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

PAAB Docket No. 13-07-0942
Parcel No. 8813-02-426-070

GG and A Crossroads Center, LP,
Appellant,
vs.
Black Hawk County Board of Review
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 17, 2015. Attorney Deborah Tharnish of Davis, Brown, Koehn, Shors & Roberts, PC, Des Moines, represented GG and A Crossroads Center, LP. Assistant Blackhawk County Attorney David Mason represented the Black Hawk County Board of Review.

GG and A Crossroads Center, LP (Crossroads) is the owner of a regional, enclosed shopping mall located at 2060 Crossroads Boulevard in Waterloo. The two-story mall has 603,775 square-feet of gross building area, including two anchor stores and forty in-line stores, a detached restaurant, and an auto service center. It was constructed in 1969 and is situated on a 31.735-acre site. The property is also improved with paving and yard lighting. Its January 1, 2013, assessment was $26,619,880, representing $7,147,000 in land value and $19,472,880 in improvement value.

Crossroads protested the assessment to the Board of Review. It also appealed two of its other related mall properties but withdrew those appeals before hearing (Dockets 13-07-0943 and 0944). Crossroads contended the assessment was not equitable with that of like properties in the taxing jurisdiction; the property was assessed

for more than authorized by law; that the property was exempt or misclassified; that there was an error in the assessment; and that there was fraud in the assessment. Iowa Code § 441.37(1)(a). The Board of Review denied the protest. Crossroads then appealed to this Board reasserting the property is over assessed.

Findings of Fact

Mary Kroeger, testifying on behalf of Crossroads, has been the mall's Marketing Manager since the 1980s and is also responsible for specialty leasing of temporary tenants, which includes kiosks, carts, and in-line spaces. Kroeger reported that Crossroads has a good location for access and is in the retail hub for northeast Iowa. The mall's anchor tenants include Younkers, JC Penney, Dillard's, and Sears. The Dillard's and Sears spaces are not subject to this appeal. However, despite the property's location, Kroeger testified the mall was not paying its debts and in 2012 the mall went into a receivership and a property management agreement. Moreover, during the receivership, repairs to the parking, roof, and cosmetic items were postponed.

She stated that the mall is experiencing an increase in vacancy. Tenant occupancy, including permanent and temporary leases, declined from 88.54% in 2010 to 82.09% in 2012. (Ex. 11). In 2011, the mall lost CVS Pharmacy, which had occupied 16,000 square feet, and Scheels, which occupied another 16,000 square feet. Additionally, Sears previously occupied two floors, but subleased one of those spaces to Gordmans in 2013 after the assessment date. According to Kroeger, Old Navy was closing after January 1, 2013.

In addition to increased vacancy, from 2010 to 2012, traffic counts by the mall declined 13.4%. (Ex. 8). Department store sales declined 17.5%, in-line store sales declined 8.1%, and total mall sales declined 12.8% from 2008 to 2012. (Ex. 7). Kroeger said declining sales, traffic count, and occupancy negatively affect Crossroads' ability to attract and retain tenants.

Appraisals

Crossroads submitted an appraisal completed by Ted Frandson of Frandson & Associates, LC, Des Moines. (Ex. 4). The Board of Review also submitted an appraisal of the property completed by Russ Manternach of Commercial Appraisers of Iowa, Inc., West Des Moines. (Ex. A). Both appraisers testified at hearing. The following chart summarizes the appraisers' approaches to value and their respective conclusions.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Frandson-As Is	$11,050,000	$12,550,000	N/A	
-Stabilized	$12,430,000	$14,060,000		$12,000,000
Manternach	N/A	$24,200,000	$24,930,000	$24,300,000

<u>The Frandson Appraisal</u>

Frandson testified the broad trend in retail is away from enclosed malls and toward online shopping and into power centers or lifestyle centers, with lower occupancy costs. According to the appraisal, aggregate retail sales at the subject mall have declined in recent years. JC Penney sales have declined from $89 per-square-foot in 2010 to $67 per-square-foot in 2012. Frandson indicated anchor and aggregate retail sales of less than $100 are not economically viable. (Ex. 4, p. 40). The lowest sales per-square-foot in Midwest malls is $98.45. Sales at both of Crossroads' anchor stores are considerably lower than the average sales indicated by surveys of National and Midwest regional malls. Frandson believes these indicators are negative signs for prospective retailers and will increase the difficulty of finding replacement tenants for vacated spaces.

Likewise, Frandson also reports a pattern of decreasing occupancy. He asserts the mall had an 85% occupancy rate at the beginning of 2013, which would drop to 80% within the first quarter of 2013 by the departure of Scheel's All Sport, and drop further to 75% by the fourth quarter of 2013 by the vacating of Old Navy. Even though these tenant departures occurred after the assessment date, it was commonly known in advance that the occupancy would be decreasing throughout this period. Frandson

also reports the anchor store leases would expire in January 2015 and January 2016. (Ex. 4, pp. 5-7). In his opinion, if an upscale anchor such as Dillard's leaves and a discount store like Gordman's subsequently rents the space, the mall's dynamics would change. He rates Crossroads, at best, as a Class C mall and indicates it is declining. He believes that although it is not dying, it is not stable and a pension fund would not invest in it.

Frandson reports average occupancy cost ratios for healthy malls typically range between 9% and 16% of gross sales. Most of Crossroads' tenant spaces have occupancy cost percentages within the range of 8% to 20%, with a mall aggregate of 15.19%. These rates are consistent with surveyed stable malls.

To determine a value for the subject property, Frandson completed the sales comparison and income approaches to value.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Frandson-As Is	$11,050,000	$12,550,000	N/A	
-Stabilized	$12,430,000	$14,060,000		$12,000,000

Frandson did not complete the cost approach to value for several reasons. He testified it was difficult to find land sales of 30-acres in a developed retail area. Additionally, because of the subject property's age, there would be significant depreciation and obsolescence attributed to it, as well as considerable deferred maintenance, which would compromise the reliability of this approach and would result in giving it little or no weight in the final reconciliation. He notes deferred maintenance of asphalt and concrete paving repairs, parking space striping, and roof repairs of over $800,000. (Ex. 4, p. 7).

Sales Approach

Frandson developed the sales approach to value by looking for local or regional mall sales that were located in a similar market, were physically comparable, and similar in class. (Ex. 4, pp. 43-76). He explained there were numerous bulk sales of multiple mall properties, which would be difficult to adjust. He also located two sales of malls in

Cedar Rapids and Council Bluffs; however, they had higher vacancy and were considered distress sales of “dead” malls.

He found three sales that met his criteria and he gave consideration to each sale. The appraisal indicates all properties were leased at the time of sale. In Frandson’s opinion, all three sales were located in stronger markets than Waterloo/Cedar Rapids. Frandson developed two sales comparable analyses for the subject property: “as stabilized” based on the conditions of the stabilized prospective occupancy; and “as is” based on increased vacancy. He based his final reconciliation on the “as is” sales approach and income values. The chart below summarizes his “as stabilized” analysis.

Property	Location	GBA	Sale Date	Sale Price	Unadjusted Price PSF	Adjusted Price PSF
Subject	Waterloo	460,365	N/A	N/A	N/A	N/A
Comp 1	Jefferson City, MO	538,035	12/12	$11,000,000	$20.44	$16.76
Comp 2	Salina, KS	486,444	12/10	$20,000,000	$41.11	$33.30
Comp 3	Auburn,, AL	399,440	6/12	$13,000,000	$32.55	$25.06

Frandson also completed an analysis of the sales considering an “as is” value. He made an additional 10% downward adjustment for occupancy to the comparable sales, in addition to his adjustments in the stabilized analysis, which reduced the value.

Property	Location	Adjusted Price PSF
Subject	Waterloo	N/A
Comp 1	Jefferson City, MO	$15.09
Comp 2	Salina, KS	$29.97
Comp 3	Auburn, AL	$22.56

Comparable 1, located in Jefferson City, Missouri, was built in 1978 and renovated in 1992. It was 82% occupied at the time of sale to a regional investor. The mall anchors are Dillard’s and JC Penney, which were owner occupied, as well as Sears. The site is 59.73 acres. Frandson adjusted the sale for its superior location, land/building ratio, quality/percentage of anchor stores, and other factors.

Comparable 2 is located in Salina, Kansas, and was built in 1986. It was 96% occupied at the time of sale in December 2010. A bankruptcy trustee sold the mall;

however, Frandson testified the owner's bankruptcy was caused by unrelated issues. Frandson reports it was on the market for two years, adequately managed during the marketing period, and had better occupancy than the subject property. We note Exhibit B shows a prior sale of this property in December 2009 at a price of $27,100,000, which may indicate the $20,000,000 sale reflected a distressed condition. The mall anchors, which were owned by this mall and included in the sale, were Dillard's, JC Penney, and Sears. The site is 97.57 acres, including 50 acres of excess land and five leased sites. Frandson adjusted it for its superior location, age and condition, land/building ratio, quality/percentage of anchor stores, and other factors. Frandson testified he also made a positive adjustment to the property's sales price because of its receivership status, but no such adjustment appears on his adjustment grids for Occupancy/Sales Conditions. (Ex. 4, pp. 44, 46). He later testified that his positive adjustment was offset by a corresponding negative adjustment to account for its higher occupancy.

Comparable 3 is located in Auburn, Alabama and was built in 1970. It sold for $13,000,000 in 2012, but previously sold for $31,200,000 in 2005. (Ex. C). The 2012 sale was a real-estate owned (REO) transaction with Wells Fargo Bank as the grantor. (Ex. C). Its anchor stores were 86% occupied and the in-line stores were 67% occupied at the time of sale. The site is 44 acres. Frandson described it as a declining mall with little recent leasing activity and 20% of the leases expiring within a year. The mall anchors are Dillard's, which was owner occupied and not included in the sale; JC Penney; Belk's; and Sears; which were all included in the sale. He considered the location of Belk's in this mall and its retail sales of $220 per-square-foot, compared to the subject's $151 per-square-foot retail sales, as indications of a stronger market. Frandson adjusted it for its superior location, age and condition, land/building ratio, and quality/percentage of anchor stores. He testified he used a similar adjustment methodology on Comparable 3 to adjust for the sales condition. However, his report does not indicate this to be the case. (Ex. 4, p. 45).

The Board of Review questioned Frandson about the superior location adjustments he made to the comparables and his diligence in researching these sales. Frandson admitted that he had not visited the comparable properties, but believed someone on his staff had contacted individuals familiar with the sales. He also testified

to his opinion that although two of his sales were bank sales, they should not, for that reason alone, be dismissed from consideration in the sales approach. He testified that they should not be considered distressed because they were professionally marketed and one received multiple offers. However, the fact that two of the sales properties had sold previously for significantly higher prices suggests that the distressed sale condition may have negatively impacted the more recent sales price which would then require adjustment.

Income Approach

Frandson developed the income approach to value using two methods. First, he determined a value by the direct capitalization method as of January 1, 2013, of the property "as stabilized." Second, he determined an "as-is" value of the property as of January 1, 2013, through a discounted cash flow analysis in an attempt to capture the market impact of changes in the subject's occupancy after January 1, 2013.

Frandson reports that market participants indicate Crossroads has been in decline in recent years and around the time of the assessment two major tenants announced plans to vacate their space and relocate. In his opinion, retail sales per-square-foot is an important measure of the health of a mall. Sales trends show the weighted average sales of the Crossroads Mall, including in-line and anchor stores, declined 12% from 2010 to 2012. In particular, he notes Dillard's has declined 26% since 2004 and its sales per-square-foot of $54 is lower than the Iowa City, Davenport, and West Des Moines Dillard's stores, which range from $65 to $93 per-square-foot. (Ex. 4, p. 80). Crossroads' in-line store sales in 2012 were $235.15 per-square-foot, as compared to $310 per-square-foot at Merle Hay Mall in Des Moines and $365 per-square-foot at Kennedy Mall in Dubuque. (Ex. 4, p. 80).

Frandson analyzed the contract rent for Crossroads' in-line stores, anchor stores, and out-lot buildings. He reports that several recent lease renewals have eliminated strong base rents and replaced them with percentage rents. He anticipates this will result in a substantial decrease in total rent paid by these tenants. Two larger tenants were given $50 per-square-foot tenant allowances when they renewed their leases in

2012 at higher base rents. Moreover, he reports new and renewal leases were generally being negotiated at 10% to 30% less than rent had been in recent years.

Frandson also reviewed Co-Star surveys for mall and large shopping center rents in Iowa. The Co-Star survey demonstrates a recent downward trend for retail rental rates for larger and regional shopping centers in Iowa. He also investigated typical anchor store rental rates and percentage rent clauses, a restaurant rent survey, and an auto service rent survey for Iowa properties. He indicates that Merle Hay Mall, with similar anchors and size, is currently undergoing an extensive renovation. Its rents range from $20 per-square-foot for low volume local tenants to $25 per-square-foot for higher performing small shops. He reports most of the national/regional in-line stores lease from $15 to $20 per-square-foot depending on tenant allowances, which range from $30 to $50 per-square-foot.

Frandson estimated market rent of $8.00 to $20.00 per-square-foot for in-line stores, depending on size. He estimates $1.00 per-square-foot for anchor space, which he believes, will be necessary to make it attractive for JC Penney and Younkers to stay when their leases end in January 2015 and 2016. The average Midwest department store rent in the most recent Dollars & Cents of Shopping Centers (2008) was $3.36 per square foot. (Ex. 4, p. 86). The chart below summarizes Frandson's market rent conclusions.

Tenant Area	Recent Lease Data (PSF)	Estimated Market Rent S/F
Anchor Stores JC Penney Younkers	Base lease rates range: $2.27 to $4.56 (Gross)	 $1.00 $1.00
Major Tenants (> 10,000 sf)[1]	Range: $2.11 to $24.46 Median: $3.90 Average: $10.16	$8.00
Tenants (5000 to10,000 sf)	Range: $10.65 to $35 Average: $22.83	$12.00
Tenants (2500 to 5000 sf)	Range: $5.30 to $50.75 Median: $15.54 Average: $17.96	$15.00
Tenants (>2500 sf)	Range: $7.21 to $29.56 Median: $14.72 Average: $17.37	$20.00
Outlot Buildings Applebees Tires Plus	No data Range: $13.50 to $37.34 $15.81 to $19.62	$40,000 per year $30.00 $14.00

In the capitalization method, Frandson analyzed three years of the subject's income, expenses, and rent rolls. He estimated a vacancy and collection loss of 18% and effective gross income of $5,872,507. He developed a stabilized operating statement, reducing the effective gross income by expenses, including 4% management fee, and included an allowance for reserves to arrive at net operating income (NOI) of $2,299,478. (Ex. 4, p. 97).

Frandson used a 16.36% capitalization rate that he extracted from the three comparable sales and a mortgage equity analysis. In his testimony, Frandson referred to a RERC Survey that he stated indicates capitalization rates for third tier malls are between 9.5% and 12%. He believes this property is a third tier "project" mall.

After applying his capitalization rate, the result is a value by the direct capitalization approach of $14,060,000 (rounded). (Ex. 4, p 99).

In his discounted cash flow (DCF) analysis, Frandson attempted to approximate the subject's fair market value as of January 1, 2013, prior to the loss of leases at

[1] Because of a lack of recent lease data, these figures are based on the actual rents in place as of January 1, 2013, as listed in Frandson's appraisal. (Ex. 4, p 82).

Scheel's All Sport and Old Navy, which he believes will cause increased vacancy at the property. Frandson applies his DCF analysis to a five year, lease-up period. To arrive at his effective gross income, Frandson uses the GPI from his direct capitalization method and then estimates vacancy levels of 25% in 2014 and 2015 and 20% in 2016, before returning to a normal 18% vacancy in 2017. In determining his operating expenses, Frandson primarily relies on his estimates from his direct capitalization method. However, he also includes an $810,000 expense in 2014 for paving and roof repairs, as well as $670,000 expenses in 2016 and 2017 for tenant improvements. His resulting NOI figures show a large decline between 2013 and 2014 before becoming more-or-less stable. (Ex. 4, p. 103).

Frandson then applies a 16.36% discount rate to his projected NOI for this five year period to determine a present value of the future cash flows of $5,961,201. Similarly, he also determined a reversion value for the subject at the end of the five year lease-up period of $13,250,000 based on his direct capitalization approach and sales comparison approach. He discounted the reversion value by a present value factor to determine a present value of the reversionary interest of $6,587,592. In total, Frandson concludes an "as-is" value by the DCF of $12,550,000.

Frandson gave weight to both the sales comparison approach and the income approach to arrive at an "as is, prior to reaching a stabilized level of occupancy" fee simple value of $12,000,000 as of January 1, 2013. He testified, however, that he gave more weight to the income approach. (Ex. 4, p. 105).

The Manternach Appraisal

Manternach developed two approaches to value. His conclusions reflect the combined value of the subject property (Parcel 8813-02-426-070) and two additional parcels (Parcels 8813-02-426-073 & 8813-02-426-071), which are mall parcels not included in this appeal. His conclusions were as follows:

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Manternach	N/A	$24,200,000	$24,930,000	$24,300,000

Manternach considered the sales comparison approach. He identified six sales located in Marshalltown and Ottumwa, Iowa; Minton and Bismarck, North Dakota; and Omaha, Nebraska. The sale prices ranged widely from $14.89 to $206.22 per-square-foot. He notes sales at the low end of the range were distressed, vacant, or at the end of their economic life. Additionally, some of the sales were in inferior locations. Manternach did not adjust the sales for differences to develop a comparable sales approach because he believed they vary too greatly from the subject property in number of anchors, tenant quality, occupancy, out-lot improvements, land leases, age, and location. In his opinion, none of the sales were highly similar to the subject, they would require too many adjustments and the resulting analysis would provide a weak indication of value. (Ex. A, p. 62). We question why Manternach limited his search to only three upper Midwest states, whereas a search of the larger regional or national market may have resulted in other comparable property sales.

Cost Approach

Manternach used the MARSHALL SWIFT VALUATION SERVICE to complete the cost approach to value. In developing this approach, he used six vacant land sales to support his opinion of land value. While the sales were all smaller sites than the subject parcel, Manternach made adjustments for size. He also adjusted the sales for location, topography, and market conditions. The land sales occurred between January 2008 and September 2013, which was nine months after the assessment date. Sale prices ranged from $2.00 to $6.16 per-square-foot. Adjusted prices ranged from $3.61 to $4.85 per-square-foot. He concluded an opinion of value of $6,320,000 for the subject site, or $4.10 per-square-foot. Relying on MARSHALL, he estimated the replacement costs new of the improvements. Manternach rated the anchor stores, mall concourse, restaurant, and retail stores as Class C in MARSHALL. He estimated an economic life of 45 years, and a remaining life of 15 years. He applied 67% physical depreciation and 15% functional obsolescence and ultimately concluded an opinion of $24,930,000 rounded by the cost approach. (Ex. A, pp. 49-60).

Income Approach

Manternach reported that a typical purchaser of the subject property would complete the income approach to provide the most credible indication of value. He testified to his opinion that a discounted cash flow analysis is normally done to value a leased-fee estate, not a fee simple estate. On cross-examination, Manternach admitted that a potential buyer would evaluate the future market rents, but that he did not specifically consider departing tenants in developing his fee simple value.

To complete the income approach, Manternach surveyed multi-state anchor store rental rates. He examined leases for medium to large community shopping centers. (Ex. A, p. 71). Based on a survey of fifty Dillard's stores, he found Dillard's rents ranged from $2.50 to $6.00 per-square-foot, with a median of $3.35 per-square-foot. In Younkers' fifty-store survey, rents ranged from $2.00 to $4.00 per-square-foot. He estimated the market rent for the anchor space at $2.40 per-square-foot.

For the non-anchor spaces, he evaluated existing leases and estimated market rent by the size of tenant space and ranked the spaces in six categories. (Ex. A, p. 75). The rents included base rent and common area maintenance (CAM) reimbursements. These figures excluded additional percentage rents. Additional percentage rents ranged from $146,000 in 2010 to roughly $182,000 in 2012 depending on lease provisions and tenant mix. (Ex. A, p. 66). His conclusions are as follows.

Tenant Area	Square Feet	Market Rent S/F
Anchor Stores	209,439	$ 2.40
Major Tenants (10k–25k)	90,300	$10.00
Tenants (3k–10k)	112,807	$16.00
Tenants (1k-3k)	39,976	$27.00
Tenants (>1000 sf)	7,972	$32.00
Outlot Buildings	43,597	$11.00

He summarizes his analysis in the reconstructed operating statement applying a 20% vacancy/collection loss, recognizing the current 16% was likely to increase during

2013, and determines a net operating income (NOI) of $3,216,677. (Ex. A, p. 79). We note that his estimates included rental income, expenses, and occupancy for approximately 28,000 square feet in two parcels (Pier 1 & Gold's Gym), which were not part of this appeal, and the 16,000 square-foot Scheels' space vacated near the assessment date.

Lastly, he develops a loaded capitalization rate of 13.43% based on comparable mall sales, mortgage equity rates, and industry survey/bulletin data. Manternach determined an opinion of value by the income approach of $23,950,000 and with additional excess land value of $250,000, a total of $24,200,000. (Ex. A, p. 82).

Manternach reported the cost approach is generally most reliable when there are good indications of land value and the improvements suffer from minimal accrued depreciation. In this case, he determined the improvements suffered from substantial amounts of accrued depreciation; therefore, this approach was given less consideration than the income approach. In his opinion, the income approach is most reliable when there are good indications of market rent, expenses, and overall capitalization rate. Ultimately, he gave the cost to value some consideration, but felt the income approach was the most applicable and reconciled an opinion of $24,300,000 for the subject property, as of January 1, 2013. (Ex. A, p. 83).

Conclusions of 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).

General Principles of Law Applicable to Assessment of Real Property

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a) and (1)(b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer v. Floyd County 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." *Id.* Conversely, "sale prices of property in abnormal 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." *Id.* The sales-comparison method is the preferred method for valuing property under Iowa law. *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 398 (Iowa 2009); *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). "[A]lternative methods to the comparable sales approach to valuation of property cannot be used when *adequate* evidence of comparable sales is available to *readily* establish market value by that method." *Compiano*, 771 N.W.2d at 398 (emphasis added).

However, where the market value of the property cannot be *readily* established using comparable sales, one can turn to other factors to determine the value. § 441.21(1)(b) (emphasis added); *Soifer*, 759 N.W.2d at 779. "Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding." *Id*. (citing *Soifer*, 759 N.W.2d, at 782); *Carlon Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997).

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).

Claim of Over-Assessment

To prevail on a claim that an assessment is for more than authorized by section 441.21(1), the law requires two showings. *Heritage Cablevision*, 457 N.W.2d at 597. First, the record must show the property is over assessed; and second, what the fair market value of the property should be. *Id*.; *Boekeloo*, 529 N.W.2d at 276-277. If PAAB "determines the grounds of protest have been established, it must then determine the value or correct assessment of the property." *Compiano*, 771 N.W.2d at 397. Here, PAAB "makes its independent determination of the value based on all the evidence." *Id*.

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*, 771 N.W.2d at 396. 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 shifts to the board of review to uphold the assessed value." *Id*. at 396-397; § 441.21(3). Failure to shift the burden of proof is not equivalent to failing to satisfy the burden of proof. *Id*. 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.

In this case, Crossroads only submitted one appraisal of the subject property and therefore did not shift the burden of proof. We must, therefore, determine whether a preponderance of the evidence shows the subject property is over-assessed.

Appraisers' Opinions of Market Value

Both appraisals conclude opinions of value that are less than the subject property's current assessment and, accordingly, we find the preponderance of the evidence demonstrates the property is over-assessed.

Sales Comparison Approach

Frandson was the only appraiser to develop the sales comparison approach. However, the sales he selected were not adjusted to account for the bankruptcy and REO sale conditions, which weakened the reliability of his value conclusion. Despite Crossroads' assertion that the conditions did not warrant adjustments, both distressed sale comparables had prior sales histories in which the properties sold for significantly higher amounts. This suggests that the distressed sale condition may have had a negative impact on the recent sales and would require some adjustment. We are not persuaded by Frandson's explanation that the sales required no adjustments for the distressed sale condition simply because they were professionally marketed. Further, Frandson was unable to adequately explain his diligence in researching these sales conditions and admitted the individuals involved with these sales may not have had a clear recollection of the circumstances.

Rather than fully develop the sales approach, Manternach testified that he determined the sales he found would require adjustments that were too significant to account for differences between them and the subject property. Thus, he concluded any value determined using this approach suspect.

Given the deficiencies in the evidence, we give no consideration to Frandson's sales comparison approach. Because of the lack of reliable sales data in the record, we find the fair market value of the subject parcel cannot be readily established by the sales comparison approach alone. Therefore, we consider the appraiser's remaining valuation approaches.

Income Approach

Both appraisers developed the income approach and came to divergent conclusions.

At the outset, we give no consideration to Frandson's "as-is" Income Approach by the discounted cash flow analysis. First, in determining a reversion value, he partly relies on his sales comparison approach. As already discussed, we find issues with his sales comparison approach that make it unreliable. He also considers his stabilized income approach that, as will be discussed, we find undervalues the subject property.

Second, Iowa law has a preference for valuing property based on existing market conditions. As such, we question Frandson's premise of valuing the subject essentially based on his judgment about future events and market conditions that may or may not come to pass. His appraisal discusses the importance of estimating the yield rate (discount rate) in a discounted cash flow analysis to convert future cash flows into present value and the numerous factors that an appraiser must consider. (Ex. 4, p. 102). Yet, neither his testimony nor his appraisal provides any detail to demonstrate the adequacy of his research, expertise, or analysis concerning the yield rate he ultimately applied. Even if we might give some consideration to the premise of Frandson's "as-is" valuation approach, his testimony and report lack sufficient details to persuade us that his conclusions are reliable. Given the opinions of value in the record that are supported by existing market data, we decline to give any consideration to Frandson's "as-is" Income Approach conclusions.

In his "stabilized" income approach to value, Frandson relied, in part, on recent leases entered into by Crossroads to determine market rent. (Ex. 4, pp. 83, 85-87).

Tenant Area	Recent Lease Data (PSF)	Estimated Market Rent S/F
<u>Anchor Stores</u> JC Penney Younkers	Base lease rates range: $2.27 to $4.56 (Gross)	 $1.00 $1.00
Major Tenants (> 10,000 sf)[2]	Range: $2.11 to $24.46 Median: $3.90 Average: $10.16	$8.00
Tenants (5000 to10,000 sf)	Range: $10.65 to $35 Average: $22.83	$12.00
Tenants (2500 to 5000 sf)	Range: $5.30 to $50.75 Median: $15.54 Average: $17.96	$15.00
Tenants (>2500 sf)	Range: $7.21 to $29.56 Median: $14.72 Average: $17.37	$20.00
<u>Outlot Buildings</u> Applebees Tires Plus	No data Range: $13.50 to $37.34 $15.81 to $19.62	$40,000 per year $30.00 $14.00

Frandson also looked at in-line rental rates at Merle Hay Mall in Des Moines. He found that "most of their recent national/regional in-line shop space leasing has been $15 to $10 per SF net." (Ex. 4, p. 83). He compared this with the average net rent of $21.09 per square foot of GLA for enclosed shopping center retail space. (Ex. 4, p. 85).

In terms of anchor space, Frandson found "the average net rent for mall owned department stores surveyed in the Midwest region, is $3.36 per square foot of GLA." (Ex. 4, p. 86). In the Midwest region, surveyed mall department stores showed average sales of $164.79 per SF of GLA, with the lowest 10th percentile showing sales of $98.54. Because the subject mall's department store sales fall below $100 per SF, Frandson opines that the anchor space market rent would also be correspondingly reduced below the average.

Manternach appears to have primarily relied on the actual lease rates to estimate the market rents for the non-anchor spaces. To estimate the market rent for the anchor space, Manternach examined Dillard's and Younkers lease data, anchor department

[2] Because of a lack of recent lease data, these figures are based on the actual rents in place as of January 1, 2013, as listed in Frandson's appraisal. (Ex. 4, p. 82).

store leases, and leases for medium/large community shopping center rentals. Approximately fifty Dillard's leases showed a pattern of rents between $2.50 and $6.00 per-square-foot, with an average of $3.35 per-square-foot. (Ex. A, p. 68). A similar number of Younkers leases showed rents between $2.00 and $4.00 per-square-foot. (Ex. A, p. 68). Although quite dated, Manternach's anchor department store leases indicated rents from $1.80 to $5.96. (Ex. A, pp. 68-69). Lastly, the shopping center rentals indicated lease rates for new buildings from $6.00 to $12.00 per-square-foot. Older store buildings showed lease rates from $3.00 to $8.50 per-square-foot.

Manternach estimated market rents as follows. (Ex. A, p. 74).

Tenant Area	**Base Market Rent PSF**
Anchor Stores	$2.40
Major Tenants (10,000 to 25,000 sf)	$10
Tenants (3000 to10,000 sf)	$16
Tenants (1000 to 3000 sf)	$27
Tenants (>1000 sf)	$32
Outlot Buildings	$11

Based on the foregoing, we find sufficient market data to support Frandson's conclusions for the in-line store (non-anchor space) and outbuilding market rents. However, we find Manternach's anchor tenant rents more accurately reflect the market. Substituting Manternach's anchor tenant rents into Frandson's direct capitalization method, the subject's net operating income is approximately $2,538,614.

Manternach considered the capitalization rates extracted from three retail center sales in his income approach. We note that the lowest capitalization rate of the three sales was for an open mall unlike the subject mall and included his distressed sales. He also considered the Investment Bulletin for retail properties, and Price Waterhouse Survey for malls, as well as, a mortgage equity model in determining a 9.5% capitalization rate (before tax constant).

Frandson uses the three sales from his sales approach and a mortgage equity model in determining a 12.50% capitalization rate (before tax constant) commenting that

a higher rate was warranted because Crossroads was a declining mall. We again note that two of Frandson's comparables sales were distressed, and we question their use in determining a capitalization rate.

Manternach used recognized market sources in determining his capitalization rate. Frandson's perspective tends be influenced by predictions of Crossroad's increased vacancy, reduced rental rates, and future general retail market decline. Overall, we find Manternach's methodology focused on present mall conditions and we find his capitalization rate is the most reliable. Applying his loaded capitalization rate of 13.43% to the net operating income shown above indicates a value for the subject of approximately $18,902,500.

Cost Approach

Manternach's estimated value by the cost approach was $24,930,000, including two parcels not included in this appeal. Manternach noted the property suffered substantial depreciation and gave this approach less weight than his income approach. His appraisal notes that his accrued depreciation is supported by his income approach. (Ex. A, p. 60). As discussed, however, we find his income approach somewhat overvalues the subject property and suggests his depreciation estimate may be too low. Like Manternach, we give this approach less weight.

For the foregoing reasons, this Board finds GG and A Crossroads Center, LP's property is over-assessed. Further, we find the evidence demonstrates the subject's fair market value is $18,902,500.

Order

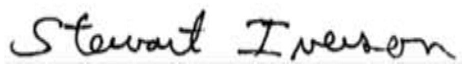
IT IS THEREFORE ORDERED that the Black Hawk County Board of Review's action is modified and GG and A Crossroads Center, LP's property assessment is $18,902,500 as of January 1, 2013.

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.

Dated this 16th day of October, 2015.

Jacqueline Rypma, Presiding Officer



Stewart Iverson, Board Chair

Karen Oberman, Board Member

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