



STATE OF NEVADA  
STATE BOARD OF EQUALIZATION

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In the Matter of

ABS NV-O, LLC  
APN: 163-08-121-008  
Clark County, Nevada  
PETITIONER

Michele Shafe  
Clark County Assessor  
RESPONDENT

Appeal of the Decision of the  
CLARK COUNTY  
BOARD OF EQUALIZATION

Case No. 14-194

**NOTICE OF DECISION**

***Appearances***

Bretta Ferrie appeared on behalf of ABS NV-O, LLC (Taxpayer).

Lisa Wilson and Jeff Payson appeared on behalf of the Clark County Assessor's Office (Assessor).

***Summary***

The matter of the Taxpayer's petition for review of property valuations for the 2014-15 Secured Roll within Clark County, Nevada, originally came before the State Board of Equalization (State Board) for hearing in Las Vegas, Nevada, on June 23, 2014 after due notice to the Taxpayer and the Assessor.

The State Board incorporated by reference the record of case 14-190 through 14-193 into the current case.<sup>1</sup>

<sup>1</sup> See *Tr.*, 6-24-14, p. 54, l. 2 through p. 55, l. 12: 2 So what I would like to do, Mr. Chairman, with 3 your blessing, is Cases 14-190 through -- all the 4 Albertsons -- through 14-203 -- and I guess it does also 5 include, then, 14-235, 14-265, and 14-241 -- I would 6 like to incorporate by reference the comments that were 7 made in all of these cases, so there's outstanding 8 incorporation by reference to any of those cases listed 9 to the other cases and discussions we've had herein, so 10 we don't have to keep doing it, and that way someone can 11 go back and pick up one case and say, Keith wasn't -- 12 didn't consider X, Y, or Z, or Ben was sounding like an 13 idiot again. 14 CHAIRMAN MESERVY: Well, my only concern there 15 is you're talking about cases we haven't even heard yet. 16 Don't try to incorporate it when we haven't taken a 17 stance on those. 18 MS. WILSON: I would actually like to also point 19 out that 235, 241, and 265, I don't believe are subject 20 to the service transaction, so neither of those comments 21 would be relevant. 22 CHAIRMAN MESERVY: I think we should make it 23 more all the cases that we've heard prior to the case in 24 numerical sequence. 25 MR.



The State Board, having considered all evidence, documents and testimony pertaining to the valuation of the property in accordance with NRS 361.227, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

## FINDINGS OF FACT

- 1) The State Board is an administrative body created pursuant to NRS 361.375.
- 2) The State Board is mandated to hear all appeals of property tax assessments pursuant to NRS 361.360 and NRS 361.400.
- 3) The Taxpayer and the Assessor were given adequate, proper and legal notice of the time and place of the hearing before the State Board, and the matter was properly noticed pursuant to the Open Meeting Law at NRS 241.020.<sup>2</sup>
- 4) The subject property consists of an Albertson's supermarket, containing a 60,970 square foot supermarket constructed in 1997, situated on one 4.89 acre parcel and located at 2550 South Fort Apache, on the southeast corner of Sahara and Fort Apache in Clark County, Nevada.<sup>3</sup>
- 5) The Clark City Board of Equalization (County Board) ordered the total taxable value for the subject property, APN 163-08-121-008 of \$4,547,380 be upheld on the 2014-2015 secured roll.<sup>4</sup>
- 6) The State Board found the Taxpayer presented sufficient evidence to support values different from that established by the County Board. The State Board found the Assessor used an 8% capitalization rate (cap rate) in the income approach. However, the State Board found the cap rate did not sufficiently reflect the amount of risk associated with possible vacancy and lack of alternative uses for a "big box" retail store. The State Board tested the taxable value using the income approach by applying a capitalization rate of 9 per cent to the net operating income (NOI) of \$393,769, developed by using \$0.65 rent per square foot and using the same vacancy loss and expense ratios estimated by the Assessor, which resulted in an indicated value of \$4,375,207. The State Board found the use of \$0.65 rent per square foot was still within market parameters and reflected the age of the property. The State Board found the 9% capitalization rate better reflected the investment risk in this type of property.<sup>5</sup>

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JOHNSON: Or we can do it again in 203, **Page 55** **1** because she is correct that the last three didn't **2** include that service transaction. And that's just based **3** on -- I'm reading the case files that were all **4** similar -- very similar issues and similar presentation **5** and data. **6** CHAIRMAN MESERVY: Well, we have reviewed those **7** cases, so I guess I have no problem with that. **8** Do you have any objection, either party? **9** MS. FERRIE: No. **10** CHAIRMAN MESERVY: The Assessors have now -- **11** MR. JOHNSON: And that would apply at **14-190** **12** through **14-203**

<sup>2</sup> See Record, SBE page 182, Receipt of certified mail.

<sup>3</sup> See Record, SBE page 157, Capitalization Summary; and SBE pages 178-179, Maps; Tr., 6-24-14, p. 43, ll. 18-23.

<sup>4</sup> See Record, SBE page 11, CBE Decision Letter and SBE page 180, minutes.

<sup>5</sup> See Tr., 6-24-14, p. 46, l. 11 through p. 47, l. 23: **11** Yeah, I mean, using \$0.65 rent and same **12** parameters, I come to an NOI of \$393,769. And using a **13** 9 percent cap rate, I come out at \$4,375,207, which is **14** slightly lower than the Assessor's number, but I **15** don't -- you know, looking at their taxable value on the **16** price per square foot, I don't know that it's that out **17** of line, so -- **18** CHAIRMAN MESERVY: Mr. Johnson? **19** MR. JOHNSON: My calculator reads the same exact **20** thing that Keith's did down to the penny, so I did the **21** same math that Keith did. **22** One of the things here that we talked about, the **23** cap rate, I'm very concerned with properties such as **24** this. If they go vacant, what are you going to do with **25** them? We don't have an expanding market for grocery **Page 47** **1** stores. It's a problem throughout the state of Nevada **2** right now where there are essentially too many grocery **3** stores, too many big-box stores. **4** We have a list up north that various brokers **5** keep of all the big-box stores that are vacant today and **6** what are you going to do with them? I mean, there's not **7** a lot of use, and we spend a ton of money reconfiguring **8** the property for an alternative use. And that's the **9** risk here when you buy a property like this, is if you **10** can't go find a supermarket to sign a lease, then you're **11** out and you're looking for alternative uses, and you're **12** going to risk having to spend a lot of money for a very **13** uncertain future. **14** And that's why the cap rate has been higher **15** here. I worry just on the cap rates that I've seen **16** comparisons that are lower are based on the strength of **17** the borrower, or the tenant in this case, rather than **18** the market, and we obviously can't consider any value that's attributable from a strong lessee.



- 7) The State Board adjusted the decision of the County Board by reducing the value from \$4,547,380 to \$4,375,207 plus common element.<sup>6 7</sup>
- 8) Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

## CONCLUSIONS OF LAW

- 1) The Taxpayer timely filed a notice of appeal, and the State Board accepted jurisdiction to determine this matter.
- 2) The Taxpayer and the Assessor are subject to the jurisdiction of the State Board.
- 3) The State Board has the authority to determine the taxable values in the State.
- 4) The subject property is appraised at the property taxable value as adjusted, in accordance with NRS 361.227.
- 5) Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

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<sup>6</sup> See *Tr., 6-24-14, p. 48, l. 1 through p. 50, l. 22*: 1 MR. JOHNSON: Sure. In case 14-194, I will make 2 a motion that we lower the taxable value to \$4,375,207. 3 That difference would obviously be attributable to the 4 improvements, leave the land where it is. And that's 5 based on our new capitalization rate, which decreased 6 the rent from \$0.70 to \$0.65 a square foot per month, 7 leaving everything else the same. 8 CHAIRMAN MESERVY: Do we have a second? 9 MR. HARPER: Second. 10 CHAIRMAN MESERVY: My comment would be that I 11 didn't see a need to change that, but -- 12 MR. JOHNSON: Oh, and I just didn't -- I 13 increased the capitalization to 9 as well. I dropped 14 the rent to \$0.65 and decreased the cap rate to 15 9 percent. I just wanted to clarify that. 16 CHAIRMAN MESERVY: And that's what both you -- 17 MR. JOHNSON: Correct. 18 CHAIRMAN MESERVY: Yeah, I'm just trying to 19 figure out why I need to change that. You might have an 20 argument. 21 MR. JOHNSON: The only thing is -- what we've 22 been doing here is we've done all the cap rates 23 primarily, and that's what remains the biggest swing in 24 value here. 25 But throughout these cases, with what I think Page 49 1 our Board struggled with a little bit, is what is a 2 correct cap rate for a big-box store? And Keith and I 3 think that there's more risk inherent in a big-box 4 location; a higher cap rate means higher risk. 5 And due to owning a big box that you have 6 limited uses for without having to put a ton of money 7 into the property, there is risk inherent in that and 8 you would require a higher rate of return to take on 9 that risk, and that's what we think's been not being 10 fully taken into account in the preparation of this 11 analysis. 12 CHAIRMAN MESERVY: And that's why I used the 13 higher rate, but I didn't change it to \$0.65. That's my 14 concern. I'm not sure if you need to do that, but maybe 15 you -- and I need more explanation in there; otherwise, 16 I'm still not clear. 17 MR. HARPER: Yeah. I just -- again, basically I 18 was looking at the \$0.65 rent because of the age. This 19 is one of the older stores, built in 1997. I mean, you 20 know, it's been well-maintained; they've kept it 21 upgraded. But, you know -- 22 And the other thing that kind of worries me is 23 that even though Smith's went out of business across the 24 street, I mean literally across Sahara several years 25 ago, I think that's probably benefited this because it Page 50 1 did leave this as the only grocery store in that 2 immediate intersection area. 3 So I just -- \$0.70, I think, is just a little 4 strong for this location, so that's why I felt that I 5 liked the \$0.65, which is still within market 6 parameters, and the information provided is just 7 basically due to its age. 8 CHAIRMAN MESERVY: Any more comments? 9 MR. JOHNSON: My only other comment would be the 10 rental area is relatively large. It's 60,970 square 11 feet, and typically there's a inverse relationship with 12 grocery stores between size and price. And a single 13 tenant here, which would also lead towards it being a 14 little bit -- towards the lower end. It may be a little 15 bit much, but I felt too it was just a little strong. 16 CHAIRMAN MESERVY: Okay. We have a motion and a 17 second, and all in favor? 18 MR. HARPER: Aye. 19 MR. JOHNSON: Aye. 20 CHAIRMAN MESERVY: Any opposed? 21 (No response.) 22 CHAIRMAN MESERVY: It's unanimous..

<sup>7</sup> See *Tr., 6-24-14, p. 63, ll. 9-25*: 9 MR. JOHNSON: I will make the motion on 10 Case 14-194 that our previous conclusion did not 11 clarify -- to the extent that our previous motion did 12 not include any consideration of common element, then 13 the common element would be added in in addition to the 14 new taxable value we arrived at in our prior motion for 15 this case. 16 CHAIRMAN MESERVY: Do we have a second? 17 MR. HARPER: Second. 18 CHAIRMAN MESERVY: Any more comments? 19 (No response.) 20 CHAIRMAN MESERVY: All in favor? 21 MR. JOHNSON: Aye. 22 MR. HARPER: Aye. 23 CHAIRMAN MESERVY: Any opposed? 24 (No response.) 25 CHAIRMAN MESERVY: Okay, passed.

## DECISION

The Petition of the Taxpayer is granted based on the above Findings of Fact and Conclusions of Law. The Clark County Comptroller is instructed to correct the assessment roll by adjusting the assessed valuation of the subject property as follows:

### 2014-2015 Secured Roll

Parcel Number 163-08-121-008	Taxable Value		Assessed Value	
	Established by County Board of Equalization	Revised By State Board	Established by County Board of Equalization	Revised by State Board
Land	\$1,533,657	\$1,533,657	\$536,780	\$536,780
Improvements	\$3,013,723	\$2,841,550	\$1,054,803	\$994,543
<b>TOTAL</b>	<b>\$4,547,380</b>	<b>\$4,375,207</b>	<b>\$1,591,583</b>	<b>\$1,531,323</b>

The Clark County Comptroller is instructed to certify the assessment roll of the county consistent with this decision.

BY THE STATE BOARD OF EQUALIZATION THIS 30<sup>th</sup> DAY OF SEPTEMBER, 2014.

  
Christopher G. Nielsen, Secretary  
CGN/ter