

IN THE IOWA DISTRICT COURT FOR MARSHALL COUNTY

WALMART, INC. and WAL-MART REAL ESTATE BUSINESS TRUST, Plaintiffs-Appellants, v. MARSHALL COUNTY BOARD OF REVIEW a/k/a BOARD OF REVIEW OF MARSHALL COUNTY, Defendant-Appellee.	CASE NO. EQCI011898 ORDER ON APPEAL
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This matter comes before the court upon Plaintiff-Appellants Walmart, Inc. and Wal-Mart Real Estate Business Trust's appeal from the January 1, 2023, property tax assessment imposed by the Marshall County Assessor and affirmed by Defendant-Appellee, the Marshall County Board of Review a/k/a Board of Review of Marshall County. Plaintiffs-Appellants Walmart, Inc. and Wal-Mart Real Estate Business Trust appeared by and through attorneys Olivia McGovern and Paul D. Burns. The Marshall County Board of Review a/k/a Board of Review of Marshall County appeared by and through attorney Jamie L. Cox. The trial was reported.

The parties were afforded the opportunity to submit post-trial briefs to the court. With the briefs having now been filed, the court considers this matter fully submitted. The court now issues the following Order having considered the evidence presented, the credibility of the testifying witnesses, the arguments of counsel, and the applicable law.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs-Appellants Walmart, Inc. and Wal-Mart Real Estate Business Trust (hereinafter collectively "Walmart") protested the tax assessment of property that it owns and operates in Marshall County, Iowa. The property is located at 2802 South Center Street in Marshalltown

and is identified as Parcel No.: 8318-11-402-015. It was valued by the Marshall County Assessor at \$13,323,780.00. D's Ex. A, p. DE007. Walmart filed a petition with Defendant-Appellee, the Marshall County Board of Review a/k/a Board of Review of Marshall County (hereinafter "the Board") protesting the assessment, which the Board denied. Ds' Ex. B, p. DE001. On June 19, 2023, Walmart filed its Petition in Equity initiating this appeal of the Board's decision. The Board acknowledges that the Petition was timely filed.

The property in question is situated on a 24.70-acre site in central southern Marshalltown. It is within close proximity to U.S. Route 30 and directly abuts Iowa Highway 14. D's Ex. F, p. DE0103. The building is categorized as a "big box" retail store that has been owned and operated by Walmart since its construction. In 2002, a 6,006 square foot garden center section was constructed and added to the retail store. From January 22, 2023, to April 28, 2023, the retail store underwent significant renovations, but as they were completed after the assessment, the property's condition at the time of the appraisal must be considered.

The parties retained three experts to provide appraisals of the property's value. The court finds each of these expert witnesses' credentials to be sufficient to qualify them as experts. At trial, Walmart's appraiser, Christopher Jenkins, and the Board's appraiser, Mark Kenney, testified. Additionally, Walmart's appraisal by Peter Helland was received into evidence, although he was not called as a witness at trial. The court also considered the exhibits related to the appraisals that were admitted into evidence.

Helland and Kenney both appraised the property utilizing three commonly recognized valuation methods: comparable sales; income; and cost. Jenkins used only the comparable sales approach, while Helland and Kenney utilized all three, affording them varying weights in their

final opinions of value. The three experts' conclusions clearly support that adage that valuation is not an exact science:

Appraiser	Comparable Sales	Income	Cost	Final Opinion of Value
Jenkins	\$9,200,000	n/a	n/a	\$9,200,000
Helland	\$8,600,000	\$8,700,000	\$8,100,000	\$8,600,000
Kenney	\$18,700,000	\$18,300,000	\$18,400,000	\$18,500,000

Jenkins utilized eight comparable sales in order to reach his opinion of value regarding the subject property. Three of the comparables were leased fee sales, and one was a leaseback transaction. Ps' Ex. 1, p. 74, 76, 84, and 88. Two of the properties are in Iowa, two are in Ohio, two are in Wisconsin, and the remaining two are in South Carolina and Georgia. Ps' Ex. 1, p. 57-59. Jenkins provided adjustments in the sale price per square foot of the properties for the property rights conveyed, conditions of sale, market conditions at the time of sale, location, size, age/condition, tenancy, land to building ratio, and "other". Ps' Ex. 1, p. 60.

Jenkins used multiple abnormal sales as comparable sales that cause the court to question their use as true comparables. Sale #1 was not marketed or listed for sale to the public, but rather sold by a broker at Jenkins' employer CBRE. Ps' Ex. 1, p. 74. Sale #5 was similarly not listed for sale to the general public. Ps' Ex. 1, p. 58, 83. Sale #2 was sold as part of a two-property portfolio along with a Fleet Farm store that included multiple buildings. Ps' Ex. 1, pg. 57, 77. Sale #4 was also sold as part of a two-property transaction. Ps' Ex. 1, p. 58. By Jenkins' own admission, the sale price of Sale #7 was negatively affected by the Covid-19 pandemic. Sale #8 was not a standalone building, but a building connected to other stores. Jenkins made no adjustments for this difference. Ps' Ex. 1, p. 60.

Sale #8 was also afforded a 25% upward adjustment for the conditions of sale. Ps' Ex. 1, p. 60. This adjustment was made because "the tenant put in their own tenant improvements." Ps' Ex. 1, p. 62. Jenkins based this upon the tenant's expenditure of approximately \$2,500,000 on improvements to a property that sold for \$3,700,000. Ps' Ex. 1, p. 59-60.

In determining a comparable sales valuation for the subject property, Helland used ten comparable sale properties, all of which are big box retail stores. All are in the Midwest and six are in Iowa. Four of the properties were leased fee transactions and six of the properties were vacant at the time of sale. Helland made adjustments in the price per square foot of the properties based upon property rights, market conditions, location, size, age/condition, site area, and quality.

Six of the ten comparable sales that Helland used were vacant at the time of sale: Sale #3; Sale #4; Sale #5; Sale #8; Sale #9; and Sale #10. Ps' Ex. 2, p. 76. Sale #9 was a former Target that sat vacant for over three years before the sale. Ps' Ex. 2, p. 130. Sale #2 was actively listed and did not sell and was sold at auction on an online platform. Ps' Ex. 2, p. 123. Sale #4 was a distressed sale and was sold after the tenant vacated during its bankruptcy. Ps' Ex. 2, p. 125.

Helland also utilized multiple "change-of-use" sales among his comparables without factoring in such a "change-of-use" into the value. For example, Sale #3 was a former single-tenant big box store that a buyer purchased and then subdivided, effectively turning it into a multi-tenant building. Ps' Ex. 2, p. 135. Sale #4, a single-tenant big box store, was sold for adaptive re-use as self-storage facilities. Ps' Ex. 2, p. 77. Sale #5 was a vacant Toys-R-Us that was sold and converted into a veterans' medical clinic at an unknown cost. Ps' Ex 2, p. 77-78. Sale #9 was a former Target that was renovated to accommodate a Farm Fleet store at a cost of

\$1,000,000. Ps' Ex. 2, p. 78–79. Sale #10 was sold as a single-tenant big box store and is currently listed as a multi-tenant property. Ps' Ex. 2, p. 131; Ps' Ex. 1, p. 56. In fact, due to this multi-tenant status, Jenkins chose not to include the sale amongst his comparable sales. Ps' Ex. 1, p. 56.

Helland adjusted all of the leased properties' prices downward to account for leases. Sale #1 was adjusted -8% and Sale #2 was adjusted -4%. Ps' Ex. 2, p. 77, 80. However, Sale #6 was adjusted -42% and Sale #7 was adjusted -62%, yet there is no substantive information in his report that supports such large adjustments regarding these specific properties, other than a general statement that the "leased fee sales are adjusted to market level lease rates and cap rates based on the market conclusions in the income approach for this property type in this location." Ps' Ex. 2, p. 80-81.

Helland's adjustments for market conditions were based upon conditions as of January 1, 2023. He gave Sales #1, #3, and #4 -10% downward adjustments pursuant to this factor. However, the retail market analysis and big box retail market overview provided in his report does not appear to support these downward adjustments. Ps' Ex. 2, p. 26-49. His report provides that in 2022, retail store closings declined to a ten-year low and retail rent levels grew at the strongest rate in the past decade. Ps' Ex. 2, p. 32. Overall, he concluded that 2022 saw very favorable trends in store sales, rent rate growth, and leasing activity across the retail sector. Ps' Ex. 2, p. 38.

Helland adjusted all but one of the comparable sales properties downward based upon location, with his adjustments ranging from -10% to -30%. Again, there was not specific

information in the report regarding the basis for the adjustment on the characteristics of each property. Regarding his location adjustments in general, Helland provided that:

The focus in the data search was placed on similar primary retail markets in Iowa and across the Midwest. Seven of the ten sales have occurred since the mid-2020, which is critical relative to market conditions. To achieve that, the geographic footprint was expanded. The emphasis was on finding sales data in overall similar demographic areas, which is tertiary MSAs in the Midwest. Adjustments are quantified MSA to MSA for this size of retail investment property. The adjustment is quantified on a straight-line basis based on average retail asking rental rate per CoStar Analytics for the subject area compared to each of the comparable MSAs or submarkets as appropriate for larger MSAs. The larger geographic area is most appropriate given the size and scope of this retail investment property compared to smaller retailers more neighborhood-centric.

Ps' Ex. 2, p. 82.

Helland also adjusted seven of the eight comparable sales downward based upon size. He adjusted Sales #1, #2, and #3 downward adjustments of -5%; all of these properties were approximately 130,000 square feet smaller than the subject property. Ps' Ex. 2, p. 77, 80. Sales #4, #7, and #9 were all larger in square footage than #1, #2, and #3, he gave them downward adjustments of -16%. Ps' Ex. 2, p. 77, 80. At trial, he testified that the "general rule" is that as square footage goes up, the value goes down. However, his adjustments for Sales #5 and #6 were inconsistent with this premise, and with his adjustment rates for the other properties. He gave Sale #6 – an approximately 50,000 square foot property – a -11% downward adjustment. Yet Sale #5, which is only approximately 5,000 square feet less than Sale #6, was given a -30% downward adjustment.

Helland gave adjustments to all but three of the properties based upon their age and condition, varying from -20% to 20%. Ps' Ex. 2, p. 80. Again, these adjustments appeared to be inconsistent based upon the characteristics of the comparable sale properties. Properties at least twelve years older than the subject property were adjusted upward by 10% while

comparables that were at least seven years newer were adjusted downward by -20%. Ps' Ex. 2, p. 80. He also included adjustments for site area and quality.

In his appraisal, Kenney utilized eight comparable sale properties: one in Iowa, four in the Midwest, and three outside the Midwest, including properties in South Carolina, Georgia, and Pennsylvania. Seven of the eight comparables used by Kenney are Walmart properties. Ds' Ex. F, p. DE0139-DE0143. All eight properties were subject to leases; seven of the properties were also Walmart stores. Kenney determined that seven of the eight properties were leased below market rent and afforded upward adjustments in price per square foot ranging from 5% to 20% to account for this factor. One property was leased at market rent and Kenney did not apply any lease adjustment for this property. In addition to adjustments for leases, he also adjusted the price per square foot based upon other characteristics including location, building size, age/condition, parking, and economic characteristics. D's Ex. F, DE0151.

CONCLUSIONS OF LAW

Walmart bears the initial burden in challenging the Board's valuation of the property.

Iowa Code § 441.21(3)(b)(2) provides:

For assessment years beginning on or after January 1, 2018, the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious. However, in protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

As used in this context, "competent" evidence means that the witness complied "with the statutory scheme for property valuation for tax assessment purposes." *Compiano v. Bd. of Rev. of Polk Cnty.*, 771 N.W.2d 392, 398 (Iowa 2009) (quoting *Boekeloo v. Bd. of Rev.*, 529 N.W.2d 275, 279 (Iowa 1995)).

A tax assessment valuation is based on the “actual value” of the property. Iowa Code § 441.21(1)(a). “Actual value” is defined as “the fair and reasonable market value of such property.” Iowa Code § 441.21(1)(b)(1). “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.

Id. In determining “market value,” sales of comparable properties in normal transaction must be considered. *Id.* However, “abnormal sales,” such as “sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit,” may not be considered when assessing “market value.” *Id.*

Iowa law establishes that the comparable sales approach is the preferred method of determining valuation, and “other approaches should only be used when market value cannot be readily determined using the comparable-sales approach.” *Nationwide Mut. Ins. Co. v. Polk Cnty. Bd. of Rev.*, 983 N.W.2d 37, 41 (Iowa 2022) (citing *Wellmark v. Polk Cnty. Bd. of Rev.*, 875 N.W.2d 667, 682 (Iowa 2016)).

When valuing real property for tax assessments, the law strives for fairness and uniformity, operating on the notion that similar properties within a given tax classification should be taxed similarly. Because courts reviewing challenges to valuations usually lack technical expertise in appraising commercial real estate, these types of cases often hinge on a factfinder’s judgment about conflicting expert witness testimony.

Id. at 38. Determination of what is an appropriate comparable property is “generally left to the sound discretion of the district court.” *Wellmark*, 875 N.W.2d at 681. “The mere fact that sales might be considered comparable, however, d[oes] not necessarily mean that valuation based on them [is] credible.” *Id.* at 682.

Comparable sales valuations “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.” *Soifer v. Floyd Cnty. Bd. of Rev.*, 759 N.W.2d 775, 783 (Iowa 2009). “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.” *Id.*

As a preliminary matter, the court finds that there is sufficient information in all three appraisals to rely on the sales comparison approach in addressing each expert’s valuations and does not find it necessary to address the valuation determinations that were reached under the cost and income approaches. The court further finds that the evidence received on behalf of Walmart, including the Jenkins’ and Helland’s reports and Jenkins’ testimony, is sufficient to meet Walmart’s burden under Iowa Code § 441.21(3)(b)(2). The court must therefore determine whether the Board can meet its burden to uphold the valuation.

In analyzing the expert appraisals in this matter, the court notes that the “ideal” benchmark for comparable properties are ones that are recent sales in the same geographic area “of similar size, age, condition, and current use.” *Nationwide*, 983 N.W.2d at 43. However, properties with long-term leases and vacant properties may be used as comparable sales, but only if proper adjustments are made to account for these factors. *Walmart, Inc. v. City of Davenport Iowa Bd. of Rev.*, No. 21-1018, 2023 WL 1808504, at *5-6 (Iowa Ct. App. Feb. 8, 2023).

Not only are there substantial differences in the three experts’ values for the property, there are also significant differences in the means by which each appraiser reached his

conclusions. Walmart contends that Kenney failed to follow Iowa law and appraisal standards because he relied upon comparable sales of properties with long-term leases with high-credit tenants, and did not make the correct adjustments to subtract the value added by these leases. Walmart further argues that Kenney did not present competent evidence in his appraisal and testimony because he relied on leased fee sales, he lacked personal knowledge of the terms of leases associated with the comparable sales properties subject to leases, and he made other serious errors, omissions, and there were other inconsistencies in his report. The court will address these arguments in turn.

At trial, Walmart belabored its contention that Kenney's valuation is fatally flawed because he considered properties that were subject to long-term leases with high-credit tenants as comparables. In support of their position, Walmart cites to *Wellmark, Inc. v. Polk County Board of Review*, in which the Iowa Supreme Court criticized an expert's opinion because "some of his comparable sales involved property subject to a long-term lease, thus clouding comparability and raising the question of whether the buyer was interested in the property or the income stream generated by an advantageous lease." 875 N.W.2d at 682. The Court held that "the district court correctly considered other factors in its effort to establish the value of the properties." *Id.*

The court rejects Walmart's argument that only fee-simple sales, where the property is not subject to a lease, should be used as comparable sales. As previously noted, leased-fee property sales can be considered "so long as suitable adjustments are made to take the status of the property into account." *Walmart, Inc. v. Dallas Cnty. Bd. of Rev.*, No. 21-1831, 2023 WL 2670039, at *4 (Iowa Ct. App. March 29, 2023). The facts underlying *Walmart, Inc. v. Dallas*

County Board of Review are markedly similar to this appeal: a Walmart franchise in Dallas County argued that an appraisal that had also been performed by Kenney could not “be relied on because he did not make any downward adjustments to the sale prices of his comparables to subtract the value added by the properties’ leases.” *Id.* at *4. At trial, Kenney had testified, “I didn’t make any adjustment. I didn’t think it was necessary.”

However, the trial court found in examining his report that he had in fact made adjustments in the economic characteristics category that would account for the leases. *Id.* Likewise, this court finds that Kenney made adjustments in his appraisal that take into account the difference in value between a fee simple sale and a leased fee sale. In Kenney’s appraisal, he lists his top “Element of Comparison” as “Real Property Rights Conveyed: Fee simple, fee simple subject to lease(s), or partial interest, if warranted.” D’s Ex. F, p. DE0128. His report also shows he made adjustments in the economic characteristics category. For example, Kenney’s Sale #6 a property was sold with 12.25 years remaining on the lease at a fixed rent of \$6.13 per square foot, triple net, which Kenney adjusted downward by 10%. D’s Ex. F, p. DE0141, DE0128. Also, Kenney’s Sale #8 had a 10% downward adjustment and was also subject to a lease from Walmart. D’s. Ex. F, p. DE0142, DE0128.

Walmart also argues that Kenney erred by making upward adjustments for the properties currently subject to leases with below-market rent. Their argument focuses on his lack of knowledge of the details of the underlying leases. Specifically, Walmart argues that Kenney’s lack of information would affect the adjustments made, such as whether there was an escalation clause, whether there was an option to purchase and on what terms, and whether the landlord was required to make periodic capital improvements. Walmart maintains that this

lack of knowledge caused Kenney to overinflate the value of the leases which in turn overinflated the value of the properties.

Walmart argues that the use of a comparable subject to a long-term, high-credit tenant lease will always require a downward adjustment in value, and that Kenney committed compounded error by making upward adjustments on all but one of his comparable properties. However, Kenney's methodology supports both upward and downward adjustments based upon whether rents are favorable or unfavorable to the tenant based upon market rate. This approach is supported by the manual commonly used by appraisers, titled APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE at 379 (15th ed. 2020), which provides that

Income producing real estate is often subject to an existing lease or leases encumbering the title. Leases may either increase or decrease the market value of the full bundle of rights depending on how the contract rates and terms compare with market rent and terms. If the sale of the lease property, i.e., leased fee, is to be used as a comparable sale in evaluation of another interest in real estate, the comparable sale can only be used if reasonable and supportable market adjustments for the differences of property rights can be made.

The court also finds that Kenney had sufficient background knowledge to substantiate his opinion that such properties would be burdened by older leases. Again, Kenney's upward adjustments further demonstrate that he accounted for the properties' leases in his valuations, simply by adjusting upward rather than downward. Kenney's report properly used leased fee sales and adjusted the values given the burden or value of the lease.

Kenney's lack of knowledge of the terms underlying the leases does not detract from the reliability of his appraisal. Jenkins also used leased fee sales for his Sale #1, Sale #6, and Sale #8 without considering lease clauses and seemingly never having seen any of the three leases. Walmart's argument would invalidate Jenkins' appraisal as much as it would Kenney's. The

same issue was also addressed in *Walmart v. Dallas County Board of Review.*, in which Walmart argued that Kenney's failure to "ascertain[] basic terms of the bondable leases underlying his comparable sales" was a critical defect. 2023 WL 2670039, at *5. The court found that "while he did not see the actual leases, or know details like whether the lease required the landlord to make capital improvements," that "it was very uncommon to actually 'see the leases for these kind of transaction' because they 'all have confidentiality clauses.'" *Id.*

Kenney's sales comparables also do a far superior job of accounting for the present use value of the real estate, as opposed to Walmart's expert appraisals. While uses for comparable properties do not need to be identical to the current use of the real estate at issue, "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 (internal quotation omitted).

Walmart claims several other flaws in Kenney's appraisal render it unreliable. First, they argue that Kenney's conclusion that January 1, 2023, was a time of favorable market conditions is baseless. They point to his reliance on the impact of the Covid-19 pandemic to explain why market conditions were inferior between 2019 and 2023. However, the court finds that based upon his report and his testimony, Kenney had an adequate factual basis for his opinion.

Walmart also alleges multiple errors related to Kenney's location analysis, household income analysis, and age and condition analysis. The court does not find that these allegations rise beyond the level of mere differences in expert opinion and do not render Kenney's overall valuations incompetent.

In contrast, the court finds that Helland's and Jenkins' appraisals are considerably less reliable and credible. The majority of Helland's comparable sales were vacant at the time of sale. As previously noted, "neither section 441.21 nor case law prohibits the use of vacant or leased properties as comparables. . . ." *Walmart, Inc. v. Dallas Cnty. Bd. of Rev.*, 2023 WL 2670039 at *4. However, an appraisal should not use only vacant properties. *See id.* at *6; *see also Walmart, Inc. v. City of Davenport Iowa Bd. of Rev.*, 2023 WL 1808504 at *7.

Helland used a number of "abnormal" sales in his comparables. He also used several change-of-use sales without factoring this into his valuations. Helland's use of a high number of vacant sales, use of abnormal sales, and use of change-of-use sales as his comparable sales negatively impacts the court's assessment of his appraisal.

Unlike Helland, Jenkins did not use any vacant sales or "change-of-use" sales. However, as previously noted, six of Jenkins' eight comparable sales involved abnormal or irregular sales. This significantly impacts the reliability of Jenkins' overall appraisal and valuation of the subject property per the sales approach. Overall, the court found that Helland and Jenkins both utilized less reliable comparable properties than the ones relied upon by Kenney, which renders their valuations less credible.

After a thorough and thoughtful review of the experts' appraisals, and in considering their choices of comparable sales and the adjustments made, the court finds that Kenney's appraisal provides the more credible determination of the property's market value. The court further finds that Kenney's appraisal comports with the statutory parameters and is competent evidence of the subject property's value. Therefore, the Board has met its burden to uphold the assessment value by a preponderance of the evidence.

IT IS THEREFORE ORDERED that the property tax assessment as fixed by the Marshall County Board of Review on or about January 1, 2023, of Parcel No. 8318-11-402-015 in Marshalltown, Marshall County, Iowa, is affirmed.

IT IS FURTHER ORDERED that the Clerk of Court shall certify this decision to the Marshall County Auditor and the Marshall County Assessor pursuant to Iowa Code § 441.38(3).

IT IS FURTHER ORDERED that the court costs of this action are taxed to Petitioners-Appellants.

Clerk to provide copies to:

Paul Burns, Attorney for Petitioners-Appellants
Olivia McGovern, Attorney for Petitioners-Appellants
Jamie Cox, Attorney for Defendant-Appellee



State of Iowa Courts

Case Number
EQCI011898

Case Title
(AMM)WALMART INC ET AL V MARSHALL CO BOARD OF
REVIEW
ORDER FOR JUDGMENT

Type:

So Ordered

Amy M Moore, District Court Judge
Second Judicial District of Iowa

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