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IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

KOHL'S DEPARTMENT STORES, INC., Plaintiff, vs. DALLAS COUNTY BOARD OF REVIEW, Defendant.	**CASE NO. EQCV038376** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On June 25, 26, 27 and July 30, 2014, a contested trial was held on the assessment appeal of the January 1, 2013 assessment by Kohl's Department Stores, Inc. (hereafter "Kohl's") of its big box retail store located at 6515 Mills Civic Parkway in West Des Moines, Iowa (hereafter the "subject property"). Kohl's was represented at trial by Thomas R. Wilhelmy of the law firm Fredrikson & Byron, P.A., who was admitted *pro hac vice* to appear before the Iowa District Court. The Dallas County Board of Review (hereafter the "BOR") was represented by Brett Ryan of the law firm Watson & Ryan, P.L.C.

Findings of Fact

This case is a property tax appeal taken by the plaintiff, and involves a Kohl's retail store located in the Jordan Creek area of West Des Moines, Iowa, owned by the taxpayer, and fully described in the taxpayer's Petition to the Court. The subject property consists of a freestanding 89,528 square foot retail department store building constructed in 2008, which sits on a 9.88 acre lot. As of January 1, 2013, the assessed value for the property is

$8,357,450.00. The taxpayer claims that the fair market value of its real property is lower than the assessed amount.

Kohl's purchased the 9.88 acre bare ground lot on August 1, 2007 for $3,505,055.00. Kohl's constructed a retail store with a LEED Certification (a certification a building can earn by meeting certain environmental requirements in the construction of the property) designating it as a "green" building. Kohl's total actual cost to acquire the property and construct the improvements was $9,070,000.

Kohl's claims that its assessment is more than market value, and provided evidence which consisted of two appraisers, Dane R. Anderson, MAI, CCIM, of Real Estate Research Corporation ("RERC") and Kyran "Casey" Cook, MAI, M.A., of Cook Appraisal, and the testimony of Scott Schnuckel, a Kohl's employee. Mr. Cook's testimony was that the property's value was between $7,290,000 and $7,390,000. Mr. Anderson's opinion of value was $6,000,000. The Board provided evidence of two appraisers, Ranney Ramsey, of Nelson Appraisal Associates, Inc., and Mark Nelson of Roy R. Fisher, Inc., and the testimony of Catherine Creighton, the deputy assessor of Dallas County. Mr. Ramsey's appraisal indicated a market value for the property of $8,400,000, and Mr. Nelson appraised the subject property at $8,250,000.

The original assessed value of the subject property as well as the experts' various opinions of value under the three traditional approaches to value and their final opinions in their appraisal reports are summarized in the chart below.

	Original Assessed Value	Sales Comparison Approach	Cost Approach	Income Capitalization Approach	Final Opinion of Market Value
Jan. 1, 2013	$8,357,450				
Dane Anderson		$5,820,000	$6,090,000	$6,120,000	$6,000,000
Kyran Cook		$7,030,000	$7,660,000	$7,220,000	$7,190,000
Mark Nelson		$8,185,000	$12,865,000	$8,145,000	$8,250,000
Ranney Ramsey		$8,400,000	$8,350,000	$8,350,000	$8,400,000

Dane Anderson's appraisal valued the subject property at $6,000,000, by far the lowest opinion of value among the appraisers. Mr. Anderson performed and relied primarily upon the sales comparison approach in reaching his conclusion of value. Unlike the other appraisers, however, Mr. Anderson made only "mental adjustments" to account for differences in size and location between his comparable sales and the subject property. Mr. Anderson acknowledged in his report that his comps were all inferior in location and two of the four were inferior in size; however, he made no quantifiable adjustments that translate into specific dollar amounts so that the Court could consider these adjustments without further evidence.

Anderson also valued the property using the cost approach to value. When formulating the cost of the bare ground for the subject property, Anderson was the only appraiser that didn't use bare ground sales in the Jordan Creek area in his analysis. Anderson's cost approach differs from the other appraisers as he assigns economic obsolescence of 67% to the subject property. Anderson testified that economic obsolescence

is obsolescence that occurs from forces outside the property, in the external market, and that a retail building like the subject property in the Jordan Creek area would lose over two-thirds of its value as soon as construction was finished due to economic obsolescence. Anderson's explanation for this reduction in value for a brand-new property was because no one builds big-box retail stores speculatively.

Anderson submitted an identical analysis which rejected his comparable sales as not reflective of the value to the current owner because of their second-generation and change-of-use status. He rejected the income approach because his comparable rents were of similar nature to his comparable sales and called his cost approach analysis "nearly inconceivable."

Kohl's other appraiser, Casey Cook, stated that it was his opinion that the subject property was worth $7,190,000. However, during his testimony, Mr. Cook admitted that his report contained an error and he omitted about $800,000 in construction costs that would raise his final cost approach opinion of value between $300,000 and $400,000, and would raise his overall opinion of value by $100,000-$200,000. As such, Mr. Cook testified his opinion of value is between $7,290,000 and $7,390,000.

Like all the appraisers, Mr. Cook performed and relied primarily upon the sales comparison approach in reaching his conclusion of value, as required by Iowa Code §441.21. Mr. Cook's first comparable sale is a former Wal-Mart in Ames which was constructed in 1984. This sale was not an arm's length transaction. The purchaser, Benedict Silverman, was also an owner and member of the seller, the Silverman-Gaymark Limited Liability Company. Mr. Cook testified that "Benedict Silverman was on both sides of this deal" (109:21) and that "it's not a purely arm's length transaction" (110:13). Mr. Cook made no adjustment to

account for this fact and states that he "treated this as an arm's length sale" (109:23). Further, Mr. Cook acknowledged that he didn't know if the purchase was for 100% interest in the property (111: 12-20).

Cook's second and third comparables are the Kohl's properties in Cedar Falls and Fort Dodge. Mr. Cook testified that the Cedar Falls sale was his most comparable sale, having an adjusted sale price the same as the actual sale price of $91.41 per square foot. Mr. Cook stated that both Kohl's properties he used as comparable sales were subject to a below-market lease, and that such a lease would reduce the sale price. Cook did not, however, make any adjustment in his analysis to account for this factor that he lowered the sale price. Mr. Cook made no location adjustment for either the Fort Dodge or Cedar Falls locations.

Cook's fourth comparable sale is of a Cub Foods store in Iowa City to Wal-Mart, the adjoining landowner, who subsequently tore down all improvements and constructed a new Wal-Mart store on the property. Cook acknowledged that the purchaser would not care about the condition or state of any improvements in this sale, and that the sale price was only 66% higher than the price of bare ground in the area. Mr. Cook did not know whether any of the furniture, fixtures, or equipment, including the heating and cooling system, or the freezer and refrigeration system was included in the sale, or what happened to any of this type of property ordinarily included in a building sale. The only adjustment this property received was a 10% adjustment for age and condition.

Cook's final comparable sale is of the Lowe's store in Burlington. This property sold twice in the same day, but Mr. Cook chose to use the lower, older sale amount in his sales comparison approach. There was no reason given for selecting the older sale that was

$887,000 lower. Kohl's other appraiser, Mr. Anderson, used the same comparable, but used the newer, higher sale amount, and testified that the second sale was better for determining market value for the subject property. It should be noted that Mr. Cook's sales comparison analysis had exactly one adjustment for location differences between his comparables and the subject, a 7% upward adjustment comparing Burlington, Iowa to the Jordan Creek area of West Des Moines. No location adjustment was made for Ames, Cedar Falls, Fort Dodge, or Iowa City. When asked why that was the case, as every other appraiser acknowledged that Jordan Creek was the superior location, Mr. Cook repeatedly stated that his decision was based upon the information and guidance he received from Kohl's regarding their retail sales per square foot to determine location adjustments. This decision was made despite Cook's research showing that prices for retail lots in Jordan Creek was more than double the price of the same ground in Fort Dodge. Cook testified that Burlington bare ground sales were, again, roughly half of his determined price for bare ground in Jordan Creek, yet his Burlington sale received a 7% location adjustment. Cook testified that Iowa City bare land sales were 27% lower than Mr. Cook's indicated price for bare ground in Jordan Creek, but made no location adjustment to his Iowa City sale. Cook testified that the retail sales per square foot data he received from Kohl's was the reason for these lack of location adjustments.

Mr. Cook also valued the property using the cost approach. Cook erroneously testified that the subject property was not LEED certified, and characterized the property as having average energy efficiency when calculating its value. All other witnesses agreed that a LEED-certified building is significantly more energy efficient, and costs more to build.

Cook's comparable unimproved land sales done for the cost approach include no sales of land in Jordan Creek, Des Moines, or in Dallas County.

As set forth above, Mr. Cook omitted $800,000 in materials in his cost approach, resulting in what he called $300,000-$400,000 understatement of value. However, to get to that figure, he had to depreciate the $800,000 in omitted expenses by 66%. In contrast, in the cost report in his appraisal, he depreciated all the other non-omitted improvements by only 28.57%. If the omitted $800,000 were depreciated at the same rate as he did the other assets in his report, it would raise his cost approach by $571,440.

Scott Schnuckel also testified on behalf of Kohl's. Mr. Schnuckel is a Kohl's employee who is not an appraiser but presented arguments of the value of the property based upon retail sales per square foot and by comparing the current assessment with the assessed values of other Kohl's stores in other jurisdictions. Mr. Schnuckel testified as to how the property should be classified under the Marshall Valuation Service guide.

Mr. Schnuckel testified that the subject property's physical improvements were "almost exactly the same" as the other Kohl's stores located in Iowa, and erroneously testified that the subject property was not LEED certified. Schnuckel did agree that a LEED certification increases construction costs and physical characteristics of a property. Mr. Schnuckel demonstrated a lack of knowledge about the other Kohl's properties he was comparing to the subject property. He didn't know if the Kohl's on Merle Hay Road in Des Moines was a first- or second-generation user of the property. He didn't know about the vacancies surrounding the Cedar Falls Kohl's, noting that the property was "not one I've done a lot of research on."

The Board's first appraiser, Ranney Ramsey, testified that the value of the subject property was $8,400,000. Like all the other appraisers, Mr. Ramsey performed and relied primarily on the comparable sales approach to value. Mr. Ramsey's sales comparison approach used seven comparables. Only one of Ramsey's comparables was vacant at the time of sale, and this same sale (comparable no. 1) was the only one that changed use, from a grocery store to a discount retail store. The remaining six comparable sales were occupied at the time of sale, and continued in use as big-box retail stores. None of Mr. Ramsey's comparables were sales to adjoining landowners, sales between related parties, and all of Mr. Ramsey's adjustments were quantifiable.

Mr. Ramsey made adjustments for the location difference between the subject and his comparables, reflecting a superior location for the subject. This is consistent with Ramsey's testimony that the Jordan Creek area is the "A plus" location for retail for Des Moines and Iowa. Mr. Ramsey testified that the Jordan Creek area was "without question" superior to the location of the Cedar Falls College Square Kohl's store, citing to poorer demographics and a location next to a collapsing mall with an oversupply of vacant retail space and low occupancy.

Mr. Ramsey also performed cost and income approaches to value, relying upon both local market data and an occupancy cost analysis. These approaches to value were not given significant weight by Ramsey, who relied primarily upon the sales comparison approach to value. These approaches do support and confirm the conclusions reached by Ramsey in the sales comparison approach and in his overall conclusion of value.

The Board's other appraiser, Mark Nelson, also based his conclusion of value

primarily on the sales comparison approach, and reached an opinion of value of $8,250,000 for the subject property. Mr. Nelson used eight comparable sales, five of which were sales of Kohl's stores, including the Cedar Falls sale discussed above. None of Mr. Nelson's comparables were sales to adjoining landowners or sales between related parties, and all of Mr. Nelson's adjustments were quantified.

Mr. Nelson, like every appraiser other than Casey Cook, determined the location of the subject in the Jordan Creek area was superior to the other Iowa comparable sales. Mr. Nelson testified that Jordan Creek is a market of significant growth, with no evidence of external obsolescence, and the use of retail sales per square foot to value the property would be improper, as it includes a business value in the appraisal. To include retail sales per square foot in the analysis would be "a comparison of the business performance of specific stores that is not ideally or even reasonably relevant to the value of the underlying real estate." The undisputed evidence was that retail sales taxes are increasing at over five percent a year from 2009-2013 for apparel stores in Dallas County, and that the Jordan Creek area is the retail center for Dallas County.

Mr. Nelson also did an income approach testifying that his lease analysis focused on a first-generation, rather than a second-generation user, because the subject is a first-generation property, and second-generation properties have a completely different dynamic. This approach was not given significant weight, but supports the overall conclusion of value.

Mr. Nelson's cost approach is a statistical outlier, coming in at $12,000,000, and not supporting his conclusion of value. Mr. Nelson stated this result was because he calculated the replacement cost as the property was a department store, rather than discount store,

causing a higher base price. Mr. Nelson testified he did this because of the overbuilt status of the property, due to the LEED certification as well as the architectural requirements imposed by the City. This results in a cost approach that is significantly different than the other analyses. Mr. Nelson testified that he gave this approach to value very little weight, relying primarily on the sales comparison approach.

Catherine Creighton, the deputy county assessor, testified for the Board. Ms. Creighton testified that the Jordan Creek area is the "biggest booming area" in Dallas County. Creighton testified that there was and is significant new development in the Jordan Creek area during the time frame relevant to the assessment. Specifically, Creighton referenced both residential and commercial development, including five apartment complexes with 150 to 300 units each, several new big-box retailers, including a Dick's Sporting Goods, a Nordstrom's Rack, a Home Goods store, Ethan Allen, an Aldi grocery store, a Firestone Tire, and a Goodwill center. Wells Fargo is adding to its corporate headquarters in the area with a $100 million expansion, transferring additional workers to the area. Two new hotels, a restaurant, and a Party City have also developed in the immediate area.

Creighton's evidence, coupled with the testimony of all of the appraisers other than Casey Cook, lead the Court to conclude that the Jordan Creek area is superior to any of the other areas in Iowa that were examined as evidence presented in this case. The development, demographics, and evidence clearly support the conclusion that the Jordan Creek area is superior to other retail areas in Iowa, often significantly so.

Conclusions of Law

In a taxpayer's appeal of a Board of Review decision to the District Court, the Trial Court is not an independent assessing tribunal, but rather only considers grounds of protest urged before the Board. *Eagle Food Centers, Inc. v. Board of Review of the City of Davenport*, 497 N.W.2d 860, 863 (Iowa 1993); *Equitable Life Insurance Company v. Board of Review*, 281 N.W.2d 821 (Iowa 1979). The lone issue before the Court on this appeal is whether the assessed value of the taxpayer's property is in excess of the fair market value.

A necessary requirement to a taxpayer's prima facie case is that the testimony be competent. Iowa Code §441.21(3). Although the word "competent" is not defined in the statute, the Iowa Supreme Court has interpreted the competency requirement to mean that the "witnesses must comply with the statutory scheme for property valuation for tax assessment purposes." *Boekeloo v. Board of Review of the City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995). Where the ground for protest is that the assessment is in excess of the value authorized by law, the witness must use the assessment methods as prescribed by law. *Ross v. Board of Review of the City of Iowa City*, 417 N.W.2d 462, 465 (Iowa 1988).

In determining the assessed value of the subject property, §441.21(1) requires that the "sale prices" or "comparable sales" approach be used. If this valuation method is not available due to the lack of sales of comparable properties, only then should the other appraisal methods and factors listed in Section 441.21(2) be used. The testimony of a witness who does not follow the established criteria for valuing property set forth in Iowa law that is appropriate for the specific property is incompetent, and cannot be considered in reaching a conclusion. *See*, *Ross*, 417 N.W.2d at 465; *Boekeloo*, 529 N.W.2d at 280 (testimony of real estate agents was

not competent, because they did not attempt to calculate the value of the property under the prescribed methods); *Dowden v. Dickinson County Board of Review*¸ 338 N.W.2d 719,723 (Iowa App. 1983). The Court finds that there are sufficient comparable sales to value this property, and will be relying upon the sales comparison approach to value the subject property in this matter. *Compiano v. Polk County Board of Review*, 771 N.W. 2d 392, 398 (Iowa 2009).

Kohl's evidence of value consisted of the appraisals of Casey Cook and Dane Anderson, and lay witness Scott Schnuckel. Mr. Schnuckel's testimony was not based upon a comparable sales analysis, but rather comparing assessed values across Kohl's stores with the retail sales per square foot information. This is neither a recognized appraisal practice nor a method of valuation recognized by Iowa law. Further, Mr. Schnuckel's testimony showed that he had limited knowledge of both the subject property and the other Kohl's stores he was comparing it to. As such, Mr. Schnuckel's testimony is not considered competent, and given no weight by this Court.

Dane Anderson's opinion of value relied primarily upon the sales comparison approach. This analysis, however, did not include quantified adjustments to account for what Mr. Anderson recognized was an inferior location for each of his comparable sales. Mr. Anderson, rather than making specific adjustments that could be seen, quantified, and translated into specific price adjustments, made what he called "mental adjustments" to account for the differences in location between his comparables and the subject property.

Iowa Code § 441.21(1)(*b*) requires adjustments to comparable sales to account for the differences between the subject property and the comparable. Iowa Courts have repeatedly and

consistently stated that when a property is valued using the sales comparison approach, it is required that the appraiser show specific quantifiable adjustments. If the "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." *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009); *Bartlett & Company Grain v. Board of Review of Sioux City,* 253 N.W. 2d 86, 94 (Iowa 1977) (rejecting comparability of property that differed from subject property "because of insufficient evidence to enable us to translate that difference into dollars of value").

In *Dowden v. Dickinson Cnty., Iowa, Bd. of Review*, 338 N.W.2d 719, 721 (Iowa Ct. App. 1983), the Court cited and relied upon the *Bartlett* decision, and rejected as incompetent evidence the appraisal of one of the Dickinson County Board of Review's experts, because he "made a mental adjustment without disclosing any specific dollar amount or percentage for the claimed adjustments." *Id.* Specifically, the Court stated:

> [The Dickinson County appraiser] testified that, in considering various allegedly comparable sales, **they made "mental adjustments**" for certain abnormal factors such as the fact that one such sale involved an employer-employee relationship. **They were, however, unable to translate those differences into specific dollar amounts such that neither we nor the trial court could make the necessary adjustments without further evidence. Under these circumstances, we do not consider the Board's valuations by comparable sales**.

Id. (emphasis added)*., Citing, Bartlett & Company Grain v. Board of Review of Sioux City,* 253 N.W. 2d 86, 94 (Iowa 1977).

In performing his sales approach, Mr. Anderson, like the appraisers in the *Dickinson* case, made only "mental adjustments" to account for differences in size and location between his comparable sales and the subject property. Mr. Anderson acknowledged in his report that his comps were all inferior in location and two of the four were inferior in size. Mr. Anderson said he made qualitative adjustments, but he did not translate these adjustments into specific dollar amounts so that the Court could make the necessary adjustments without further evidence. As such, Mr. Anderson's appraisal fails to comply with Iowa law, and is not competent evidence of value.

Kohl's argued at trial that quantifiable adjustments are not required unless the adjustment is for something specifically enumerated in Iowa Code §441.21. This is incorrect. First, the list of distorting factors in the code clearly lists the distorting factors immediately preceded by "including but not limited to." §441.21(1)(b)(1). Second, the Iowa Supreme Court has clearly stated that if the "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." *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009) (emphasis added). It is clear quantifiable adjustments are required under Iowa law to account for the differences between the subject property and the comparable sale. It is equally clear that Anderson failed to do so.

Even if the Court finds that Anderson's appraisal report meets the standard for competent evidence, the credibility of it as evidence remains suspect. Iowa law discourages the use of vacant comparable sales and second-generation/change in use comparable sales, and

requires an adjustment to account for these factors. *See, e.g., Wetlaufer v. Fayette Cnty. Bd. of Review*, 764 N.W.2d 783 (Iowa Ct. App. 2009) (rejected an expert's opinion, in part because he didn't account for repairs made after the sale on one comparable and failed to account for a change in usage of another). In *Hy-Vee, Inc. v. Dallas Cnty. Bd. of Review*, 856 N.W.2d 383 (Iowa Ct. App. 2014), the Court preferred sales of occupied properties as comparisons because they were more representative of the occupied subject property's value than vacant properties. In *Hy-Vee Food Stores, Inc. v. Carroll Cnty. Bd. of Review*, 840 N.W.2d 726 (Iowa Ct. App. 2013), the Court directly cited to the testimony of Kohl's other appraiser, Casey Cook, saying it is "reasonable to expect an occupied building to sell for more than a vacant building" and avoiding vacant comparable sales is appropriate when the subject is currently occupied and is fully utilized by the occupants. *Id.*

Iowa law requires that comparable sales be sufficiently similar in their characteristics and sale conditions to compare to the subject, and the comparable sales must be adjusted to account for differences between the comparable properties and the subject. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). An examination of Anderson's comparable sales shows he failed to meet these requirements. Anderson's analysis selected sales of vacated big-box stores previously occupied by Wal-Mart or a grocery store that were changed in use by the buyer. The properties are 12 years, 23 years, 19 years, and 28 years older than the subject, respectively. Further, Mr. Anderson was the only appraiser that didn't use the comparable sale of the Kohl's store in Cedar Falls, Iowa. Anderson's selection of inferior comparable properties, the lack of adjustment to adequately account for their vacancy, change

in use, inferior condition and location make it difficult to accept Mr. Anderson's opinion of value as credible. The selection of these sales reflects the value of the property to a secondary tenant rather than a primary tenant such as Kohl's.

Anderson's credibility also suffers when his cost approach to value is considered. Anderson's appraisal applied 67% external obsolescence, and he testified that any retail property in Jordan Creek would be worth less than a third of its construction cost immediately after completion. Anderson asserts this is due to the subject's building size, and because big-box use is not feasible for speculative development purposes. While big-box properties like the subject are rarely, if ever, built on speculation, this Court cannot adopt Anderson's conclusion because it is nearly inconceivable that a property owner would build this type of property knowing that it is almost completely obsolete upon construction. For these reasons, the Court finds that Anderson's opinion does not represent the actual value of the subject property as required by Iowa law, and it is given no consideration.

Casey Cook performed and relied primarily upon the sales comparison approach in reaching his conclusion of value. Iowa Code §441.21 provides a non-comprehensive list of factors which distort value and must be accounted for in any sales comparison approach. Prominently featured in this list are sales between related parties, and sales to adjoining landowners. Mr. Cook's appraisal shows that he did not account for these statutory requirements.

Mr. Cook's first comparable sale is a former Wal-Mart in Ames which was purchased by Benedict Silverman, who was an owner and member of the seller, the Silverman-Gaymark

Limited Liability Company. Mr. Cook admitted that "Benedict Silverman was on both sides of this deal," that "it's not a purely arm's length transaction." Mr. Cook made no adjustment to account for this fact and testified that he treated this as an arm's length sale. Further, Mr. Cook acknowledged that he didn't even know if the purchase was for 100% interest in the property.

Dowden v. Dickinson County Board of Review, 338 N.W.2d 719,723 (Iowa App. 1983) identified a sale between an employer-employee as a "distorting factor." Iowa Code §441.21 identifies "sales to immediate family" as a distorting factor that mandates an adjustment. Failure to account for a distorting factor in a sale renders the opinion of value based upon that sale incompetent. *See, e.g., Wetlaufer v. Fayette Cnty. Bd. of Review*, 764 N.W.2d 783 (Iowa Ct. App. 2009) (District Court's reliance on appraisals containing distorting factors that were not accounted for was reversible error).

Similarly, Cook's comparable No. 3 was Cub Foods store in Iowa City that sold to Wal-Mart, the adjoining landowner, who subsequently tore down all improvements and constructed a new Wal-Mart store on the property. Iowa Code §441.21 specifically identifies a sale as a comparable sale as a sale to an adjoining landowner for property that is to be operated as a unit as a "distorting factor" and mandates an adjustment if such a sale is used to value property. That is precisely the situation present with this comparable, yet Mr. Cook made no adjustment. This makes his opinion of value incompetent evidence of value under Iowa law. *See, e.g., Wetlaufer v. Fayette Cnty. Bd. of Review*, 764 N.W.2d 783 (Iowa Ct. App. 2009).

Mr. Cook's failure to adjust for the differences between his comparable properties and the subject renders his opinion of value suspect. Mr. Cook acknowledged that both of the

Kohl's properties he used as comparables were subject to below-market leases, and that such a lease would reduce the sale price of a property. Cook did not, however, make any adjustment to either of these sales to account for this factor that clearly affected the sale price and represents a difference between the subject property and the comparable sales. These differences, unaccounted for, negatively affect Cook's credibility when considering his report. *Crozier v. Iowa-Ill. Gas & Elec. Co.,* 165 N.W.2d 833, 834 (Iowa 1969).

Mr. Cook's sales comparison analysis had no location adjustments for his sales in Ames, Cedar Falls, Fort Dodge, or Iowa City. When asked why that was the case, as every other appraiser acknowledged that Jordan Creek was the superior location when compared with these others, Mr. Cook testified that his decision was based upon the information and guidance he received from Kohl's regarding their retail sales per square foot to determine location adjustments. This decision further harms the credibility of Cook's report. Evidence showed that Cook had knowledge of the fact that the bare ground price for the areas of his comparable sales was significantly lower than the bare ground prices in Jordan Creek. Cook ignored the evidence, relying upon Kohl's retail sales per square foot data exclusively, and made no location adjustment.

Kohl's other appraiser, Dane Anderson, acknowledged the superior location of Jordan Creek in his appraisal, and testified that when talking about assessed value, it would be improper to base a value on retail sales per square foot, because in doing so you would start considering "going concern value," which isn't appropriate. Iowa Code §441.21 states, in part, that when valuing property, "The following shall not be taken into consideration: Special value

or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property." Reduction of value based upon retail sales per square foot does just that.

The argument that the value of the subject property should be reduced based upon a lower retail sales per square foot analysis is the same argument rejected by the Iowa Supreme Court in *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 424 (Iowa 1997). The taxpayer in *Merle Hay* was arguing that the assessor had included business value in arriving at the assessment, and that in doing so had over assessed their property. *Id*. After finding the assessment did not contain a business value component, the Court said that although the assessed value can consider certain intangibles in arriving at the actual value of the property, it must expressly exclude factors specifically identified in Iowa Code §441.21(2), which prohibits the assessed value from considering "the good will or value of a business which uses the property as distinguished from the value of the property as property." *Id.*

Kohl's asks the Court to lower its assessed value because its business is not performing as well as they hoped. Iowa law is clear on this point. A positive going concern or business valuation cannot be used to raise an assessed value, neither can a poor-going concern or business valuation be used to lower an assessment.

Mr. Cook's opinion of value is incompetent because it doesn't comply with the statutory requirement that factors which distorted market value must be adjusted. He failed to do so on what he acknowledged was a sale which was not arm's length, and another sale that

was to an adjoining landowner. These factors in and of themselves render his opinion of value incompetent.

Further, Cook failed to account for the superior qualities of the subject property, particularly its location. His lack of location adjustments ignores evidence other than the Kohl's supplied data regarding retail sales per square foot. Not only does this practice not comply with Iowa law or good appraisal practice, it shows a lack of independence that causes the Court to give no weight to his testimony or evidence.

Ranney Ramsey's opinion value based primarily on the sales comparison approach for the subject property was $8,400,000. Mr. Ramsey's sales comparison approach used seven comparables, and unlike Kohl's appraisers, only one of Ramsey's comparables was vacant at the time of sale, and changed use after the sale. These factors were accounted for by quantified adjustments, as were the other differences between the subject property and the comparable sales, as required by Iowa law. *Wetlaufer v. Fayette Cnty. Bd. of Review*, 764 N.W.2d 783 (Iowa Ct. App. 2009). The remaining six comparable sales were occupied at the time of sale, and continued in use as big-box retail stores. None of Mr. Ramsey's comparables were sales to adjoining landowners, sales between related parties, and all of Mr. Ramsey's adjustments were quantifiable. The similarities between the comparables and the subject's uses and vacancy give weight and credibility to Ramsey's conclusions.). *Hy-Vee, Inc. v. Dallas Cnty. Bd. of Review*, 856 N.W.2d 383 (Iowa Ct. App. 2014); *Hy-Vee Food Stores, Inc. v. Carroll Cnty. Bd. of Review*, 840 N.W.2d 726 (Iowa Ct. App. 2013). As such, the Court finds that Mr. Ramsey's

opinion of value complies with Iowa law and recognized appraisal practices, and gives his appraisal and testimony significant weight.

Mark Nelson also based his conclusion of value primarily on the comparable sales approach, and reached an opinion of value of $8,250,000 for the subject property. Mr. Nelson used eight comparable sales, five of which were sales of Kohl's stores, including the Cedar Falls sale discussed above. None of Mr. Nelson's comparables were sales to adjoining landowners or sales between related parties, and all of Mr. Nelson's adjustments were quantified, and supported by the evidence to account for the differences between the subject and the comparable sale. Mr. Nelson determined the location of the subject in the Jordan Creek area was superior to the other Iowa comparable sales, and his adjustments to his comparable sales reflect these differences that affect value. The Court concludes that Mr. Nelson's appraisal complies with Iowa law and recognized appraisal practices, and gives his appraisal and testimony significant weight.

In total, the Court finds that Kohl's evidence of value fails to comply with Iowa law, which mandates that the differences between the subject property and the comparable sales be accounted for by adjusting the comparable sales with quantifiable adjustments. Kohl's appraisers failed to do so. Further, Kohl's experts' selections of older, vacant properties that changed uses after their sale calls their analysis further into question, and the Court is reluctant to give any weight to this evidence of value. The Court finds that the Board's experts did comply with Iowa law regarding valuing properties for property tax purposes, and finds their testimony to be more credible. Kohl's failed to prove that the assessment of their land and

buildings is excessive. The evidence demonstrated that the assessment is substantially correct and valid. The action of the Dallas County Board of Review in denying Kohl's protest is affirmed.

Order

Based on the above findings of fact and conclusions of law, the Court hereby ORDERS, ADJUDGES, AND DECREES that the January 1, 2013 assessment of the property which is the subject of this dispute is affirmed, and the assessed value for said property is $8,357,450.00. It is further ORDERED, ADJUDGED, AND DECREED that each party shall bear its own costs of this action.

SO ORDERED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCV038376	KOHL'S DEPARTMENT STORES INC VS BOARD OF REVIEW OF DALLAS CO

So Ordered

Richard B. Clogg, District Court Judge,
Fifth Judicial District of Iowa