in their briefs. Our remaining choices are to reject these sales entirely or leave the adjustments to the appraisers' discretion because of their experience and judgment. We think the latter approach most advisable here.

b. Walmart's Other Disagreements with Ramsey's Sales Adjustments

Walmart argues that Ramsey's size adjustments to his sales are "half of what they should be." (Walmart Post-Hearing Brief p. 9). Aside from theoretical arguments, however, Walmart provides no support for its contention that Ramsey's adjustments are inadequate. While Jenkins made larger adjustments for size in his appraisal, he provided virtually no data or information to support the degree of adjustment he made. We find this argument is without merit.

Additionally, Walmart contends Ramsey improperly adjusted two sales for occupancy. (Sales 1 and 2, Ex. D, p. 96; Sales 1 and 3, Ex. C, p. 92). Walmart's argument is not entirely consistent with appraisal methodology, however.

> If a comparable building used to estimate the value of the subject sold and was only at a 50 percent occupancy level, its price would most probably have been reduced because of the occupancy problem. This situation can be handled in one of two ways. The first method is to adjust the value

> upward to represent occupancy and then take a full deduction for rentup. A second method is to adjust the sales price for the relative difference between the impact of the 50 percent occupancy in the comparable and the 0 percent occupancy level in the subject on completion but prior to rentup.

JEFFREY D. FISHER & ROBERT S. MARTIN, INCOME PROPERTY VALUATION 393-94 (2d ed. 2004).

Similarly, "if a comparable sold was 70 percent occupied at closing and the subject is 50 percent occupied currently, a downward adjustment must be made to the comparable for the relative difference in occupancy between the two." *Id*. at 407.

THE APPRAISAL OF REAL ESTATE also recognizes that for income producing properties, an adjustment may be warranted for different economic characteristics between the comparable and the subject that affect income. *Id*. at 422. This can include lease terms, lease expiration dates, renewal options, and lease provisions, among other things. *Id*. Vacancy would clearly be a characteristic affecting income. THE APPRAISAL OF REAL ESTATE cautions, however, that this adjustment may already be accounted for in the property rights, location, or market conditions adjustments. *Id*. at 422-23.

Ramsey's occupancy adjustment recognizes the subject property is currently 100% occupied, whereas some of his sales comparables were not. A buyer of a property with vacancy – no matter the degree – will have additional costs and risks, which will naturally impact the resulting sales price. The subject, being fully occupied and expected to remain so for the foreseeable future, does not share similar costs or risks. Because Ramsey's occupancy adjustment is supported by appraisal theory and appears consistent with the going-concern and current-use valuation in Iowa law, we find no error.

We also find no error with Ramsey's renovation adjustment. (Sale 2, Ex. D, p. 96). Whether the renovations actually took place is immaterial. What is important is whether renovations were contemplated by the buyer and affected the sales price. "A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because those costs affect the price the buyer agrees to pay." THE

APPRAISAL OF REAL ESTATE 412.[12] These expenditures can include, but are not limited to, costs to demolish and remove a portion of the improvements, and costs for additions or improvements to the property. *Id*. "The relevant figure is not the actual cost that was incurred but the cost that was *anticipated* by both the buyer and seller." *Id*. (emphasis added).

For example, Ramsey's Davenport, Iowa Sale 2 was converted from an American TV & Appliance store to an Ashley Home Furniture Home Store in 2015. (Ex. D, p. 83). As part of that conversion, Ramsey reported $2,113,586 worth of building permits were taken out for interior remodeling and renovation. This amounts to roughly 35% of the sales price, which is the amount of Ramsey's renovation adjustment. This is consistent with the methodology for post-sale expenditures detailed in THE APPRAISAL OF REAL ESTATE.

Lastly, Walmart contends Ramsey should have given more weight to the Blaine, Minnesota sale (Sale 1), which set the low end of his range on both an unadjusted and adjusted basis. (Walmart Post-Hearing Brief p. 12; Ex. D, p. 86 & 96). Somewhat confusingly, Walmart also implies that Ramsey erred by not using the average of his adjusted sales, which would have given each sale equal weight. (Walmart Post-Hearing Brief p. 12).

As it relates to Sale 1 referenced above, we note it had the lowest unadjusted sales price per square foot of all of the sales in either Jenkins' or Ramsey's appraisals. (Ex. D, p. 96; Ex. 1, p. 110). Even after adjustment, its adjusted sales price per square foot was $41.40, well-below the adjusted sales prices in Jenkins' and Ramsey's appraisals. The closest adjusted sale price per square foot in either appraisal is $51.90. (Ex. 1, p. 84). Amongst the sales, it appears to be an outlier. Given these circumstances, it does not seem reasonable to give it more weight, as Walmart suggests.

[12] We note this is an additional concern we have with the MaRous appraisal. It appears most, if not all, of his sales comparables did or would require post-sale expenditures for deferred maintenance or remodeling. He made no apparent adjustments to account for those expenditures on the sales price. Thus, his valuation more accurately reflects a vacant building in need of remodeling and repair, which is not the current use of the subject property.

Regarding the weight to be given sales, we think there is good reason why an appraiser would not give equal weight to each sale. "In reconciling value indications in the sales comparison approach, the appraiser evaluates the number and magnitude of adjustments and the importance of the individual elements of comparison in the market to judge the relative weight a particular comparable sale should have in the comparative analysis." THE APPRAISAL OF REAL ESTATE 392. The circumstances regarding the Blaine, Minnesota sale provides an example of a sale that an appraiser may not reasonably believe should be given equivalent weight.

Of course, reasonable people might disagree with the use of sales and the weight they should be given. At the end of the day we are called to determine which appraisal offers the most persuasive evidence of market value. With that in mind, we consider some of the sales offered by the appraisers and their conclusions.

First, we question Jenkins' decision to weight all sales equally in this case. Sale 2 was a vacant American TV Store that "went dark in February 2014." (Ex. 1, p. 81). It is well known that American TV & Appliance filed for bankruptcy and we have previously found these sales unreliable unless adjusted to account for the potential distressed nature of the sales. *See Wal-Mart Real Estate Business Trust v. Johnson Cnty. Bd. of Review*, PAAB Docket No. 2015-052-00558C & 2016-052-00055C (Sept. 29, 2017); *Wal-Mart Stores East, LP vs. Dallas Cnty. Bd. of Review*, 2015-052-00452C & 2016-025-00057C (Sept. 29, 2017). While Jenkins did adjust this comparable for conditions of sale, we note it still sets the lower end of the value range by roughly $10 per square foot. Given the number of available sales in the record, we do not believe it is necessary to consider this distressed property.

Sale 3 is Jenkins' only sale less than 100,000 square feet of building area and it also sets the lower end of the range. Again, because there are numerous sales in the record greater than 100,000 or even 150,000 square feet, we do not believe it is necessary to consider a significantly smaller property.

Removing Sales 2 and 3, or at the very least, giving them limited consideration results in an adjusted range of value of $57.76 to $67.74 per square foot for the remaining five sales; four of which indicate a value of more than $62.49 per square foot.

The average adjusted value of the five sales is roughly $63.25 per square foot. Comparatively, Jenkins estimated a per square foot value by the sales comparison approach of $60. Sale 4, which appears to be the most similar to the subject property and to which Jenkins made the fewest adjustments, has an adjusted value of nearly $63.00 per square foot. Even then, Sale 4 was a transaction involving a Kmart property that was arguably distressed, as indicated by the fact it had a significantly higher capitalization rate of any sale Jenkins considered. Yet he made no adjustment for conditions of sale. Sale 5 had the second fewest adjustments and an indicated value of $65.63 per square foot; roughly $5.00 per square foot higher than Jenkins concluded. Based on this, we believe Jenkins undervalued the subject property in his sales comparison approach.

Unlike Jenkins, Ramsey did not give all the comparable sales equal consideration in his conclusion of value by the sales comparison approach. Ramsey testified it was his responsibility to use judgment as to where the subject property fits within the range of the data presented and not to simply select the average or median from within a range. As previously indicated, given its divergence from the other sales data, we question the inclusion of the sale located in Blaine, Minnesota (Sale 1). Further, the sales in Davenport, Iowa (Sale 2) and Valdosta, Georgia (Sale 5) required large adjustments and might reasonably be given less weight. If those sales are excluded, the remaining adjusted sales show a range from $55.50 to $98.43 per square foot, with a median of $73.95 per square foot. We note the sale located in Pueblo, Colorado (Sale 8) is the oldest sale upon which Ramsey relied, but it is the most similar sale in size and required the fewest adjustments and indicates a value of nearly $74.00 per square foot. (Ex. D, p. 96).

Therefore, we find Ramsey offered the best supported and most persuasive sales comparison analysis in the record.

2. Income Approach

Our analysis of Jenkins' and Ramsey's sales comparison approach persuades us Ramsey's appraisal offers the most reliable opinion of value. If we were to consider the income and cost approaches to value, we would come to the same conclusion. Jenkins' and Ramsey's 2017 income analysis is summarized in the following table.

Appraiser	Market Rent	Vacancy & Credit Loss	Operating Expenses	NOI	Capitalization Rate	Conclusion of Value
Jenkins	$5.25	6.00%	$366,391	$994,277	8.23%	$12,100,000
Ramsey	$6.25	1.20%	$513,325	$1,168,732	7.80%	$15,500,000

The appraisers have differing opinions regarding their market rent, vacancy/credit loss, and total operating expenses. While the discrepancies arise from more than one element of the reconstructed operating statements, the primary distinction is in the market rent. The difference between the appraiser's market rents is $177,000 rounded. The NOI, between the appraisers, has a variation of roughly $175,000, which nearly matches the market rent differences. The capitalization rates have a variation of roughly 0.50%, resulting in the $3,500,000 difference between the two opinions.

After reviewing the market rent comparables, it is apparent to us that both appraisers had difficulty finding representative comparable properties from which to estimate a market rent for the subject as of January 1, 2016 and January 1, 2017. Therefore, we chose to give more weight to Ramsey's market rent conclusion because his comparables better demonstrate continued, single occupant retail use. None of his comparables are affected by vacancy and none are used for multi-tenant purposes.

In contrast, three of Jenkins' rent comparables are used for multi-tenant purposes and at least one (Rent Comparable 2) is not fully occupied. Two of Jenkins' rent comparables are shuttered Kmart properties where a subsequent retailer took over the property. Jenkins reported Rent Comparable 6 had its rent lowered by roughly $3.00 per square foot after Home Depot took over the property. He also indicated At Home undertook $2 million in renovations to Rent Comparable 8. Both of these circumstances raise the question of whether the rent rate was affected by tenant improvements. "Extensive tenant improvements can influence contract rent." THE APPRAISAL OF REAL ESTATE 474. "If capital expenditures are made by the tenant, the lessor may reduce the tenant's rent for all or part of the lease term as compensation for such tenant expenditures. In many retail environments, the rents vary directly with the level of build-out provided to the tenant. When using these leases as comparable data, the level of build-out supplied with the rent is an important element of comparison." *Id*.

On the whole, we find Ramsey offered more support for his capitalization rate. Ramsey extracted capitalization rates from sales which we believe more accurately reflect the subject's current use, as they are used for single-occupant retail purposes. These rates ranged between 5.02% and 7.25%. Investor survey data, particularly the Boulder Group 'Big Box Report', also supports his capitalization rate. It shows median asking rates for large format big-box stores, like the subject, is 6.58% and the median rate for big-box stores in the Midwest is 7%.

Jenkins' unloaded capitalization rate of 8% is higher than four of the six sales from which he derived rates. The sales with higher rates were Sale 4 and Sale 5. Sale 4 was a vacant, former Kmart store and Sale 5 included a vacant, former Sam's Club that the owner intended to demise for multi-tenant use. We find neither of these capitalization rates reflects the subject's current use. For this and other reasons, we find his capitalization rate is too high.

3. Cost Approach

Turning to the cost approach, both Jenkins and Ramsey relied on MVS for their cost estimates. Jenkins concluded the subject property is a good quality property in average condition and his cost estimates were based off of a mega-warehouse category. Whereas, in Ramsey's opinion, it is an average quality property in good condition; and he relied on the discount store category in determining his base costs. The following table summarizes their cost conclusions.

Appraiser	RCN	Physical Depreciation	External Obsolescence	Depreciated RCN	Depreciated Value of Site Improvements	Site Value	Conclusion of Value (Rounded)
Jenkins	$17,158,409[13]	$7,843,567	$4,083,208	$11,926,865		$6,850,000	$12,100,000
Ramsey	$14,229,827	$4,398,310	$1,977,349	$7,854,168	$1,629,570	$5,500,000	$15,000,000

[13] Jenkins' RCN includes the $2,200,000 cost new of site improvements (signage, landscaping, parking/walks).

Jenkins included the cost new of site improvements within his RCN. For comparison purposes, Jenkins' reported RCN of the improvements only, including 10% for indirect costs was $14,738,409; roughly $500,000 within Ramsey's determination of RCN.

Walmart was critical of Ramsey for relying on a discount store category rather than the mega-warehouse category, which it asserts would have resulted in a lower RCN. However, as previously noted, both appraisers determined nearly identical RCNs and we find this argument without merit. The differences in their cost approach lies in the depreciation and obsolescence they each applied.

Both appraisers determined a similar effective age for the subject property: Jenkins concluded 16 years and Ramsey concluded 17 years. However, they disagreed on the economic life, which is the denominator for the physical depreciation calculation. Jenkins relied solely on MVS for his determination of a 35-year economic life and Ramsey looked to the market in his determination of a 55-year economic life. Their physical depreciation is calculated as follows:

Jenkins 16/35 = 45.7%

Ramsey 17/55 = 30.9%

Walmart was critical of Ramsey for not relying on MVS to determine the economic life of the subject property. It asserted that because Ramsey relied on MVS for his cost estimates, he should also rely on MVS' determination of the economic life to determine his physical depreciation.

Ramsey acknowledged MVS has a table with estimated economic life expectancies for different types of properties, but he does not rely on MVS for an economic life. He turns to the market instead and analyzed how participants use these types of properties and how far out do they go to recapture their investment. He testified that the typical big-box lease is about 20 years, followed by four to six renewal options, which results in roughly 50 to 55 years. In his experience, this has been a good indicator of the economic life for big-box retail properties. We note there is evidence in the record to support his conclusion. Jenkins' Rent Comparable 3 involves a 20-year initial lease with seven, 5-year renewal options that was entered into by Hy-Vee in 2014.

Rent Comparable 7 is another Walmart property that was originally leased in 1991 for 20 years, with the option of four, 5-year renewals. The lease most recently renewed in Rent Comparable 6 is a former Kmart built in 1993. Home Depot assumed a lease in 2003 and agreed to a fifteen-year extension in 2014. All of these comparables show the economic life of these types of properties can exceed the 35 years used by MVS and on which Jenkins relied.

Ramsey also explained that physical depreciation is not an observable number like actual cost numbers and reiterated his market research reasserting that the MVS economic life for this property type is not reliable based on his analysis and experience. This approach is supported by THE APPRAISAL OF REAL ESTATE, which states, “[t]o estimate an improvement’s economic life, an appraiser studies the typical economic life expectancy of similar improvements that have been sold recently in the market area.” THE APPRAISAL OF REAL ESTATE 602. While consultation with a cost service is one technique to estimate total economic life, an appraiser can also “observ[e] real estate cycles and changes in market preferences to establish the length of time that similar properties are in demand and improvements are contributing to market value.” *Id*. Because Ramsey’s economic life estimate is supported by evidence and consistent with appraisal methodology, we find no merit in Walmart’s criticism.

Regardless, another distinguishing characteristic between Jenkins’ and Ramsey’s conclusion is their treatment of economic obsolescence. Jenkins calculated his economic obsolescence adjustment using his capitalization rate from his income approach. As we found his capitalization rate to be too high, we also believe his economic obsolescence adjustment of 23% to be too great. Ramsey also relied on his capitalization rate to calculate an economic obsolescence adjustment of 13.9%. We find this conclusion more reliable.

D. Conclusion

Considering the foregoing, we find Ramsey offered the most persuasive evidence of the subject property’s value as of January 1, 2016 and January 1, 2017. His appraisal supports the 2016 valuation, but indicates a slight over assessment for 2017.

We therefore modify the 2017 assessed value based on Ramsey's reconciled valuation, which appears to give full weight to the sales comparison approach.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action for the January 1, 2016 assessment.

PAAB HEREBY MODIFIES the Polk County Board of Review's action for the January 1, 2017 assessment, and ORDERS the subject property's January 1, 2017 assessed value be set at $15,500,000.

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

Karen Oberman, Presiding Officer

C Valley

Camille Valley, Board Member

Copies to:

Paul Burns and Matthew Barnd for Walmart by eFile

David Hibbard for Polk County Board of Review by eFile

POLK COUNTY AUDITOR
111 COURT AVE
DES MOINES, IA 50309