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Wal-Mart Stores East, LP vs. Dallas County Board of Review

Iowa Property Assessment Appeal Board

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

PAAB Docket Nos. 2015-025-00452C & 2016-025-00057C

Parcel No. 16-13-402-016

Wal-Mart Stores East, LP (Wal-Mart Real Estate Business Trust),

Appellant,

vs.

Dallas County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 1, 2017. Attorneys Paul Burns and Melissa Carrington represented Wal-Mart Stores East, LP. Attorney Brett Ryan represented the Board of Review.

Wal-Mart Stores East, LP is the owner of a commercial retail property located at 6395 Stagecoach Drive, West Des Moines.

The Dallas County Assessor set the property's January 1, 2015 and January 1, 2016, assessments at \$18,851,560; allocated as \$6,655,970 in land value and \$12,195,590 in improvement value. (Exs. 4, 7, & 10). Wal-Mart protested to the Dallas County Board of Review claiming the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petitions. Wal-Mart then appealed to PAAB. It asserts the correct value for 2015 and 2016 is \$15,700,000. (Appellant Brf, p. 3).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a).

Findings of Fact

The subject property is a large commercial retail store built in 2006. It has 216,511 square feet of gross building area (GBA), which includes a greenhouse/garden center, and an auto care center. The 19.1 acre site is also improved with 399,000 square feet of paving. (Ex. A).

The record includes three appraisals. Wal-Mart submitted two appraisals, one completed by Chris Jenkins, CBRE, West Des Moines, Iowa (Ex. 2); and the other by Dane Anderson, Situs RERC, West Des Moines, Iowa (Ex.1). Wal-Mart contends its two appraisals shift the burden of proof to the Board of Review. The Board of Review submitted an appraisal completed by Mark Kenney, American Valuation Group, Lansdale, Pennsylvania. (Ex. B.) All of the appraisers are qualified to appraise the property and testified at hearing.

The following table summarizes the appraisers' approaches to value and their respective conclusions.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Jenkins	\$16,000,000	\$15,200,000	\$15,200,000	\$15,600,000
Anderson	\$15,200,000	\$15,200,000	\$15,200,000	\$15,200,000
Kenney	\$21,500,000	\$19,200,000	\$20,400,000	\$20,500,000

A. Highest and Best Use

Jenkins concluded the subject property's highest and best use is "consistent with the existing use as retail development." (Ex. 2, p. 81).

Anderson stated that "[g]iven the subject's current occupancy, achieved rents, and limited alternative uses, conversion of the existing improvements to an alternative use is not considered feasible." (Ex. 1, p. 46). Anderson concluded, "no altering of the improvements would appear to provide a higher return. . . . Therefore, the highest and best use, as improved, is considered continued single-tenant retail use. The most probable buyer is an owner occupant or speculative investor." (Ex. 1, p. 46).

Kenney found the "highest, best, and most profitable use of the property is for 'continued' discount department superstore use utilizing the existing improvements. It is strongly emphasized that the highest and best use of the subject property is not for liquidation of the property by the current owner, redevelopment of the stores for other uses, or partitioning and renovation of the store for multiple tenant use." (Ex. B, p. 83) (emphasis omitted).

B. Sales Comparison Approach

All of the appraisers testified that the subject property has a good location in a prime commercial/retail area. Anderson testified there is no dispute the Jordan Creek area is a prime real estate location. Kenney identified the subject as being located in the premier retail location in Iowa, driven by the Jordan Creek Town Center.

1. Jenkins Appraisal

Jenkins submitted seven sales he considered in his analysis, which are summarized in the following table. (Ex. 2, pp. 91-95).

Comp	Address	Sale Price	Sale Date	GBA	SP/GBA	Adjusted SP/GBA
J1	Burlington, IA	\$8,542,000	Apr-12	131,644	\$64.89	\$70.29
J2	Johnston, IA	\$5,900,000	Dec-14	146,003	\$40.41	\$57.22
J3	Ames, IA	\$3,650,000	Aug-15	60,053	\$60.78	\$70.29
J4	Port Huron, MI	\$9,796,179	Feb-13	193,590	\$50.60	\$71.34
J5	Rolling Meadows, IL	\$24,300,000	Jul-15	259,302	\$93.71	\$81.64
J6	Perry, GA	\$13,861,500	Jun-13	152,720	\$90.76	\$78.53
J7	York, SC	\$10,400,000	Nov-12	151,980	\$68.43	\$79.08

Jenkins testified that he searched regionally and nationally for sales of larger retail stores. In his opinion, size was a critical factor of comparison. However, five of his sales are smaller than the subject property's 216,511 square foot of GBA, with roughly 60,000 to 152,000 square feet of GBA. Jenkins remaining two sales, J4 and J5, are more comparable in size with GBA of 193,590 and 259,302 square feet respectively.

Some of Jenkins' sales were sold leased-fee and some were sold in fee-simple. He explained that when he relied on leased-fee sales, he attempted to find sales that had limited years left on the lease in order to isolate the effect of the lease on the sale. All of the sales were adjusted for location and age/condition. He also applied various other adjustments to sales for issues such as property rights conveyed, market conditions (time), and size. (Ex. 2, p. 96).

Sale J1 was a leased-fee sale located in Burlington. Jenkins adjusted this sale downward 15% for its 14-year lease to a good credit tenant in an effort to make it comparable with the fee simple interest of the subject property. (Ex. 2, p. 94). The Board of Review asserts this property sold twice in one day; however there is no evidence in the record supporting this assertion. Moreover, this sale was purchased by a real estate investment trust (REIT), which the Board of Review insinuates does not represent a market value sale. However, the Board of Review's appraiser also used a REIT sale.

Sale J2 was an American TV & Appliance store in the Des Moines market, which was closed after retailer filed bankruptcy. (Exs. E & F). The property was a “dark store” meaning it was vacant at the time of sale. Jenkins adjusted this property upward 20% to reflect its distressed sale. (Ex. 2, p. 96). Jenkins testified he was unaware of any use restrictions on this property when it sold. He testified he gave this sale minimal consideration in his reconciliation.

Sale J3 is located in Ames and is Jenkins’ smallest comparable, at only 28% the size of the subject’s GBA. It was vacant at the time it was purchased by Wal-Mart, and Jenkins asserts it was listed and marketed as a retail store. Despite this, Wal-Mart, which owned the adjacent property, purchased this property to tear down the improvements and expand its existing store/operations. Regardless of the purchase price, PAAB finds this transaction represents a land sale not an improved sale. Moreover, because the purchaser was an adjoining land owner intent on expansion, the sale is considered abnormal thereby requiring either an adjustment to eliminate distortion of its market value or eliminating the sale from consideration. Iowa Code § 441.21(1)(b). The Board of Review was critical of Jenkins’ minimal 15% upward adjustment for Sale J3’s location. This sale is located near North Grand Mall, which Jenkins identified as a distressed and substantially inferior mall compared to the subject property’s location near the vibrant Jordan Creek Town Center in West Des Moines.

Sale J4 is a Super K-Mart located in Michigan, which had less than six years left on its lease. Jenkins testified that K-Mart is an inferior quality credit tenant compared to Wal-Mart’s AA credit rating. Accordingly, the capitalization rate from this sale was an outlier at 12.53%. Jenkins made no adjustment for the fact the property was leased to a poor-quality tenant.

Sale J5 is a Wal-Mart/Sam’s Club in Illinois, located in the Chicago metro. These stores had roughly five years left on their leases. Sam’s Club was not occupying the space when the property sold; Jenkins was unsure how long the property had been vacant. Jenkins did not adjust the sale for the vacancy because lease payments were still being made resulting in 100% economic occupancy. This is the only sale Jenkins adjusted downward for location.

Sale J6 is a Wal-Mart in Georgia with a lease in place. It sold in 2011 for \$10,700,000; the lease was subsequently extended and the property resold in 2013 for \$13,900,000. Jenkins explained this demonstrates the value of a longer lease, so he adjusted for this factor.

Sale J7 is a Wal-Mart Supercenter in South Carolina with a lease in place. It sold in November 2012; the lease was subsequently extended and it resold in June 2013 for \$12,188,500. Jenkins, however, chose to rely on the 2012 sale of this property for his analysis.

After adjustments, and excluding Sale 2, Jenkins range of value was between \$70.29 and \$81.64. From within this range, he selected \$74.00 per square foot; or \$16,000,000 rounded. (Ex. 2, p. 96-99).

2. Anderson Appraisal

The following table is a summary of the seven Iowa, big-box stores that Anderson considered in his analysis. (Ex 1, p. 65).

Comp	Address	Sale Price	Sale Date	GBA	SP/GBA	Adjusted SP/GBA
A1	Burlington, IA	\$9,662,000	Apr-12	133,894	\$72.16	\$69.04
A2	Fort Dodge, IA	\$3,800,000	Jan-15	87,272	\$43.54	\$50.51
A3	Sioux City, IA	\$3,015,200	Oct-11	87,762	\$34.36	\$43.78
A4	Cedar Falls, IA	\$8,050,000	Dec-12	88,064	\$91.41	\$89.51
A5	Cedar Rapids, IA	\$5,500,000	Mar-10	111,179	\$49.47	\$64.85
A6	Davenport, IA	\$6,250,000	Dec-14	147,000	\$42.52	\$48.89
A7	Johnston, IA	\$6,000,000	Dec-14	146,003	\$41.10	\$46.85

Anderson acknowledged his search for comparable properties was focused on Iowa sales, noting he was unable to find any single-tenant retail sales over 216,000 square feet of GBA. He also explained the sales he used required significant adjustments because of the superior quality of the subject's location and age compared to the selected sales. The location adjustments were based on the demographics of the purchasing power, population, lease rates, and traffic counts of the comparable locations compared to the subject property. (Ex. 1, p. 68).

Anderson explained Sale A1 was a build-to-suit Lowes, which sold with a re-negotiated contract to update the property. This sale was also considered by Jenkins (J1); however, where Jenkins *subtracted* the tenant improvements and reported an adjusted sale price of \$8,542,000, Anderson *added* them to the sale price to arrive at an adjusted sale price of \$9,662,000.

Sale A2 was a multi-tenant property, which according to Anderson was split roughly in half between tenants Hobby Lobby and Marshalls. Kenney asserts the location of this sale is significantly inferior to the subject property. Moreover, Kenney contends it was 50% vacant at the time it sold, and is a much older property having been built in 1985. For these reasons, Kenney did not consider it comparable to the subject. Anderson reported this sale as transferring in January 2015; however the report also states it transferred in September 2011. (Ex. 1, p. 71 & 130). If the transfer date occurred in 2011, an upward adjustment for market conditions would be warranted.

Sale A3 was a former Wal-Mart located in Sioux City that was sold to Bomgaars. Despite the sale occurring in 2011 and Wal-Mart vacating the property, Bomgaars did not occupy it until after Wal-Mart's lease expired in January 2016. (Ex. 1, p. 110). Regardless of the fact the property had been physically vacant, Anderson identified it as 100% economically occupied because of the lease in place.

Sale A4 is a free-standing Kohl's located near the College Square Mall and close to the University of Northern Iowa in Cedar Falls. Anderson adjusted it downward 19% for economic tenancy asserting it was superior to the subject. The Board of Review asserts the nearby Mall has roughly a 50% vacancy rate since Scheels moved out, which has had a negative impact on surrounding retail centers like Sale A4. Anderson acknowledged Scheels relocated in 2010, yet he was unaware whether the space in the Mall had been filled. Moreover, Anderson was unaware of the Mall's other existing anchor stores or whether any other space had been vacated. Despite this, Anderson asserts this is a quality Mall with a very low vacancy rate.

Sale A5 was formerly an Econo Foods and vacant at the time of sale. It was purchased by Theisen's, a regional home, farm, and auto retailer. Anderson reported it as having 100% occupancy in his sales comparison analysis (Ex. 1, p. 71), despite

testifying to and stating elsewhere in his report that this property was vacant at the time of sale (Ex. 1, p. 112). Anderson testified that some remodeling occurred after the sale, such as the removal of coolers, partitioning, and floor coverings but that in general it was a wide-open retail space. The Board of Review questioned whether the removal of the coolers would have resulted in a need to update the heating, ventilation and cooling systems (HVAC) for the property; however, Anderson was unaware if this was the case. Kenney was critical of this sale, asserting it was vacant when it sold which might be due to a number of reasons such as bankruptcy or business decisions to pull out of a market area. Kenney referred to it as a second-generation space, which often has a different highest and best use than it previously had. In his opinion, comparing a vacant store to the subject is not appropriate.

Sale A6 is a 147,000 square foot free-standing retail store in Davenport. The Board of Review asked Anderson if he was aware it had been a foreclosure or bankruptcy sale. Anderson testified he did not believe it was and he did not adjust for this fact. The Board of Review submitted an excerpt of an article identifying Sale A6 as one of the American TV and Appliance stores closed as a result of bankruptcy. (Ex. E).

Sale A7 was another American TV and Appliance store sold from bankruptcy. (Ex. F). Anderson asserts that when he verified Sales A6 and A7, they were both reported as normal market transactions. However, he later contradicted himself when he stated he was aware Sale A7 was a bankruptcy sale when he included it in his analysis. The bankruptcy, however, was not acknowledged in his report.

Anderson further adjusted Sales A1, A2, and A4 downward for “having long-term leases in place to credit tenants.” (Ex. 1, p. 70). He made these adjustments, which range from 16% to 24%, by “comparing the actual capitalization rate to the estimated market capitalization rate, if leased to an average tenant with a typical retail lease term.” (Ex. 1, p. 70). It appears that his market capitalization rate used for this adjustment was the same as he derived in his income approach to value.

After adjusting his sales, Anderson’s range of value was between \$43.78 and \$89.51. From within this range, he selected \$70.00 per square foot; or \$15,200,000 rounded. (Ex. 1, p. 72).

3. Kenney Appraisal

The following table is a summary of the comparable properties that Kenney considered in his analysis. (Ex B, pp. 96-103).

Comp	Address	Sale Price	Sale Date	GBA	SP/GBA	Adjusted SP/GBA
K1	Fort Lauderdale, FL	\$26,060,000	Mar-16	189,543	\$137.49	\$89.09
K2	Baltimore City, MD	\$23,500,000	Mar-16	121,404	\$193.57	\$99.30
K3	Orland Park, IL	\$20,000,000	Dec-15	149,526	\$133.76	\$97.85
K4	Mayfield Heights, OH	\$17,100,000	Nov-15	137,133	\$124.70	\$112.54
K5	Hilliard, OH	\$13,103,400	Aug-15	125,357	\$104.53	\$86.18
K6	Round Lake Beach, IL	\$12,700,000	Mar-15	89,306	\$142.21	\$101.68
K7	Westerville City, OH	\$10,750,000	Dec-14	99,380	\$108.17	\$83.29
K8	Villa Rica, GA	\$14,350,000	Oct-14	152,000	\$94.41	\$108.57
K9	Metairie, LA	\$16,500,000	Oct-14	107,806	\$153.05	\$109.43
K10	San Jose, CA	\$18,250,000	Feb-14	120,437	\$151.53	\$118.93
K11	Cedar Falls, IA	\$8,050,000	Dec-12	86,584	\$92.97	\$123.74
K12	La Habra, CA	\$16,500,000	Aug-12	106,801	\$154.49	\$101.96
K13	Coralville, IA	\$15,000,000	Apr-12	98,596	\$152.14	\$108.78
K14	Fort Dodge, IA	\$4,700,000	Dec-11	55,858	\$84.14	\$67.73
K15	Vernon Hills, IL	\$12,005,000	Sep-11	111,400	\$107.76	\$96.66

Kenney explained the subject property is a large supercenter retail store occupied by an investment grade tenant. Because it is an investment grade property, he believed the most likely buyer would be a national investor, therefore he did not limit his search to purchasers seeking to owner-occupy property. He searched nationally for comparable properties, while maintaining a focus on the Midwest. He acknowledged he only has a few sales in Iowa, because there were few sales considered comparable to the subject. He also used sales in Illinois and Ohio, acknowledging the remaining sales are located much further away.

Kenney relied, in part, on Site to Do Business (STDB), a commercial database that provides ring demographics on population, population growth, median and average income, and traffic counts. Kenney testified these demographic factors are important when considering comparable properties and are the factors he considered in selecting his comparable sales. He noted the subject property's daily traffic count is 48,500,

which he contends is high considering it is not proximate to an interstate highway/freeway interchange.

Wal-Mart was critical of Kenney for selecting primarily leased-fee national investor grade sales, rather than choosing sales by buyers who intended to owner-occupy the property. In his opinion, there are few, if any, fee-simple sales that are not vacant stores, which he considers not comparable with the subject property. Moreover, Kenney explained the highest and best use of the subject property is for its continued use, contending leased-fee sales best represent that continued use.

Wal-Mart was also critical of Kenney's sales because of their low GBA, of which fourteen ranged from 26% to 70% the size of the subject property's GBA.

Sale K1 is a Wal-Mart supercenter on 15 acres with a ground lease. Kenney acknowledged this was not the most comparable sale, but he believes it has similar retail demographics and income to the subject. He testified that this property's 45,000 traffic count is similar to that of the subject property. Despite his assertion the traffic count of each property was information he considered in selecting and analyzing his comparable sales, Kenney did not include that information within his report.

Sale K2 is located in Baltimore, Maryland. It has a 20-year lease to BJ's Wholesale, which Kenney testified is a quality tenant.

Sale K3 is a Home Depot located in a suburb of Chicago, Illinois. It is an older renovated building. The property sold in December 2015 with the lease recently extended to 2027.

Sale K4 is another Wal-Mart property located in Cuyahoga County, Ohio. Kenney testified it has a 29,740 traffic count, almost 40% lower than the subject property, and it is in a lower populated area.

Sale K5 is located in the Columbus, Ohio metro area. It is occupied by Lowe's, which is a quality credit tenant.

Sales K6 and K7 are Kohl's stores located in Illinois and Ohio respectively. Kenney testified Sale K7 had a 14,504 traffic count, which is 70% lower than the subject property's traffic count.

Sale K8 is located in Georgia and is another Wal-Mart store.

Sale K9 is a K-Mart, which Kenney notes is located in a primary retail corridor of New Orleans, Louisiana, with a traffic count of 33,695.

Sale K10 is a Target store located in San Jose, California. It has a traffic count of roughly 35,000. Although its lease is set to expire in 2019, it has three 5-year options which Kenney believes will be exercised.

Sales K11, K13, and K14 are Iowa sales that occurred in 2011 and 2012. Sales K11 and K14 have the lowest sale price per square foot of Kenney's sales.

Sales K12 and K15 are located in California and Louisiana respectively.

Wal-Mart was critical of Kenney for using the Sears property in Coralville (Sale K13), asserting the adjoining Mall was the purchaser and it was part of a portfolio/bulk (REIT) sale. In Anderson's opinion, this was not an arm's length transaction because it was a transfer of roughly fifteen stores, in which a Hawaii store was the sought after property. Anderson testified the total purchase was roughly \$250,000,000 to \$270,000,000, with \$200,000,000 allocated to the Hawaii store alone. While Kenney was aware the owner of the adjoining Mall purchased the Coralville property, he believed it to be an arm's length transaction and therefore did not adjust for this fact. Moreover, he explained he was aware of the allocation of the values between the properties included in the portfolio and as far as he could determine the \$15,000,000 sale price, which was recorded on the Declaration of Value (DOV), appeared reasonable.

Kenney adjusted his sales for differences, such as market conditions (time), location, GBA, age/condition, and occupancy. Wal-Mart was critical of Kenney for not making any adjustments for ownership interests to Sales K4, K5, K8, K12, and K14 – despite there being leases in place. Kenney considered these sales to be equivalent to fee-simple sales, given the short term remaining on the leases, contending they did not require an adjustment.

Where Kenney made ownership adjustments, Wal-Mart was critical of them. In particular, Wal-Mart impliedly questions why Kenney made positive adjustments for ownership interests when, in Wal-Mart's opinion, he should have made negative adjustments. (Wal-Mart Brf. p. 9). Kenney's ownership interest adjustments ranged

from -5% to 15%, which is a lower adjustment than Kenney made for many other factors such as location, building size, or age/condition. (Ex. B, p. 106). With the exception of Sale K2, Kenney’s adjustment grid shows that when the subject property was leased at market rent, he made no ownership interest adjustment. When the property was leased below market rent, Kenney made a positive ownership interest adjustment of varying amounts.

After adjustments, the sales indicated a range of value between \$67.73 and \$123.74 per square foot, with an average and median of roughly \$100.00 and \$102.00 per square foot respectively. He reconciled to \$100.00 per square foot; or \$21,500,000 rounded.

C. Income Approach

Appraiser	Effective Gross Income (EGI)	Vacancy/Credit Loss	Operating Expenses	Net Operating Income (NOI)	Loaded Capitalization Rate	Total Value by Income Approach (rounded)
Jenkins	\$1,714,707	8%	(\$380,712)	\$1,333,995	8.75%	\$15,200,000
Anderson	\$1,774,784	8%	(\$446,013)	\$1,328,771	8.75%	\$15,200,000
Kenney	\$1,432,084	5%	(\$123,719)	\$1,308,365	6.80%	\$19,200,000

Jenkins and Anderson both reached identical conclusions and near identical components of their income analysis. All of the appraisers concluded a rent of \$7.00 per square foot.

Jenkins and Anderson both estimated 8% vacancy and collection loss, whereas Kenney concluded a lower estimate of 5%, resulting in divergent EGI’s. The Board of Review was critical of Jenkins for using a vacancy rate based on the larger Des Moines metro area, rather than the subject’s immediate retail area around Jordan Creek Town Center in West Des Moines. Jenkins and Anderson have complimentary operating expenses, and Kenney’s estimate is much lower. Despite these differences, all three appraisers conclude similar NOIs with an average of roughly \$1,325,000.

The distinction in their overall analysis comes down to the capitalization rate. Jenkins and Anderson both determined a loaded capitalization rate of 8.75%, and

Kenney concluded a 6.80% loaded capitalization rate. This results in Kenney's opinion of value being \$4,000,000 higher than the other two appraisers.

Jenkins extracted capitalization rates of 7.16% and 6.06% from two of his comparable sales (Sales J1 and J6), which had long-term leases to credit tenants. He notes these rates are lower than market capitalization rates, which would consider an average quality tenant. (Ex. 2, p. 111). Jenkins relied on the capitalization rate of 8.04% for Sale J7. However, there was a more recent 2013 sale of this property, with an extended lease to Wal-Mart that Jenkins did not analyze. He agreed with the Board of Review that the extracted capitalization rate of the 2013 transaction was 6.89%. Jenkins also testified that his Sale J4, which indicated a 12.53% capitalization rate, was occupied by a tenant with some financial difficulties and a shorter lease. He explained this demonstrates exactly how the credit quality of a tenant and the length of the lease impact the capitalization rates. In addition to extracting capitalization rates from the market, Jenkins spoke with a Real Estate Broker and considered published surveys and the band of investment.

The Board of Review was critical of Jenkins for identifying the subject as a Class B property when analyzing capitalization rates from surveys. (Ex. 2, p. 112). Jenkins explained the subject is located "in a good retail corridor with high traffic counts, but in a tertiary market..."

Jenkins' selection of an 8.50% capitalization rate is exactly the same as the opinion of the single Broker he interviewed and at the high end of the Class A range or mid-range of Class B properties from the CBRE Power Centers' survey. (Ex. 2, p. 112-113). According to Jenkins' report, "[t]he broker indicated a capitalization rate of around 8.50% would apply assuming a non-long term lease to a typical credit tenant." (Ex. 2, p. 113). This contrasts with Jenkins' evidence of three sales involving tenants with similar credit ratings as the subject property with capitalization rates between 6.77% and 7.66%, and a median of 6.89%. Regardless, Jenkins reconciled to an 8.75% loaded capitalization rate. (Ex. 2, p. 114). Jenkins' report also details the broker's opinion that the subject property's most likely future use, if not occupied by Wal-Mart, is for multi-tenant retail space. (Ex. 2, p. 112).

Anderson extracted capitalization rates from Sales A1, A2, A3, and A4 in his sales comparison analysis, which ranged from 6.77% to 10.83%. (Ex. 1, p. 85-86). Sales A1 and A2 have extracted rates based on long-term, net leased property to a credit tenant of 6.77% to 7.66% respectively. Sale A3 has the highest extracted capitalization rate of 10.83%, as it was leased but not occupied with only four years left on its lease. Lastly, Sale A4 indicated a capitalization rate of 7.30% based on a build-to-suit agreement. Like Jenkins, Anderson acknowledged “because of the long-term lease to a credit tenant the capitalization rate is significantly below a market capitalization rate, with a market rent, market lease term length, and *average quality* tenant.” (Emphasis added). (Ex. 1, p. 86).

In addition to the aforementioned sales, Anderson considered seven additional sales A-G from other markets with capitalization rates ranging from 6.15% to 10.25%. (Ex. 1, p. 86). No specific information about these sales was included by Anderson to explain the differences within the range or for determining whether they are comparable properties.

In addition to extracting capitalization rates from the market, Anderson considered published surveys and the band of investment. His published surveys were based on “[s]econd-tier investment properties...defined as aging, former first-tier properties, in good to average locations.” (Ex. 1, p. 87). In Anderson’s opinion the second-tier data is appropriate, with an indicated range of 8.50% to 9.50%. PAAB questions the decision to rate the subject as a second-tier property, given Anderson’s testimony that the subject is in a prime location, it is newer than all of the comparable sales from which he extracted rates, and it is occupied by a credit tenant.

Anderson selected an 8.50% capitalization rate despite his evidence of three credit-worthy tenant sales or built-to-suit properties. These sales are more akin to the current use of the subject property with capitalization rates ranging between 6.77% and 7.66% and a median of 7.30%.

Kenney considered the band of investment (mortgage equity) analysis, investor surveys, and comparable sales to determine his capitalization rate. He explained how he obtained the information he relied on for his mortgage equity analysis and concluded

a capitalization rate of 6.80%. (Ex. B, p. 121-124). He also analyzed investor surveys for power centers, strip centers, and net leased properties from the fourth quarter of 2014, which indicated capitalization rates between 6.60% and 7.05%. (Ex. B, p. 125). He states “[t]he average for the ‘Power Center’ properties, which are comprised of multiple big box stores, was 6.60%.” (Ex. B, p. 125). Lastly, Kenney considered the fifteen sales he analyzed in his sales comparison analysis, which resulted in thirteen extracted capitalization rates ranging from 4.99% to 7.29%. (Ex. B, p. 127). The low end of this range was set by Sale K1, which was eliminated from his calculation as it was a ground rent lease. The average extracted capitalization rate of the remaining twelve sales is 6.28%. (Ex. B, p. 127). Kenney also took into consideration the subject’s overall excellent location “near the premier super-regional shopping mall in the state of Iowa...” (Ex. B, p. 127).

Wal-Mart was critical of Kenney for extracting capitalization rates from investment grade tenants asserting it results in a lower capitalization rate than if he were to include non-investment grade tenants with shorter leases. Kenney explained the subject property is an investment grade quality property and currently tenanted as such, which were the types of properties he considered in his analysis. He further testified that he did not value the property as a Wal-Mart, as it asserted; but rather valued it for any investment grade quality tenant.

D. Cost Approach

The following table summarizes the appraisers’ conclusions in their cost approaches.

Appraiser	Land Value	Replacement Cost New (RCN)	Total Depreciation	Total Value by Cost Approach (rounded)
Jenkins	\$7,070,000	\$17,558,000	(\$9,382,338)	\$15,200,000
Anderson	\$5,800,000	\$17,500,000	(\$9,384,912)	\$15,200,000
Kenney	\$6,700,000	\$18,501,977	(\$4,757,651)	\$20,400,000

All of the appraisers relied on MARSHALL AND SWIFT VALUATION SERVICE cost manual to estimate their replacement cost new (RCN). (Ex. 1, p 57; Ex. 2, p. 75; Ex. B, p. 136).

The appraisers concluded a range of site value between \$5,800,000 and \$7,070,000. Because the site conclusions are reasonably similar, with an average of 6,525,000 rounded; and compared to the assessed site value of \$6,655,970, we find it unnecessary to dwell on the appraisers' analysis for this component of the cost approach.

Similarly, the appraisers had a tight range for the replacement cost new (RCN), but differed on the total depreciation as noted in the table above.

All of the appraisers agree the subject property has a modern design and layout and does not suffer from functional obsolescence. (Ex. 1, p. 60; Ex. 2, p. 89. Ex. B, p. 140).

All relied on the economic age-life method to determine physical deterioration. (Ex. 1, p. 60; Ex. 2, p. 88-89. Ex. B, p.140). Jenkins concluded an age-life of 8/35 resulting in 22.90%, or roughly \$4,000,000 physical deterioration. (Ex. 2, p. 90). Anderson concluded an age-life method of 8/40 resulting in 20%, or \$3,500,000 physical deterioration. (Ex. 1, p. 60). Kenney concluded an age-life method of 9/35, resulting in 25.71%, or roughly \$4,757,000 physical deterioration. (Ex. B, p. 142).

Both Jenkins and Anderson assert the subject suffers from external obsolescence; whereas Kenney does not believe this is the case – herein lies the distinction between the appraisers' cost conclusions.

Jenkins asserts there is external obsolescence to the subject property because there are very few users that would desire this building for a single-occupant use. Using an income analysis comparing the cost feasible net operating income (NOI) to the stabilized NOI, Jenkins asserts the subject suffers from \$5,369,081 in external obsolescence; or 30.5% of the RCN. (Ex. 2, p. 89). It is noted his cost feasible NOI is derived from the capitalization rate developed in his income approach to value. (Ex 2, pp. 89-90).

Anderson explained external obsolescence is something outside of the property that negatively affects its value, such as a soft economy, an over-size building, or poorly located property. In his opinion the subject suffers from external obsolescence because it was built in 2006 prior to a recession; e-commerce is an issue for traditional retailers like the subject; and the large size of its improvements. Anderson applied external obsolescence based on the same income feasibility analysis as Jenkins, and asserted the subject suffers from \$4,615,088; or 26.37% of the RCN. (Ex. 1, p. 61). Anderson acknowledged that if his stabilized NOI or capitalization rate was incorrect, it would affect the results of this analysis.

Kenney does not believe the subject suffers from external obsolescence, which he contends would be evidenced by factors such as high vacancy rates or lower rents. However, these factors are not evident with the subject property or its market area. He noted “[c]ap rate compression in the market for single occupant, institutional quality, investment-grade properties clearly reflects high demand and no external obsolescence for properties such as the subject property.” (Ex. B, p. 140). Moreover, he contends the subject has one of the best retail locations in the state, high traffic counts, and excellent income characteristics. In his opinion there is no external obsolescence impacting the subject property.

E. Final Reconciliation

Although Jenkins developed the cost approach, he did not give it much consideration in his final reconciliation due to the large amount of depreciation considered. He testified that he gave equal consideration to the sales and income approaches, concluding at the midpoint for a value of \$15,600,000 for the subject property.

All three of Andersons’ approaches to values resulted in the same conclusion of value of \$15,200,000. As such, this was also his final reconciliation.

Kenney gave the sales comparison approach primary consideration, as preferred by Iowa law, but also gave the cost and income approaches consideration in his final reconciliation of value of \$20,500,000.

Analysis and Conclusions of Law

A. Burden Shifting

Wal-Mart asserts it shifted the burden of proof to the Board of Review, as provided under Iowa Code section 441.21(3)(b), by offering testimony and reports of two appraisers who opined the subject property is over assessed. The Board of Review, however, contends that neither of Wal-Mart's appraisers offered competent evidence of value and thus, did not shift the burden of proof.

Initially, the burden of proof in an assessment protest rests with the taxpayer, who "must establish a ground for protest by a preponderance of the evidence." *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 397 (Iowa 2009). . . However, if the taxpayer "offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed." *Id.* at 396-97; § 441.21(3).

Iowa law "requires the evidence offered by a disinterested witness to be competent before the burden of proof shifts to the board." *Id.* at 398. "Evidence is competent under the statute when it complies 'with the statutory scheme for property valuation for tax assessment purposes.'" *Id.* "[M]arket-value testimony by a taxpayer's witness under a comparable-sales approach is 'competent' only if the properties upon which the witnesses based their opinions were comparable." *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009) (noting "If distorting sale factors or the points of difference between the assessed property and the other property are not quantifiable so as to permit the required adjustment, the other property will not be considered comparable."); *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995); *Bartlett & Co. Grain v. Floyd Cnty. Bd. of Review*, 253 N.W.2d 86, 88 (Iowa 1977). For the purposes of burden shifting, however, the *Soifer* Court also stated that "where the properties are reasonably similar, and a qualified expert states his opinion that they are sufficiently comparable for appraisal purposes, it is better to leave the dissimilarities to examination and cross-examination than to exclude the testimony altogether." *Soifer*, 759 N.W.2d at 784.(quoting *Stewart v. Commonwealth*, 337 S.W.2d

880, 884 (Ky. Ct. App. 1960)). If the sale properties “are comparable, the two witnesses’ opinions constitute ‘competent evidence’ and the burden of persuasion” shifts, “otherwise it does not shift.” *Bartlett & Co. Grain*, 253 N.W.2d at 88; *Soifer*, 759 N.W.2d at 783. Nonetheless, “the mere fact that sales might be considered comparable . . . does not necessarily mean that valuation based on them is credible.” *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 667, 682 (Iowa 2016) (citing *Soifer*, 759 N.W.2d at 784).

PAAB finds Wal-Mart provided two disinterested witnesses, Jenkins and Anderson, who were lawfully competent to testify. Jenkins and Anderson concluded the market value of the subject property is less than its assessed value. Both offered evidence complying with the statutory scheme for real estate valuation by initially conducting the sales comparison approach to value whereby sufficiently comparable properties were considered and adjusted. They also considered other appraisal methods as provided in Iowa Code section 441.21(2).

Here we find Jenkins and Anderson both provided competent evidence of the property’s market value and thereby shifted the burden of proof to the Board of Review.

B. Subject Property’s Actual or Fair Market Value

Wal-Mart argues the subject property is assessed for more than its market value, as provided under Iowa Code section 441.37(1)(a)(1)(b). PAAB “makes its independent determination of the value based on all the evidence.” *Compiano*, 771 N.W.2d at 397. “Ultimately, the burden of proof is one of persuasion” which “comes into play after all of the evidence is introduced at hearing.” *Id.* at 397 n.3. All evidence is to be considered. Iowa Code § 441.37A(3)(a).

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*, 759 N.W.2d at 778.

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

§ 441.21(1)(b).

In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at market value.” *Id.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision 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]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. v. Partridge*, 210 N.W.2d 584, 590 (Iowa 1973)). The assessor is “recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for goodwill, 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 at 670-71. In that case, Wellmark’s experts valued the single-occupant corporate headquarters “by using an analysis of multitenant office buildings,” reasoning that a purchaser would likely convert the property to a multitenant use. *Id.* at 671. In evaluating the theories of value-in-use and value-in-exchange pertaining to Wellmark’s property, the Iowa Supreme Court adopted the view that “value should be based on the presumed existence of a hypothetical buyer at its current use.” *Id.* at 683. The Court rejected Wellmark’s experts’ opinions valuing the property as a multitenant office building and, instead, concluded the property should be valued based on its current use as a single-occupant office building. *Id.* at 682-83.

“[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.

All three appraisers developed all three approaches to value and gave all of the approaches consideration in their final opinions.

Sales Comparison Approach

Given the subject property's characteristics and the foregoing assessment law, the ideal comparable properties would be fee simple sales of single occupant, investment grade retail properties with continued use for the same after purchase. However, the record is replete with testimony that properties like the subject are not often sold in fee-simple for continued use by a single tenant. If occupied, they are typically leased-fee purchases, which can be difficult to adjust based on the complexities and length of the leases in place. If they are vacant, there is often an implication the prior occupant's financial difficulties caused the vacancy and the properties are typically converted from single-tenant use to multi-tenant use. Because a property like the subject is not typically sold in fee-simple, we recognize this reduces the reliability of the sales comparison approach.

Many of Jenkins' and Anderson's sales are significantly smaller properties, or located in inferior areas with lower appeal compared to the subject's location. Both appraisers relied on sales that we find were distressed (J2, A6, and A7). Jenkins made an adjustment for this factor, but Anderson did not. Jenkins testified Sale J4 was occupied by an inferior quality tenant. The sale has the highest capitalization rate of any of Jenkins' sales at 12.53%, indicating the increased risk involved with this purchase. We are not inclined to place any reliance on these sales.

Jenkins also included the sale of a property purchased by the adjoining land owner with the intent of demolishing the improvements and expanding its operations (J3). PAAB believes this transaction better represents a land sale than an improved sale. And without adjustment, this sale may not to be considered, as provided under Iowa Code § 441.21(1).

They also relied on sales that were vacant at the time they sold (A5 and J5). We find the fact the properties were vacant does not render them *per se* unreliable, but vacant properties require special care as other attributes of the sale may necessitate additional research and adjustment. In the case of Sale A5, we are not inclined to give it any weight because it is a dated sale and the property's use changed after purchase. Testimony indicated significant remodeling took place after purchase and Anderson failed to adjust for that fact. THE APPRAISAL OF REAL ESTATE 412 (discussing adjustments for expenditures made immediately after the purchase). Sale J5 was partly vacant at the time of sale and the buyer was in discussions with the existing tenant, Wal-Mart, to extend its lease and accept a buyout of the retail space formerly occupied by Sam's Club. Further, the buyers intended to divide the Sam's Club space for multi-tenant use.

Jenkins made a downward adjustment for expenditures made after the purchase of J1, despite the fact that post-sale capital expenditures normally require a positive adjustment. THE APPRAISAL OF REAL ESTATE 412. In considering the same sale (A1), Anderson made a positive adjustment.

Considering the foregoing, we give no weight to Jenkins Sales J1, J2, J3, and J4. His remaining sales have an adjusted range from \$78.53 to \$81.64 per-square-foot. Accordingly, we find Jenkins' reconciled value of \$73.90 per-square-foot is too low.

Of Anderson's remaining sales, he also included a multi-tenant property (A2), which PAAB does not consider similar to the subject's single-occupant use. While A2 has net adjustments of 16%, Anderson made gross adjustments totaling 81%; indicating the property lacks comparability with the subject. While we are willing to give consideration to Anderson's remaining sales (A1, A3, and A4), we also generally find them inferior to the subject. Considering the sale demographics (Ex. 1, p. 68), Sale A4 in Cedar Falls appears to be most similar to the subject, although still inferior. Despite this, Anderson's reconciled value of \$70 per-square-foot falls well-below the unadjusted (\$91.41) and adjusted (\$89.51) per square foot values for sale A4. In our view, Anderson's selection of inferior comparables in his sales approach caused an

undervaluation of the subject property. See THE APPRAISAL OF REAL ESTATE 404 (recognizing the importance of bracketing).

In contrast, Kenney submitted sales from across the country. While he asserts he focused on the Midwest, we note many of the sales are located in coastal states that may lack comparability to the subject property. The sale prices ranged from \$4,700,000 to just over \$26,000,000. He explained he sought sales of properties in areas with high traffic counts and income levels that compared to the subject's location. We acknowledge nearly all of Kenney's comparable sales were leased at the time of sale, but Kenney made adjustments to account for the leased-fee status. Moreover, as previously noted, properties like the subject tend to sell as leased-fee rather than fee-simple due to the buyer pool.

Unlike many of Jenkins' and Anderson's sales, Kenney's sales demonstrate continued and on-going single occupant retail use pre- and post-sale. Iowa Courts have found properties with continued use to be more persuasive than properties that changed use after the sale. *Soifer*, 59 N.W.2d at 784-89; *Hy-Vee, Inc. v. Dallas County Bd. of Review*, 2014 WL 4937892 at *5 (Iowa Ct. App. Oct. 1, 2014).

In Kenney's opinion, it is not reasonable to compare vacant stores or bankruptcy sales to the subject property, as it is a prime investment grade quality property in a premier location. Wal-Mart asserts that by selecting the sales he did, Kenney's conclusions value the subject property to a specific user, in this case, Wal-Mart. Kenney explained he was looking for properties with similar highest and best use of continued prime retail occupied by an investment grade tenant, and he was valuing the property in its current use.

PAAB finds Jenkins' and Anderson's use of sales that were distressed, vacant stores or in areas significantly inferior to the subject's location resulted in artificially low conclusions. They were not valuing the current use of the subject property as a single-occupant, investment grade retail space in a prime location.

Wal-Mart is critical of Kenney's use of leased-fee sales and believes he did not correctly adjust the sales for the lease terms and creditworthiness of the tenant. (Wal-Mart Brf. p. 8). In support of its position, Wal-Mart notes Jenkins and Anderson

adjusted their leased-fee sales for the property rights associated with the sales. PAAB notes that Anderson's adjustment appears to be based off of the capitalization rate he determined in his income approach to value, which we later find is too high. Conversely, the record is not clear as to how Jenkins arrived at his property rights adjustments.

For his part, Kenney made mostly positive property rights adjustments to his leased-fee comparables in an apparent attempt to recognize the leases were below market. (Ex. B, p. 106). While we recognize Kenney's use of leased-fee sales of properties primarily located outside of Iowa may not provide an ideal indication of value, we also note he included six sales from Iowa and Illinois (K3, K6, K11, K13-15). These sales had adjusted sales prices ranging from \$67.73 to \$123.74, with a median of \$99.77, which supports his conclusions by the sales comparison analysis.

Given a desire for fee-simple sales, and sales that are as proximate and similar as possible in location, we again recognize the weaknesses of the sales comparison approach when valuing a property like the subject. Where PAAB is convinced comparable sales do not exist or cannot *readily* determine market value, than other factors such as cost and income may be used. § 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlton Co.*, 572 N.W.2d at 150; § 441.21(2). Accordingly, we consider the other approaches to value.

Income Approach

All three appraisers reach complimentary NOI conclusions. The distinction in their income analysis comes down to the capitalization rate. Jenkins and Anderson both determined a loaded capitalization rate of 8.75%, and Kenney concluded a 6.80% loaded capitalization rate. This results in Kenney's opinion of value being \$4,000,000 higher than the other two appraisers.

Both Jenkins and Anderson included extracted capitalization rates of investment grade quality properties, like the subject, that ranged between 6.06% and 7.66% (Sales J1, J6, A1, and A2). We previously found Sales A1 and A2 were inferior to the subject,

yet Anderson's capitalization rate is well-above the capitalization rate indicated by these sales.

Anderson also examined other retail property sales in Iowa in determining his capitalization rate (Sales A-G). (Ex. 1, p. 86). There is very little information about these properties in the record, but we note Sales C and G appear to be outliers and, in our view, should not have been considered. Nonetheless, despite considering those sales, Anderson's capitalization rate of 8.75% is greater than the average (8.31%).

Anderson also reviewed investor surveys for second-tier investment properties in the Midwest. (Ex. 1, p. 87). Anderson asserts it is appropriate to compare the subject property to "second-tier investment properties...defined as aging, former first-tier properties, in good to average locations." (Ex. 1, p. 87). PAAB notes the assessed value of a property is required to reflect the value of the property in its current use.

Jenkins also considered five of his sales in determining his capitalization rate. (Ex. 2, p. 111). We previously found we were not going to consider Sale J1 in the sales comparison approach, and we likewise decline to consider it here. Sale J4 also appears to be a significant outlier and we give it no consideration. The remaining three sales indicate a range from 6.06% to 9.54%. We note Sale J5, which sets the upper limit of the range, had increased risk due to the actual vacancy of the Sam's Club retail space. All else being equal, this would have caused an elevated capitalization rate.

Like Anderson, Jenkins also considered investor surveys. (Ex. 2, p. 112). In his opinion, the subject is a Class B property, which indicated a range of 6.50% to 10% with an average of 7.76%. Jenkins chose the upper portion of this range because he considered the subject to be in a tertiary market.

Jenkins also spoke to a local broker who indicated a capitalization rate around 8.50%, assuming a non-long term lease to a typical credit tenant. (Ex. 2, p. 112-13). In reviewing Jenkins' report, the broker was of the opinion the most probable future use of the subject is to be converted into a multi-tenant space. We note this is not the current use of the subject and modifies the risk determination that impacts the capitalization rate. In any event, Jenkins' loaded capitalization rate slightly exceeds the broker's opinion.

Kenney concluded a lower loaded capitalization rate of 6.80%. (Ex. B, p. 121). Kenney relied on the band of investment, as well as market comparables and investor surveys, in arriving at his conclusion. The sales he relied on were more like the subject property as they were occupied by credit tenants and purchased as investment grade quality properties, which PAAB finds describes the current use of the subject property. Focusing on the Iowa sales, we note Sale K11, located in Cedar Falls, indicates a capitalization rate of 7.29%. Sale K14, located in Fort Dodge, indicates a capitalization rate of 6.88%. We find those locations and properties inferior to the subject, suggesting the subject's capitalization rate should fall at or below 7.29%.

The capitalization rate is a function of risk and the ability of the real estate to provide a return on and a return of capital. As of the date of assessment, the subject is an investment grade retail property occupied by a single user, located in one of the premier retail locations in Iowa. The evidence in the record indicates increased retail construction, low vacancy rates, and strong retail sales in the area. Given these characteristics, if vacant, PAAB believes the subject property would generate significant demand by similar or nearly similar occupants in quality as its current occupant. Thus, the risk of this property not being able to provide an adequate return on and of capital is relatively low.

As expressed by their capitalization rates, we find Anderson and Jenkins overestimated the risk associated with the subject property. This appears to be based, in part, on a perceived lack of potential buyers of the subject property for single-occupant use sometime in the future. Their judgments regarding the property's future use enhances its risk, thereby increasing the capitalization rate, and reducing their value conclusions. Because on the demographics of the subject property's surrounding market, we do not believe those judgments are true to the facts.

Moreover, our analysis of the evidence indicates their selected capitalization rates are not supported by the data. Both appraisers had evidence of lower capitalization rates that better reflect the current use of the subject property and indicate the 8.75% loaded capitalization rate they selected is excessive. Considering all of the

aforementioned capitalization rate evidence, we find a 6.80% loaded capitalization rate is supported by the record.

We note both Jenkins and Anderson also used their 8.75% capitalization rate in various capacities in their sales comparison approach and cost approach. This overestimation of the capitalization rate makes their conclusions under those approaches suspect as well.

Cost Approach

Both Jenkins and Anderson assert the subject suffers from external obsolescence in the cost approach, which distinguishes their conclusions from Kenney's. Jenkins and Anderson determined external obsolescence using the same methodology, which relies on the extracted capitalization rate from their income approaches as a key factor in the formula. Both relied on this analysis to determine the amount of external obsolescence they assert exists, despite recognizing there is low vacancy and no indication of depressed rents. Moreover, Anderson testified that if the capitalization rate is incorrect, it would affect the conclusions. Here, PAAB found the capitalization rates relied on by Jenkins and Anderson to be too high. Thus, using the capitalization rates in their cost approach, Jenkins and Anderson have overestimated external obsolescence. This artificially reduces their conclusion by the cost approach.

Kenney does not believe the subject property has any external obsolescence, which is typically identified in the market by higher vacancy and lower rents. The record is clear the subject is in a premier location, with low vacancy and no indication that rents are lagging.

Further, PAAB finds the record supports a capitalization rate of 6.80%. The lower capitalization rate results in less than \$300,000 income loss; or 0.016% obsolescence. Thus, we find Jenkins and Anderson overestimated the property's economic obsolescence.

C. Conclusion

Wal-Mart's appraisers both had lower conclusions of value within their different approaches to value based primarily on the selection of their comparable properties, capitalization rates, and application of external obsolescence. We find Jenkins and Anderson overestimated the risk associated with the subject property, relied on inferior sales, their conclusions did not reflect the property's current use, and the most reliable evidence does not support their capitalization rates. Thus, we find their opinions of value are the least credible in the record.

We find Kenney's appraisal to be the more persuasive and the most credible indication of value. Kenney's conclusions, in all three approaches to value, more accurately reflect the value of the subject property in its current use. His reconciled conclusion of value of \$20,500,000 is above the subject's 2015 and 2016 assessments of \$18,851,560. Giving less weight to Jenkins' and Anderson's appraisals and substantial weight to Kenney's appraisal, we conclude the property's assessment is consistent with its fair market value. Therefore, we find the Board of Review has met its burden of upholding the assessment.

Order

PAAB HEREBY AFFIRMS the Dallas County Board of Review's action.

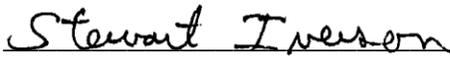
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Camille Valley, Board Member

Copies to:

Paul Burns and Melissa Carrington by eFile

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