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

PAAB Docket No. 2019-040-00184I

Parcel No. 40872420400009

POET Biorefining – Jewell, LLC,

Appellant,

vs.

Hamilton County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on March 12, 2024. Attorney Daniel Manning Sr. represented POET Biorefining – Jewell, LLC (POET). Attorney Brett Ryan represented the Board of Review.

POET owns an industrial classified property located at 2601 320th Street, Jewell. Its January 1, 2019, assessment was set at $15,146,590, allocated as $2,877,880 in land value and $12,268,710 in improvement value. POET petitioned the Board of Review claiming the assessment was for more than the value authorized by law. § 441.37(1)(a)(1)(b). (Exs. A & C). The Board of Review denied the petition. (Ex. B).

POET then appealed to PAAB reasserting its claim of overassessment.

Findings of Fact

The subject property is an active biorefining industrial facility located in the southern portion of Hamilton County, just north of the town of Jewell. Nearly all of the improvements were built in 2005. (Ex. A).

Chris Morey is a general manager for POET at its Menlo, Iowa facility. He testified on behalf of POET and explained that he is very familiar with the subject property. He described the facility and product flow and explained the manufacturing process at the facility. Using an aerial photograph of the facility he explained the flow of product from the delivery of the corn to the load out of the ethanol and the other products. (Ex. 6).[1] The facility operates 24/7 and has a continuous flow of product.

The corn arrives at building number #2 and is stored in grain bins #1 until needed. The corn is conveyed, as needed, through a hammermill and wetted as it continues to one of seven fermenter tanks #3. Once the fermentation process is complete, the product flows to the Beerweel #4. The Beerweel acts as a buffer between the fermenters and the distillation building #13. The distillation process separates out the alcohol and leaves a wet but solid mass that makes a good animal feed. At this point, the alcohol is 190-proof and pumped to one of two 190-proof tanks that store the product until it is pumped to the molecular sieve where it is completely dehydrated and treated with a denaturant. The finished denatured, 200-proof alcohol is pumped to one of two final product tanks #12. The solids from the distillation process are wet and consist of fat, fiber, and proteins. The solids go through an evaporator. It can now either be sold as a wet-distillers-grain or it can be further dried into dried-distillers-grain. The wet product is sent to the wet-distillers-grain storage building #15 and is loaded out with a payloader. The dried-distillers-grain is further dried by two grain dryers, then treated with a syrup. After being treated, the dried-distillers-grain is sold as a dried-distillers-grain with solubles. It is either stored in building #2 or bin #18 before being sold. It can be shipped by either truck or train from building #2. (Ex. 6).

Another product marketed from the plant includes corn-oil that is centrifuged out of the product and stored in two 200,000-pound tanks. Listed as 30,000-gallon tanks #17.

Other improvements include the machine shop #7, the cooling tower #9, the boiler building #8, and administration building #19.

POET's Vice-President for Corporate Affairs Doug Berven also testified on its behalf. He testified to the poor market conditions for ethanol plants as of January 1, 2019. He described the property as a commodity-in and commodity-out industrial

[1] PAAB notes the labels on Exhibit 6 do not correspond to the labels identifying buildings, yard items, etc. on the subject's property record card (Exhibit A).

facility. Because of this type of manufacturing facility, he explained the business is dependent on market prices. As of the 2019 assessment date in question, the corn – the input commodity – was high priced and the ethanol – end product – was low priced. Additionally, he suggested the political climate had turned against the industry and it was in a state of decline. Therefore, he believes the property's market value was adversely affected.

The record includes two appraisals valuing the entire manufacturing facility as of January 1, 2019. Joseph Calvanico, formerly of Loop Capital Financial Consulting Services, LLC, Chicago, Illinois, prepared an appraisal and testified on behalf of the appellant. (Ex. 1). Thomas Kubert, Kubert Appraisal Group, Lincoln, Nebraska, completed an appraisal and testified on behalf of the Board of Review. (Ex. J). Both appraisers are qualified to appraise the property.

Calvanico completed the cost approach to value. He also listed and analyzed sales from around the country, but asserts the sales approach is not reliable and could be misleading if completed. Kubert completed the cost, sales comparison, and income approaches to value. Both appraisers arrived at values lower than the subject's 2019 assessment.

As detailed further in this Order, both appraisals include the value of property the assessment has seemingly identified as exempt machinery or equipment. The property record card denotes Yard Items 11, 17, 19-22 as having $0 value and the notes indicate they are M&E – a common definition for machinery and equipment.[2] (Ex. A, pp. 37-38, 44). In comparison, the appraisers specifically identified and valued all items at the property in their cost approach. (Ex. 1, p. 54; Ex. J, 50). Further, their appraisals and testimony indicate their opinions of value were for the entirety of the property, including the machinery and equipment.

The following table summarizes the appraisers' approaches to value and their respective conclusions as of January 1, 2019. (Exs. 1 & J).

[2] In general, machinery used in manufacturing is not subject to taxation. Iowa Code §§ 427A.1(e), 427B.17(3). See *Stateline Cooperative v. Property Assessment Appeal Bd.*, 958 N.W.2d 807 (Iowa 2021).

Table 1

Appraiser	Cost Approach	Sales Comparison Approach	Income Approach	Final Opinion of Value
Calvanico	$6,550,000	Not Completed	Not Developed	$6,550,000
Kubert	$12,600,000	$12,200,000	$13,600,000	$12,400,000

<u>Calvanico's Appraisal</u>

Calvanico identified the subject property as an ethanol plant, consisting of 200.23-acres of land improved with two office buildings and seven industrial buildings containing a total of 72,503 square feet of building area. He reports the plant's Name Plate Capacity is 69 Million Gallons Per Year (MGPY). He reports in 2019 the plant was running at 90% capacity. (Ex. 1, p. 20).

He physically inspected the property in 2020 with the effective date of valuation being January 1, 2019. In both his testimony and report, Calvanico stated his valuation included the property's machinery. He states, "our estimate of actual value includes the land, land improvements, buildings and certain machinery & equipment classified as industrial real estate in the Iowa Property Tax statutes." (Ex. 1, pp. ii, 13, 58).

Because the subject property is a special use property, Calvanico asserts the cost approach should alone be relied on to value the property. He has never seen another ethanol plant leased and therefore argues the income approach cannot be developed. Additionally, he believes the sale price of an operating ethanol facility includes more than just the value of the real property, and if used as a comparable it would reflect the business value of the property and would result in the over-valuation of the property. He asserts adjusting for business value would be nearly, if not completely, impossible.

His report states he started by "research[ing] sales of ethanol plants and oil refineries through the United States, but the data was very limited." (Ex. 1, p. 46). He writes the "sales reflected a price well below reported cost to construct." He believes this is consistent with his analysis that the ethanol industry was overbuilt and underperforming. He then went on to research sales of chemical plants nationwide as well as industrial properties in Iowa. He believes this research was sufficient to "develop a picture of the market for ethanol facilities as well as the overall industrial market in Iowa."

Calvanico analyzed fourteen sales. He made no adjustments to the sales and only compared the sale price per square foot. Regardless, he believes his analysis supports his cost approach and final opinion of value. Calvanico's fourteen sales are summarized in the following table. (Ex. 1).

Table 2

Address	Sale Date	Sale Price	Site Size (SF)	Building Area (SF)	SP/SF
Subject			8,722,019	73,335	N/A
Nationwide Ethanol Plants and Oil Refineries					
C1 – 10326 S. Robert Trl, Inver Grove Heights, MN	Apr-19	$10,000,000	632,901	23,744	$421.16
C2 – 335 McKee Rd, Rochester, NY	Apr-18	$9,116,133	625,957	18,253	$499.43
C3 – 401 Cove Rd, Pennsauken, NJ	Jul-19	$4,200,000	1,785,960	13,000	$323.08
C4 – 269 Pate Rd, Raeford, NC	May-14	$12,800,000	21,381,426	75,000	$170.67
Nationwide Chemical Industrial Properties					
C5 – 1835 NE 144th St, Miami, FL	Jan-18	$1,600,000	87,120	22,813	$70.14
C6 – 30590 Cochise Cir, Murrieta, CA	Oct-16	$8,200,000	760,993	122,400	$66.99
C7 – 400 Commerce Pkwy Dr. W. Greenwood, IN	Oct-16	$5,500,000	297,515	60,577	$90.79
C8 – 1020 4th Ave, Sibley, IA	Listing	$4,750,000	292,288	160,000	$29.69
C9 – 5501 S. 4th St, Chickasha, OK	Listing	$2,460,000	1,416,136	79,390	$30.99
Iowa Industrial Properties					
C10 – 2245 Dean Ave, Des Moines	Mar-18	$1,490,000	80,412	63,926	$23.31
C11 – 4905 Hubbell Ave, Des Moines	Nov-17	$3,100,000	256,133	77,760	$39.87
C12 – 2030-2250 Delaware Ave, Des Moines	Mar-16	$1,600,000	197,762	88,498	$18.08
C13 – 1700-1708 Delaware Ave, Des Moines	Jan-16	$1,100,000	100,750	52,460	$20.97
C14 – 1020 Westview Dr, Iowa Falls, IA	Listing	$879,000	219,542	24,000	$36.63

Calvanico reports limited sales were available. Comparables 1-4 were identified as oil refineries and ethanol plants. He described these sales as being mostly bulk sales from one company to another with little to be gleaned from the transaction other than they sold well below the original cost to construct. Comparables 1-3 were described as operating oil refineries when sold. Because they were operating facilities he asserts the sale price includes business value. Comparable 4 was a closed oil refinery purchased with the intent to renovate into an ethanol plant. The buyer was planning to start ethanol production as soon as possible with improvements expected to be made over the next three years. Perhaps as a result of the cost to convert its use, we note its sale price per square foot is a significant outlier relative to Comparables 1-3. The improvements are similar in square footage to the subject, but it has a much larger site. But for Comparable 4, their ages are not reported. Calvanico made no adjustments to the sales for their differences compared to the subject.

Comparables 5-9 were labeled chemical plants and Comparables 10-14 as Iowa industrial facilities. The Board of Review asserts most if not all of Calvanico's Comparables 5-14 are light industrial properties compared to the subject's heavy industrial use. But for Comparables 7 and 14, all are older than the subject; some significantly so. On cross examination, Calvanico appeared to know little regarding the use of his Comparables 5-14. Similarly, his report offers limited information about them.

Calvanico appeared unconcerned about the different uses and stated he did not develop this approach or rely on it. Calvanico believes the sales comparison approach could not value the subject by itself. Additionally, he believes it is not credible and could be misleading if developed. His report states, "While we are unable to use the market data to pinpoint a value conclusion for the subject, it is clear that the data shows certain parameters within the context of reasonability given the conclusion of value from the cost approach." (Ex. 1, p. 47).

Hamilton County Assessor Brenda Loftus testified on behalf of the Board of Review. She researched the Iowa sales Calvanico reported. She stated Comparable C8 was a prior cheese drying facility that had sustained fire damage and was sold as a vacant empty-shell. After the purchase it was totally gutted and refinished, and is being repurposed as a blood plasma drying facility. She testified two dryers damaged during the fire would have a replacement cost of $11,000,000. She reported Comparable C10 was a light industrial facility and Comparable C11 assembled golf carts and included a showroom. Additionally, Comparables C12 had multiple businesses operating including a tool rental, design shop, DIY garage. Comparable C13 is used to manufacture scoreboards. Comparable C14 was built on speculation by the municipality and is a steel shell.

Calvanico's cost approach begins with the valuation of the subject site, as if vacant and ready for development. He considered six sales in his land sales analysis. (Ex. 1, pp. 49-50). The following table summarizes the sales he relied on.

Table 3

Address	Sale Date	Sale Price	Site Size (Acre)	SP/Acre
Subject – Jewell, IA			200.23	
CL1 – Vintage Ln, St Charles, IA	Dec-17	$91,500	12.11	$7556
CL2 – 260th St & Fawn Ave, Winterset, IA	Nov-17	$97,280	20.45	$4757
CL3 – 10834 N 99th Ave W, Collins, IA	Nov-17	$89,000	11.46	$7766
CL4 – 13220 Overland Trail, Council Bluffs, IA	Jan-17	$313,010	33.84	$9250
CL5 – SE Vandalia Dr, Des Moines, IA	Listing	$1,192,500	159.00	$7500
CL6 – Beaumont Ave, Linden, IA	Contract	$590,000	70.93	$8318

Calvanico reported qualitative adjustments to the sales and commented regarding these differences. The sale prices ranged between $4757 and $9250 per acre. He selected a market value for the subject of $7,400 per acre or $1,480,000.

To complete his cost approach, Calvanico relied on Marshall & Swift Valuation Service (MVS), a national cost guide, for his cost estimate of the improvements. (Ex. 1, pp. 51-54). His estimates of the building improvements' replacement cost new (RCN) are in Table 4 below. (Ex. 1, p. 54). His total replacement cost new for the buildings was $5,236,910. (Ex. 1, p. 54).

To physically depreciate the building improvements, he estimated the effective age of the property to be equal to its actual age. Relying on MVS, he selected an economic life of 50 years for the office building and 45 years for the industrial buildings. (Ex. 1, p. 53). However, he reduced the depreciation by 5% to reflect updates completed on the property. He noted these repairs included partial roof repairs, concrete projects, and insulation improvement. (Ex. 1, p. 53). After the reduction, he concluded physical deterioration on the office buildings, main processing buildings, and storage warehouses at 23%, 26%, and 1% respectively.

Table 4

Building	GBA (SF)	Year Built	Class/Quality	RCN	Physical Depreciation
Office	3240	2005	C/Average	$369,708	23%
Office (Scale house)	1100	2005	C/Average	$125,518	23%
Heavy Manufacturing	18,096	2005	S/Low Cost	$1,525,033	26%
Heavy Manufacturing	22,713	2005	S/Low Cost	$1,914,129	26%
Heavy Manufacturing	2758	2005	S/Low Cost	$235,639	26%
Heavy Manufacturing	4832	2005	S/Low Cost	$410,749	26%
Heavy Manufacturing	1848	2005	S/Low Cost	$157,890	26%
Metal Warehouse	14,076	2005	S/Low Cost	$391,454	26%
Metal Warehouse	3840	2018	S/Low Cost	$106,790	1%

Calvanico next estimated the depreciated value of each site improvement, which included processing and non-processing equipment and machinery. He testified he did not know the original cost of these items. Therefore, he researched sales of these components with used equipment dealers or relied on MVS's general equipment categories. His report does not specify which approach was used for each particular item. Together the site improvements have a depreciated value of $5,301,060.

Calvanico developed an opinion of external obsolescence by analyzing the cost of a bushel of corn, the price for a gallon of ethanol, and the amount of ethanol produced from one bushel of corn. (Ex. 1, pp. 38-39). He looked at these factors for the years of 2007 and 2019. His calculation showed in 2007 each bushel of corn produced revenue from ethanol that exceeded its cost by $3.26. However, in 2019 the cost of a bushel of corn exceeded the value of the ethanol produced by $0.20. He concludes from this the proper external obsolescence should be 45%.

After adjusting 45% for external/economic obsolescence, he concluded a reproduction cost new less depreciation for the buildings of $2,154,277. (Ex. 1, p. 54). He applied the same 45% economic obsolescence adjustment to arrive at a replacement cost new less depreciation for the site improvements of $2,915,583.

Calvanico's conclusion of value by the cost approach and his final opinion of value was $6,550,000. (Ex. 1, p. 54). In his reconciliation his opinion is weighted toward the cost approach with some influence from the "market data approach." He does not specify whether "market data approach" references his sales comparison approach or the "market conditions" of the ethanol industry in general.

Kubert Appraisal

Kubert described the subject property as an operating ethanol plant located in rural Hamilton County. (Ex. J, p. 25). He describes the plant as having a maximum capacity of 90 MGPY, and a 2019 output of 72 million gallons. He reports the POET Bioprocessing website states the plant is producing 90 MGPY. He based his appraisal on a 70–72 MGPY output of ethanol. In comparison, Calvanico stated the plant has a name plate capacity of 69 MGPY. (Ex. 1, p. 20).

Kubert inspected the property in November of 2022 and reports a total of 73,463 square feet of building improvements.

Kubert's report states:

> The appraised value includes the land, existing improvements, and site improvements. In addition to the improvements, the analyst noted integrated mechanical and processing equipment related to the ethanol plant operation. The noted processing equipment, including the balance of the manufacturing lines, are considered real estate fixtures, as they have become an inherent part of the real estate by their adaptation and intended use without which the manufacturing process would not function.

(Ex. J, pp. 9, 14; See also Ex. J, p. 25). He includes equipment listed on page 26 in his appraisal.

Kubert reports the highest and best use of the property is for its continued use as an ethanol plant. He identified 98.23 acres of excess land not required to support the existing improvements. (Ex. J, p. 40).

Kubert gives an analysis of Hamilton County and the Alternative Fuels market in the Addendum of his report.

Kubert developed the cost, sales, and income approaches to value, and described the strengths and weaknesses of each approach. He reports the values indicated by these approaches "include the real estate and the integrated mechanical and processing equipment." (Ex. J, p. 65). Like Calvanico, he stated the best approach for a special use property may be the cost approach. He asserts the sales comparison and income approach can be developed. He gave some consideration to the sales comparison approach, noting "it is felt to provide the most reliable estimate of value for the real estate and the operating equipment in total." (Ex. J. p. 65). The income approach was developed only as a check of reasonableness for the other approaches.

Kubert's cost approach begins with the valuation of subject site. He selected five land sales from Hamilton County. All of these sales appear to be agricultural in use but are similar in location. He explained that rural Hamilton County has no zoning and it appears these sites are comparable to the subject. Kubert reports his Comparable Land Sales 1 and 2 also adjoin the railroad tracks like the subject. He reports a qualitative analysis was completed and does so in a narrative fashion. He reconciled to a value of $8500 per acre or $1,702,000 total for the land.

Kubert relied on MVS to estimate a reproduction cost new of the property. POET questioned Kubert's use of reproduction cost instead of the replacement cost new, nothing his report indicates that a reproduction cost replicates "inadequacies of utility and design…." (Ex. J, p. 46). Kubert noted he did not find any functional obsolescence to the improvements and therefore offered a reproduction cost. He implied there would be no material difference between a reproduction cost and replacement cost.

Kubert adjusted the base cost for the local Jewell market and also for architects' fees (design and engineering) and also to reflect entrepreneurial profit. He listed all component parts of the property including the buildings, bins, equipment, and site improvements. He applies a unit base cost for each item as well as a retrospective cost index to adjust for time. The sum of these parts is then adjusted for architect fees, local multiplier, and entrepreneurial incentive. He estimated a total reproduction cost new of $22,276,858. POET was critical of Kubert's reliance on a cost index to adjust present costs back to the effective date of the appraisal. It asserts cost data from 2019 should have been used.

Kubert reports the subject is in average condition and has been well maintained. He estimates economic life for the components to be 50-years for the office buildings, 45-years for the industrial buildings, 40-years for the grain improvements, and 35-years for the site improvements. He believes the subject suffers from no functional obsolescence, but external/economic obsolescence does exist. He asserts the ratio between the actual output and maximum output of the plant is an estimate of the external obsolescence. He reports the plant has been running at 80% of full capacity and therefore has a 20% obsolescence. Additionally, because of the uncertainty of the ethanol market, an additional 5% of external obsolescence was applied. Therefore, he concludes a total 25% of external/economic obsolescence. (Ex. J, pp. 48-49). His cost approach reconciled to a total value of $12,600,000.

Kubert developed the sales comparison analysis. (Ex. J, pp. 52-57). Kubert asserted few comparables exist, but relied on four. He asserts some of the sales were sold under duress, but explained this was not an uncommon situation and therefore no adjustment was necessary. Kubert explains these facilities are purchased for their output of ethanol and his unit pricing is based on a price per gallon output. He asserts Calvanico's building size unit of comparison makes no sense and is not reflective of the market.

Kubert relied on comparables that were ongoing ethanol plants. POET was critical of his comparables and asserted that they were sold with business assets and operating capital. Kubert believed there is very little business value in his sales because this is a commodity driven business where suppliers and buyers are unconcerned with the company operating the facilities. Additionally, the sales were multiple property sales with allocated sale prices. Calvanico testified he would never rely on such sales. However, Kubert asserts the sale prices he relied upon were reported and agreed on by both the buyer and seller of the properties. He agrees the sales are not ideal, but argues they are the best sales available. Further, he argues these sales are made by sophisticated and knowledgeable individuals and organizations and many times have at least one if not more professional valuations completed before the purchase. Therefore, he believes the prices are reflective of market value.

Kubert's four comparables are summarized in Table 5. (Ex. J, p. 53-56 and Addenda pages 93-96).

Table 5

Address	Sale Date	Sale Price (SP)	Site Size (Acres)	Gallons of Production (Mil)	SP/Gallon	Adjusted SP/SF
Subject			200.23	72 MGPY	N/A	N/A
K1 – Bluffton, IN	Nov-18	$19,000,000	415.58	115 MGPY	$0.17	$0.18
K2 – Lakota, IA	Nov-18	$14,200,000	78.00	110 MGPY	$0.13	$0.14
K3 – Ravenna, NE	Sep-16	$22,086,390	201.00	88 MGPY	$0.25	$0.25
K4 – York, NE	Sep-16	$14,355,378	133.37	56 MGPY	$0.26	$0.24

Kubert stated his comparable sales may have included personal property but he relied on the reported sale price for the real estate only. He believed the market had adequate sales activity to develop a reliable approach to value. Comparables K1 and K2 involve the same buyer and seller, with the sale price reported to be allocation of the real estate value from the total sale price. He reported Comparables K3 and K4 were bankruptcy sales, but believed this is the result of the downturn in the industry and reflects the market conditions as a whole. He testified additional sales were analyzed, but chose these four as the most comparable to the subject property. He adjusted the comparables for size/capacity of the facility, age/condition, functional utility, and land size. Calvanico asserted he was knowledgeable of these sales and at least some if not all of them included operating capital in the sale price. He believes this makes them unreliable. We note Kubert reported total sale prices, inclusive of equipment, for Comparables K3 and K4 of $115,000,000 and $37,375,000 respectively, but utilized the real estate allocation in his adjustments.

Comparable K1 is a larger facility located in Indiana. This property sold less than two months prior to the assessment date, and because larger facilities normally have a lower unit price, the sale price/gallon was adjusted upward. This sale was superior in functional utility, and its larger site superior to the subject.

Comparable K2 is located in Lakota, Iowa. It is a larger facility and therefore adjusted upward for size/capacity. The sale is adjusted upward just slightly for floodplain and land size. We question his site size adjustments, but believe overall, they have minimal effect on his reconciled value opinion.

Comparable K3 is from Ravenna, Nebraska. This sale is most similar in size/capacity to the subject. This property sold in September 2016 with a sale price per gallon of $1.31, and $0.251 per gallon reported to be for the real estate. It is similar in size/capacity, age, and site area. It requires no adjustments.

Comparable K4 is from York, Nebraska. This sale has a lower capacity than the subject and is therefore adjusted downward for size/capacity. The sale closed in September 2016, with a sale price per gallon of $0.67, and a reported $0.256 per gallon for the real estate. The sale was part of a bankruptcy action, but Kubert believes it was at market value. It is adjusted downward for size, upward for age, and downward for functional utility. Although it was constructed with older materials, it had been updated and was considered slightly superior in functional utility to the subject.

The comparables indicated an adjusted sale price per gallon between $0.14 and $0.25, with a mean of $0.20 and median of $0.21. Kubert reconciled to a range of value between $0.16 and $0.18, and selected $0.17. Relying on its current production of 72 MGPY, not its maximum production of 90 MGPY, he concludes to a final value opinion from the sales comparison approach of $12,200,000. (Ex. J, p. 57). In comparison, the Board of Review asserts Calvanico's appraisal concludes a value of $0.09 per gallon.

POET asserted Kubert's sales comparison approach included more than just the value of the real estate. Additionally, it asserted the sales were part of large portfolio sales and the prices reported were allocated and not reflective of the market value of the real estate. (Appellant's Post-Hearing Brf. p. 7). Calvanico testified he would never use a portfolio sale with an allocated sale price.

Kubert also developed the income approach. (Ex. J, pp. 58-64). He testified the subject is a special-use property and similar properties are owner occupied. Because they are not leased facilities, Kubert does not develop a direct capitalization approach, but rather creates a yield capitalization based on the property's estimated revenue over a ten-year period. He gave limited weight to this approach in his final value estimate, but asserts it supports his sales comparison and cost approaches.

Kubert estimates the revenue and expenses associated with the operation of the plant. Because he had no income and expense data regarding the subject property, he relied on the income and expenses from other ethanol plants he has appraised. His estimates are based on an ethanol price of $1.30/gallon, dry-distillers grain at $135/ton, denaturant at $0.19/gallon, and corn at $3.50/bushel. He estimates the other costs associated with operating the plant. After estimating the revenue and expenses he determines the property's projected annual net income.

Kubert relied on a mortgage equity analysis to form an opinion of a capitalization rate because he was unable to extract an estimate from the market. Kubert concluded a capitalization rate of 15.02% after loading for taxes. (Ex. J, p. 63). He summed the discounted present value of the annual income, and adds a value of the reversion to arrive at a final opinion of value from the income approach of $13,600,000.

Kubert developed all three approaches to value. He gave most weight to the sales comparison and cost approaches. Additionally, he developed the income approach as a check to the other two approaches. Kubert reported the values indicated by his approaches "included the real estate and the integrated mechanical and processing equipment." (Ex. J, p. 65). He ultimately concluded a market value opinion, as of January 1, 2019, of $12,400,000. (Ex. J, p. 66).

Post-Hearing PAAB Orders

After the hearing, both parties filed briefs. In its brief, POET argued both appraisers valued the property as a whole, including all potentially exempt machinery. (POET's Post-Hearing Brf. pp. 3, 5, 6). POET specifically requested that if "PAAB considers the actual value set forth in the government's appraisal of $12,400,000.00, that value must be reduced to remove the exempt improvements (which total $2,502,922) for an assessed value as of January 1, 2019 of $9,897,078.00." (POET's Post Hearing Brf. pp. 11-12).

Upon review of the full record, PAAB asked the parties to respond to its findings that the "appraisers valued all components at the property listed on the subject's property record card, even though some components allegedly may qualify for the statutory manufacturing machinery exemption discussed in *Stateline Cooperative v.*

Iowa Property Assessment Appeal Bd., 958 N.W.2d 807 (Iowa 2021)." (PAAB Order Requesting Response to Findings). Further, PAAB noted, the subject property's assessment listing suggests Yard Items 11, 17, 19-22 all were considered exempt from the assessment because they had $0 value and were labeled as "M&E". PAAB Ordered the parties to file any responses or objections to these findings.

POET filed a response indicating its agreement to PAAB's findings. (POET Response to PAAB's Order Requesting A Response to Its Findings).

The Board of Review, however, argued Kubert's appraisal "utilized all three methods of determining value (cost, sales comparison, and income), which valued the properties absent the alleged 'Yard Items' for all approaches except cost." (Board of Review Objection to Proposed Findings of Fact). The Board of Review stated Kubert assigned Yard Items 11, 17, 19-22 a value totaling $139,716 in the cost approach, which the Board of Review argued would not have impacted his final value. The Board of Review also contended reliance on the cost approach would be contrary to Iowa law and that the issue of exemption is not before PAAB.

After reviewing the parties' responses, PAAB found inconsistency with the Board of Review's objection and the record. Therefore, PAAB issued an order requesting the Board of Review clarify its objection on three major issues. (PAAB Order Requesting Clarification on Board of Review Objection). After pointing out numerous instances in Kubert's appraisal where he stated the appraised value included processing equipment, PAAB first requested the Board of Review to offer support for its argument that Kubert's sales and income approaches did not include the Yard Items listed as exempt on the property record card. Second, after pointing out PAAB's calculations show Yard Items 11, 17, 19-22 had a reproduction cost new less depreciation of nearly $2.5 million in Kubert's appraisal, PAAB requested the Board of Review to "clarify and detail how it arrived at its value of $139,716 for the identified Yard Items." Kubert's appraisal lists Yard Items 11, 17, 19-22 as follows:

Table 6

Description	Depreciated Value
Y11 - 2 Process Tanks	$44,716
Y17 – Denaturant Tank	$90,955
Y17 – Low Proof Tank	$122,937
Y17 – Shift Tank	$122,937
Y17 – Tank-Thinstiller	$181,914
Y17 – Tank-Beerwell	$255,372
Y17 – Tank-Fermenter	$1,584,525
Y19 – Cooling Tower	$19,090
Y20 – Rectifer Tank	$31,668
Y21 – In-Process Tank	$37,341
Y22 – Cooler	$6901
Total	$2,498,356

(Ex. J, p. 50). PAAB also ordered the Board of Review to "specifically admit or deny whether the Yard Items 11, 17, 19-22 on Exhibit A pages 37 and 38 were considered exempt for the 2019 assessment."

The Board of Review's response reiterated its opinion the issue of exemption is not before PAAB. The Board of Review also argued the issue before PAAB is the value of the property as a whole, and not the value of individual components. The Board of Review failed to specifically admit or deny whether Yard Items 11, 17, 19-22 on Exhibit A pages 37-38 were considered exempt for the 2019 assessment. The Board of Review also offered no support for its contention that these yard items were excluded from Kubert's valuation in the sales and income approaches. As to the value of Yard Items 11, 17, 19-22 in Kubert's appraisal, it merely restated the figures from the appraisal while noticeably stating the value of Yard Item 17 – the In-Process Tanks – was "N/A." This is despite the fact Yard Item 17 is shown in Kubert's appraisal as consisting of tanks with an aggregated replacement cost new less depreciation of $2,358,640. (Ex. J, p. 50). The Board of Review did not attempt to explain this disparity or provide any rationale as to why it listed the value of Yard Item 17 as "N/A."

After receiving those responses, PAAB issued a third order advising the parties it found Kubert's appraisal most reliable but that Kubert's appraisal included the value of Yard Items 11, 17, 19-22 that were exempted in the 2019 assessment. (PAAB Order for Argument Re: of Subject Property Less Exempted Yard Items). The Order offered the parties an opportunity to make any desired argument regarding the procedure to arrive a value for the property less the exempted Yard Items. It specifically requested the parties to address whether additional factfinding was necessary to do so.

While it stated it may disagree with PAAB's determination that Kubert's appraisal is most reliable, POET indicated its belief that no additional factfinding was required. It stated PAAB should reduce Kubert's conclusion by the depreciated value of the exempted Yard Items ($2,498,356).

Instead of specifically addressing the requests PAAB made in its Order, the Board of Review asserted PAAB is raising the issue of exemption on its own, that Kubert's appraisal (but for the cost approach) does not include the value of the Yard Items, that removal of the Yard Items from the cost approach does not affect the conclusions, and that there is "no evidence to support the PAAB's conclusion that the tanks bearing the designation Y17 are excluded from the assessment." (Board of Review Argument in Support of Proposed Findings of Fact).

Analysis & Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-115.2(2-4). New or additional evidence may be introduced. *Id.* 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 the assessed value is correct. § 441.37A(3)(a).

POET contends its property is assessed for more than the value authorized by law. § 441.37(1)(a)(1)(b).

In an appeal alleging the property is assessed for more than the value authorized by law under ection 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). In protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation. § 441.21(3)(b)(2). To be competent evidence, it must "comply with the statutory scheme for property valuation for tax assessment purposes." *Soifer*, 759 N.W.2d at 782 (citations omitted).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.*

> Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, 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, including but not limited to 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.

Id. "When sales of other properties are admitted, the market value of the assessed property 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*, 759 N.W.2d at 783. "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.*

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783. "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 782 (*citing Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). "Factors that bear on the competency of evidence of other sales include, with respect to the property, its '[s]ize, use, location and character,' and, with respect to the sale, its nature and timing." *Id.* (other citations omitted). Sale prices must be adjusted "to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments." *Id.* (other citations omitted). See *Jevin Corp. v. Wright Cnty. Bd. of Review*, 2005 WL 839515 (Iowa Ct. App. 2005) (agreeing with district court's rejection of sales which lacked necessary adjustments).

"In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor." § 441.21(2).

POET contends the subject property is over assessed and submitted the Calvanico appraisal indicating the total value of the POET facility is $6,550,000, or less than half of the present assessment. The Board of Review offers the Kubert appraisal. He opined a value of $12,400,000, also less than the assessment.

Because both appraisals conclude values below the assessment, we find the preponderance of the evidence demonstrates the subject's assessment is excessive. We find our remaining task is to consider what appraisal offers the most reliable evidence of value. *Equitable Life Ins. Co. v. Bd of Review of City of Des Moines*, 281 N.W.2d 821, 827 (Iowa 1979).

The Board of Review contends Kubert's appraisal is a more persuasive valuation of the property. Partially because Kubert developed all three approaches to value and gave most consideration to the sales comparable approach. It asserts that Iowa law requires property be valued at market value and supported by market sales, if available.

It asserts sales are obviously available because both appraisers offered them. However, because Calvanico chose not to develop the sales comparison approach the Board of Review believes his report does not follow Iowa Code and should not be relied upon. (Closing). Calvanico asserted the approach was unreliable and could be misleading if developed.

Sales comparison approach

Calvanico testified he did not complete the sales comparison approach and asserts that if completed it could be misleading. However, he did research sales and asserts his reported sales and listings support his cost approach.

Calvanico listed fourteen properties that had either sold or were listed for sale. He testified sales were limited, but if a comparable was available it would be nearly impossible to adjust for differences. Additionally, he believes the sale of an operating ethanol plant would not be appropriate because it would include business value and personal property. He was knowledgeable that some of Kubert's comparables included operating capital, and also testified he would never use an allocated sale for a comparable. He believes the sale price for Kubert's comparables include more than just the value of the real property and therefore over values the subject. Calvanico's fourteen comparables included oil refineries and ethanol plants, chemical plants around the country, and Iowa industrial properties. Calvanico reported Comparables C1-C3 were operating oil refineries that included business value and other consideration beyond the real estate. He asserts that beyond selling well below their construction cost new, little could be gained by the analysis of Comparables C1-C4. We believe Calvanico made this comment in support of his obsolescence adjustment in the cost approach.

We agree Comparables C1-C3 had different uses and are not comparable to the subject. However, Comparable C4 is fairly similar in size and age to the subject and was not in production at the time of sale. Despite these similarities, it sold for much higher than Calvanico's RCN for the subject or his final opinion of value. Therefore, while it may support obsolescence in the market, it also makes us question Calvanico's

RCN. Calvanico also asserted the sale price is more reflective of the value of the real property alone for a facility that is not in production. The sale is on a much larger site, but was also reported to need improvements after the sale that would be made over a three-year period. Regardless of its purchase for a similar use and it being vacant at the time of sale, Calvanico made no further analysis of this sale. Based only on Calvanico's limited analysis, it would appear to more closely align with Kubert's value opinion.

Calvanico reports Comparables C5-C14 are chemical industrial facilities from around the United States and general industrial facilities located in Iowa. However, he appeared to know little regarding the facilities or their use. The one identified Iowa property was later described as a prior cheese drying facility that had sustained a fire and was sold as a burned-out shell. Additionally, his Iowa industrial Comparables C10-C14 were identified as light industrial or mixed industrial uses.

With the potential exception of Comparable C4, we find his comparables have little similarity to the subject. Only Comparable C4 was purchased for ethanol production like the subject. Comparable C4 is also the most similar property in size and age, but sold in 2016 and was on a much larger site. Calvanico reported it was going to be renovated and converted into an ethanol plant with improvements made over the three years following the sale. This sale has a price per square foot of $170.67 which if relied on for the subject would indicate a value of $12,516,084. However, we note there are differences between the subject and Comparable C4 and without adjustments find it gives minimal support of a value for the property.

We question Calvanico's unit of comparison for the sales. He asserts the sale price per square foot is the best indicator of value for the subject. Kubert disagreed and testified this measurement is not reflective of the market. Additionally, Kubert believes a larger than typical warehouse building on a sale could easily skew this unit of comparison.

Calvanico made no adjustments for any of these sales, but reported only the sale price per square foot. Calvanico's comparables indicate a range of SP/SF between $18.08 and $499.43. We question the comparability of these properties based on this range, and agree with Kubert's assertion. Overall, with this range of price per square foot and no real analysis, we find this approach gives no support to Calvanico's Cost Approach.

Kubert also developed the sales comparison approach, but he relied on comparables that were ongoing ethanol plants. POET was critical of his comparables and asserted that they were sold with business assets and operating capital. Additionally, the sales were multiple property sales with allocated sale prices. Calvanico testified he would never rely on such sales. However, Kubert asserts the sale prices he relied upon were reported and agreed on by both the buyer and seller of the properties. Two of the four sales were bankruptcy sales. Kubert agrees the sales are not ideal, but argues they are the best sales available. Further, he explained that these sales are made by knowledgeable individuals and organizations and many times have at least one, if not more, professional valuations completed prior to the purchase. Therefore, he believes they are reflective of market value.

Kubert quantified adjustments of comparison. We acknowledge that, for an assignment like this, the adjustment process is prone to some subjectivity. *Walmart, Inc. v. City of Davenport Bd. of Review*, 2023 WL 1808504 *5 (Iowa Ct. App. 2023) (quoting other Iowa Court decisions indicating appraisal is not an exact science and is a subjective determination guided by professional judgment). Further, we recognize isolating specific elements of comparison and then arriving at a quantifiable adjustment can be complicated task. However, when an appraiser quantifies adjustments, it provides PAAB with a better understanding of the appraiser's determination concerning the comparability of that particular property. Simply identifying a sale as superior or inferior does not give PAAB the same ability to consider the comparability of a property, especially in a complex assignment.

Ultimately, we find Kubert's unit of comparison much more reliable and his comparables to be the most similar sales in the record. However, we also find the subject's market value cannot be readily established by the sales comparison approach alone. Neither appraiser was willing to fully rely on the sales comparison approach. In *Nationwide Mutual Insurance Co. v. Polk County Board of Review*, the Iowa Supreme Court noted the fact the appraisers relied on all three methods of valuation indicates "that the market value for the property could not readily be established through the 'sale prices' approach alone but had to be determined by use of the 'other factors' approach." 983. N.W.2d 37, 43 (Iowa 2022) (quoting *Equitable Life Ins. Co. v. Bd. of Review of City of Des Moines*, 281 N.W.2d 821, 824 (Iowa 1979). In addition to that, the record here shows a general lack of normal sales transactions of similarly situated properties. Therefore, we find consideration of other valuation approaches to be warranted.

Cost approach

Both appraisers completed a cost approach and agreed it should be given the most consideration. Both appraisers started the approach by valuing the subject site as if vacant and available for development. Both appraisers chose comparables. Calvanico selected six mostly smaller industrial properties and made qualitative adjustments to the comparables. Kubert selected five agricultural sales from Hamilton County. Although they were agricultural, they appear to be alternative sites to the subject. Like Calvanico, his comparables were smaller in size. Kubert believed the subject's access to rail was an important factor in his comparable selection. He chose two comparables that backed to the same tracks as the subject. Calvanico made no mention of the rail. Kubert made no adjustments, but analyzed the comparables in a narrative format.

Calvanico reconciled to a final value of the site as if vacant of $7400 per acre or $1,480,000 total. Kubert reconciled to a value of $8500 per acre or $1,702,000 total. We find these values both reasonable and credible, but believe Kubert more accurately reflected the market value of the subject because he used comparables more similar in location and reflected the value of the rail line to the property.

Both appraisers relied on MVS in development of the cost approach. Calvanico testified that he valued everything included by the assessor on Exhibit A. The table below summarizes both appraisers' cost approaches.

Table 7

Appraiser	RCNLD Buildings	RCNLD Grain Improvements	RCNLD Site Improvements	Total RCNLD	Indicated Value by cost approach
Calvanico	$2,154,277	Inc. in Site Imp.	$2,915,583	$5,069,860	$6,550,000
Kubert	$3,818,681	$2,849,037	$4,233,636	$10,901,353	$12,600,000

While both appraisers relied on the MVS for cost information, we note a drastic difference in both RCN and the RCNLD. We find two items assist us in the determination that Kubert's Cost Approach is most reliable. First, Kubert developed a sales comparison approach that supports this approach. See *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 598 (Iowa 1990) ("The advantage of using multiple appraisal techniques lies primarily in those instances where the differing techniques lead to similar conclusions concerning market value and therefore tend to support each other."). Second, Calvanico stated his research "showed that the sales reflected a price well below reported cost to construct." (Ex. 1, p. 46). Despite being of similar size as the subject, Calvanico's Comparable C4 had a sale price of $12,800,000 but Calvanico concludes a value for the subject in his cost approach of $6,550,000. We find this testimony and report inconsistent with his cost approach estimates.

We also find Kubert's estimate of obsolescence more reliable. Calvanico estimates 45% obsolescence based on his analysis of corn and ethanol prices. His analysis showed a much less favorable ethanol industry in 2019 than in 2007. Although it may be logical that these national market for ethanol would have some effect on the market values for ethanol facilities, we question whether this analysis accurately represents the influence on the subject's real estate value. Rather, his selection of 45% obsolescence appears to be largely subjective.

On the other hand, Kubert based his obsolescence on the production output of the plant. He analyzes the ratio of the actual plant output in relation to its designed capacity. Because the plant's output is running at 80% of its designed capacity, he asserts this shows a 20% obsolescence. While we question Kubert's label of economic/external and not functional obsolescence, we realize the label has no effect on his opinion of value. We find this measure much more consistent with Kubert's testimony regarding the cost and value of ethanol plants. Mainly that the cost of construction is directly tied to its total production capacity and its value is directly tied to its actual output. Kubert also adds 5% of additional obsolescence to reflect the poor market conditions of the ethanol industry. This amount, like Calvanico's estimate of obsolescence, appears to be purely subjective.

Lastly, we also question Calvanico's decision to apply economic obsolescence to the site improvements; in particular those site improvements whose value was estimated through the secondary/used equipment market. Any external obsolescence would likely already be reflected in the equipment's secondary/used market value. Therefore, applying additional obsolescence to the equipment would be double-dipping.

Income approach

Lastly, although he recognized the limited reliability of the approach, Kubert developed an income analysis as a check on his sales comparison and cost approaches. Because these facilities are not leased, a market rent cannot be determined. Therefore, Kubert's analysis focused on the income generated by the operating facility. POET was critical of this approach because it is based on the operation of the facility. Kubert gave no weight to this approach and he explained that it was only developed as a check for the other approaches.

We have similar concerns to POET, and give this approach no consideration.

Final Reconciliation and Analysis of the Appraisals

Calvanico chose not to develop either the sales comparison approach or income approach to provide a test to his cost approach. He believes the cost approach should be solely relied upon to form a value opinion of the subject. While he did list sales of industrial properties from around the country, they were shown to have little similarity to the subject and, with the exception of Comparable C4, we give them no consideration. Comparable C4 was reported to be purchased for a similar use to the subject, but Calvanico did not adjust it for its differences. Therefore, we still give it little consideration, but find it appears to more closely support Kubert's opinion of value than

Calvanico's. Aside from that, there is little support from the real estate market for Calvanico's conclusions. Additionally, we question Calvanico's replacement cost new estimates given his testimony regarding the replacement costs of the sales, and find his obsolescence adjustment less reliable.

On the other hand, Kubert developed a sales comparison approach using sales of other ethanol facilities. These sales had allocated sale prices and included other properties in the sale. Personal property and operating capital was also included in the sale prices. Although Kubert relied on the price that was reported paid for the real property alone, his report also states his value opinion reflects equipment. We agree with Kubert's testimony that these sales are between knowledgeable buyers and sellers and due diligence was completed prior to the sale. We also acknowledge that other factors may have influenced the buyers and sellers and the sale prices reported. However, while not ideal sales, they are the best available ethanol plant sales and we do give them consideration. At minimum, they provide some indication of market actions of relatively similar properties. Kubert's cost approach appears more consistent with the testimony regarding reproduction costs. Additionally, his analysis of obsolescence is more consistent with the cost and value of ethanol facilities. Lastly, we find the support between Kubert's cost and sales comparison approaches are the best evidence in the record of subject's market value.

After consideration of the appraisals and testimony, we find Kubert's appraisal to be the most persuasive and provides the most reliable indications of the subject property's fair market value as of January 1, 2019. It concludes a value of $12,400,000 for the entirety of POET's facility. This value indication exceeds the January 1, 2019, assessed value. Therefore, we conclude the assessment exceeds the property's market value.

Exempt Machinery & Equipment

Having determined Kubert's appraisal is the most reliable estimate of the subject property's value, we next consider what, if anything, should be done about the machinery and equipment that appears to be exempted in the subject's 2019 PRC. (Ex.

A). Previous PAAB Orders notified the parties that PAAB found machinery and equipment, specifically Yard Items 11, 17, 19-22 in Exhibit A, had been previously exempted in the 2019 assessment by the Assessor and/or Board of Review but were nonetheless included in Kubert's appraised value. PAAB requested the parties' comments on whether additional factfinding was necessary to determine the property's value less the exempted machinery and equipment. (PAAB Order For Argument Re: Value of Subject Property Less Exempted Yard Items).

Despite its disagreement about PAAB's determination that Kubert's appraisal is most reliable, POET stated no additional factfinding was required and PAAB should remove the depreciated value of the exempted Yard Items from Kubert's appraised value.

In contrast, the Board of Review argued that the primary issue here is the property's total value, that PAAB has raised the issue of exemption on its own, that there is "no evidence to support PAAB's conclusion that the tanks bearing the designation Y-17 are excluded from the assessment", that Kubert's appraisal (with the exception of the cost approach) does not value the exempted property, and that removal of the exempt property's value from that cost approach would not affect Kubert's conclusions.

The Board of Review correctly points out that under Iowa Supreme Court precedent, the overarching question in many assessment appeals is the value of the property as a whole and not the value of individual components. *Deere Mfg. Co. v. Zeiner*, 78 N.W.2d 527 (Iowa 1956); *White v. Bd. of Review of Polk Cnty.*, 244 N.W.2d 765, 769 (Iowa 1976). In decisions too numerous to mention, PAAB has adopted this position and we have stated our primary concern in overassessment claims is the property's total value. Despite that, *Deere Mfg.* and *White* do not stand for the proposition that the assessment can include the value of property determined to be exempt. Moreover, both appraisals offered in this matter demonstrate POET's total property assessment is excessive. Thus, the narrow issue we are now addressing is how to remove the value of property the Assessor and Board of Review already determined to be exempt from the appraisals' conclusions.

The Board of Review next argues PAAB has raised the issue of exemption on its own and it has no jurisdiction to consider the question. It is true that POET did not raise an exemption claim under section 441.37(1)(a)(1)(c). As PAAB has made clear, however, we are not entertaining claims on whether property should be exempt. (PAAB Order Requesting Response to Findings para. 8). The foremost problem with the Board of Review's argument is that, as we will discuss later, the Assessor and Board of Review already exempted Yard Items 11, 17, 19-22 and therefore POET had no reason to raise an exemption claim. In our view, the Board of Review is attempting to obfuscate and avoid application of the Assessor's exemption of this property that the Board of Review itself affirmed.

It was POET's post-hearing brief that alerted PAAB to the fact the appraisals offered may have included the value of this exempted property. (POET Post-Hearing Brf. pp. 11-12). Subsequently, our inquiry regarding the issue was two-fold: 1) whether the original assessment exempted Yard Items 11, 17, 19-22, and 2) whether those same items were included in the appraisals. We determined this inquiry was necessary, if for no other reason, than to ensure we conducted a fair comparison of the assessment and appraisals. Second, such inquiry was necessary in order to consider the appropriate remedy to apply when it is found, as we find here, that the subject's total value is excessive but the appraisals offered in support of that conclusion include the value for exempted machinery (i.e. Yard Items 11, 17, 19-22). See *Equitable Life Ins. Co.*, 281 N.W.2d at 827 ("Once the Court of Appeals found the valuation was excessive, it was obliged to determine a fair market value for the property from a de novo review of the record.").

From there, the Board of Review contends there is "no evidence to support PAAB's conclusion that the tanks bearing the designation Y-17 are excluded from the assessment." As Table 6 shows, the tanks designated as Yard Items 17 bear the majority of the exempt property value.

PAAB finds the Board of Review's argument disingenuous. In its September 10 Order, PAAB clearly ordered the Board of Review to "specifically admit or deny whether the Yard Items 11, 17, 19-22 on Exhibit A pages 37 and 38 were considered exempt for the 2019 assessment." (PAAB Order Requesting Clarification on Board of Review Objection). The Board of Review failed to comply with that request, neither admitting or denying whether any identified items were exempt. At this late hour and without any support for its assertion, the Board of Review is now suggesting Yard Item 17's tanks were not exempted.

Nonetheless, there is substantial evidence to conclude Yard Item 17's tanks were exempt in the 2019 assessment. The 2019 assessment described Yard Item 17 (Y17) as "(11)IN-PROCESS TANKS – NC. M&E." (Ex. A, p. 44). M&E is a common abbreviation for machinery and equipment. Meanwhile, the assessment property sketch denotes exactly 11 tanks labeled Y17. (Ex. A, p. 46). Then, the assessment shows Yard Item 17 with a value of $0. (Ex. A, p. 38). In combination, those facts indicate Yard Item 17's tanks were not valued in the assessment and were considered exempt.[3] To say that there is no evidence to suggest Yard Item 17's tanks were exempted in the assessment is a factually inaccurate.

Importantly, the Board of Review has provided no support for its argument that Yard Item 17's tanks were excluded from the assessment. The unrefuted evidence shows the subject's 2019 assessed value excludes Yard Items 11, 17, 19-22 on Exhibit A pages 37-38 as exempt machinery and equipment. When requested to do so, the Board of Review failed to specifically admit or deny whether those yard items were considered exempt for the 2019 assessment. To the extent the Board of Review might now argue those items should not be exempt, we find it should be estopped from doing so. *Carroll Area Child Care Center, Inc. v. Carroll Cnty. Bd. of Review*, 613 N.W.2d 252,

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[3] PAAB is not making any substantive determination as to whether the yard items should or should not be exempt as manufacturing machinery under sections 427A.1(1)(e) and 427B.17(3). *See Stateline Cooperative v. Iowa Property Assessment Appeal Bd.*, 958 N.W.2d 807 (Iowa 2021) (discussing exemption for manufacturing machinery). PAAB is merely trying to apply the exemption determination made by the Assessor, and affirmed by the Board of Review, to the evidence of this appeal to fashion a remedy in accordance with the previously determined taxable status of the property. As we have made clear, PAAB has not entertained arguments regarding the exempt status of any property not already exempted in the 2019 assessment. (PAAB Order Requesting Response to Findings para. 8).

254 (Iowa 2000) ("We do not think the law permits the Board to challenge on appeal its own determination that the Center was entitled to a partial exemption from property taxation.").

The last of the Board of Review's arguments are that 1) Kubert's appraisal does not include the value of the exempted property, except for in the cost approach, and 2) removing the exempt property's value from his cost approach would not impact his final value conclusion. Here again, PAAB's September 10 Order contained numerous facts from the record that are contrary to the Board of Review's assertion that Kubert's appraisal does not include a value for the exempt machinery and equipment. (PAAB Order Requesting Clarification on Board of Review Objection). In that Order, PAAB asked the Board of Review to respond to the following questions:

1. What evidence supports the assertion that Kubert's valuation, with the exception of the cost approach, excludes Yard Items 11, 17, 19-22? Cite to the record.
2. PAAB notes it would be unusual for an appraisal's scope to vary across the approaches used. To clarify, it is the Board of Review's position that Kubert's value conclusions under the sales and income approach exclude the Yard Items, but the cost approach includes those same Yard Items? Please identify any statements in his report that support that position.

As before, the Board of Review failed to specifically respond to these questions. It has not provided any support for its contention that Kubert's sales and income approaches excluded exempted property.

Facts contained throughout this Order and detailed specifically in our September 10 Order demonstrate that Kubert's final value conclusion includes the property's machinery and equipment. This conclusion can be most clearly be illustrated by Kubert's appraisal, which states, "The appraiser has used the Cost Approach, Sales Comparison Approach, and the Income Approach to indicate the value of the subject property. The indicated values include the real estate and the integrated mechanical and processing equipment." (Ex. J, p. 65). When discussing the sales comparison approach specifically, Kubert wrote, "The Sales Comparison Approach directly compares the subject property with similar properties which have recently been bought or sold in the market and it is felt to provide the most reliable estimate of value for the real estate and the operating equipment in total." (Ex. J, p. 65).

Lastly, the Board of Review contends that even if the value of the exempted Yard Items is removed, Kubert's final value conclusion would not be affected. However, the Board of Review's argument here rests entirely on the exclusion of Yard Item 17's tanks from that analysis. Those tanks have an aggregate depreciated value of $2,358,640 in Kubert's appraisal. In total, all of the exempted property has a value of $2,498,356. We believe removal of the value of all exempted items would materially affect Kubert's conclusions and the Board of Review has given no persuasive reason to think otherwise.

PAAB rejects all of the Board of Review's arguments. Probably more than was necessary, we have given the Board of Review the opportunity to support its arguments with the record and it has consistently failed to do so. As this Order demonstrates, the arguments are unsupported by, and sometimes specifically contradicted by, the record.

Ultimately, neither party is contending that additional factfinding is necessary to ascertain the property's value less the exempted property. We conclude an additional reduction to Kubert's final value in the amount of $2,498,356 – equal to his RCNLD for Yard Items 11, 17, 19-22 – should be made. This results in final value for the subject property of $9,901,644.

Order

PAAB HEREBY MODIFIES the Hamilton County Board of Review's action. The January 1, 2019 assessment of Parcel No. 40872420400009 should be $9,901,644.

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

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 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.

As a result of this modification, the appellant has the right to elect a refund of any taxes already paid based on the assessment at-issue in this appeal by filing a motion for refund with PAAB. § 441.37A(3)(c); Iowa Admin. Code R. 701-115.5(2)(d). Such motion must be filed within 10 days of this Order. R. 701-115.5(2)(d). If no such motion is filed, any change in taxes resulting from this assessment modification shall be credited toward future tax payments. *Id.*

Dennis Loll, Board Member

Elizabeth Goodman, Board Member

Karen Oberman, Board Member

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Hamilton County Auditor by email