

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

ALODIUM LLC,
APPELLANT,

CASE NO: 20C 0355

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING THE
DECISION OF THE
LANCASTER COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Larry Albers,
Member of Alodium LLC

For the Appellee:

Daniel J. Zieg
Deputy Lancaster County Attorney

This appeal was heard before Commissioners Robert W. Hotz & James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 5,938 square foot, two-level commercial office parcel located at 6710 L Street, Lincoln, Lancaster County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Lancaster County Assessor determined the assessed value of the Subject Property was \$506,500 for tax year 2020. Alodium LLC (the Taxpayer) protested this assessment to the Lancaster County

Board of Equalization (the County Board) and requested a taxable value of \$393,500 at the time of Protest, and \$410,000 at the hearing. The County Board determined the taxable value of the Subject Property for tax year 2020 was \$506,500.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 23, 2022. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1-56 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.² When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.³

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

¹ Exhibit 1.

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁴ *Id.*

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.⁸

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.⁹ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹³ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Constitution.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²¹ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²² If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT

A. Testimony of Larry Albers

Larry Albers was a member of Allodium, LLC. He disputed several factors considered by the County Assessor in its income approach to value the Subject Property.

Albers alleged a discrepancy in the amount of rentable square footage of the Subject Property. The County Assessor determined the

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

rentable space at 4,915 square feet.²⁵ Albers contended the rentable space was 4,135 square feet. Albers asserted the County Assessor did not correctly account for common areas²⁶ in the Subject Property.²⁷ He also argued the space shown on Exhibit 50 as “Storage Room A” could not be rented out due to access requirements and should not be counted as leasable space.

Albers also argued the income approach calculation used by the County Assessor should have used the actual lease income of the Subject Property rather than what was typical in the market. He provided copies of the leases in place as of January 1, 2020, indicating a gross rent of \$13.50 per square foot.²⁸ Albers also noted the leases were gross leases, rather than triple-net leases.²⁹

Albers produced a calculation using the asserted actual square footage, actual rent rates, and actual expenses averaged over the prior three years to calculate an income-approach valuation.³⁰ This calculation used an expense rate of 49% but used the vacancy & collection loss rate and capitalization rate used by the County Assessor. This calculation resulted in a value of \$307,420.

Albers also contended one of the County’s comparables shows a gross lease with an expense rate of 35.09%.³¹ Albers argued, based upon his own experience working in real estate development, that a 35% expense rate is common and therefore he conceded the use of that rate would be appropriate for the Subject Property. Using the 35% expense rate in place of the 49% rate in his calculation noted above,

²⁵ Exhibit 3:9 (2,677 for upper floor + 2,238 for lower level = 4,915 square feet).

²⁶ Common areas are “mutually used by and benefit all tenants or owners, including areas such as halls, elevators and playgrounds.” Jeffrey D. Fisher & Robert Martin, *Income Property Valuation*, 562, Dearborn Financial Publishing, Inc., (1994).

²⁷ See Exhibits 48, 49, and 50.

²⁸ Exhibits 45, 46.

²⁹ Under a triple-net lease the tenant typically pays the property insurance, property tax, and maintenance costs.

³⁰ Exhibit 55.

³¹ Exhibit 37:7.

Albers calculated a Subject Property value of \$410,169.³² Albers opined this was the actual value of the Subject Property for tax year 2020.

B. Testimony of Mike Ball

Mike Ball was a Vice President of brokerage and leasing for NAIFMA Realty for over 15 years. Ball oversaw nine brokers and real estate agents. Ball was not a licensed appraiser. Ball stated he was familiar with the Lincoln area real estate market and the Subject Property.

Ball testified as to his opinion the Subject Property was best used as a multi-tenant office building based upon its size, amenities, and layout. He also opined the Subject Property would take longer than normal to find a single tenant to occupy the building as any reconfiguration would likely require rewiring and reworking HVAC systems in addition to changing the layout. Ball stated this difficulty in marketing to a single tenant vs. multiple tenants would lead to reduced income from the property due to vacancy.

C. Testimony of Robert Stanley

Robert Stanley was a Senior Commercial Appraiser with the Lancaster County Assessor for approximately 31 years. Stanley was formerly licensed as a Registered Appraiser before that level of licensure was discontinued.

Stanley noted he used market-based triple-net lease rates in valuing the Subject Property as that is the norm in the market, but he acknowledged the leases for the Subject Property were not triple-net leases but were gross leases. Stanley noted the income approach is the primary approach used to value office buildings, but sales comparisons are used to support the valuations.

Stanley prepared a spreadsheet comparing the sale prices and assessed values of comparable multi-tenant office buildings and single tenant office buildings.³³ Stanley pointed out the Subject Property's

³² Exhibit 56.

³³ Exhibit 4:2.

ratio of net leasable area to gross building area was abnormally low at 69.6%, compared to the selected comparable properties, which ranged from 86% to 100%. Stanley asserted the Subject Property could potentially be reconfigured to increase the net leasable area.

Stanley also argued the rents charged in the gross leases were at submarket rates. He based this opinion upon the comparable market leases, which he acknowledged were triple-net leases, not gross leases. Stanley opined the highest and best use of the Subject Property would be as a single-tenant property to increase the net leasable space.

Stanley provided two calculations using the income approach, one which included 219 square feet of storage area as leasable space, and one calculation which removed this square footage. Both calculations used market rates for vacancy & collection loss, expenses, and capitalization rates. These figures were based upon triple-net leases. Stanley acknowledged he used an increased rent rate for the lower level of the Subject Property (\$10 per square foot, rather than \$8 per square foot as assessed) based upon his post-assessment inspection.

Stanley acknowledged the Subject Property was assessed using a single-tenant valuation model. He noted that using a multi-tenant valuation model would alter the rent rate, vacancy & collection loss rate, and capitalization rate. Regarding the 35% expense rate of the comparable property noted above,³⁴ Stanley stated it was treated as a multi-tenant office building, and that many of the older, downtown multi-tenant office buildings were using gross leases, but were trying to move to triple-net leases. Accordingly, Stanley used the multi-tenant gross lease model for that calculation. When asked whether the same model should have been used for the Subject Property and the gross lease comparable, Stanley testified he would use the same model for both, but that model would be the triple-net lease model.

Stanley stated in mass appraisal no property's actual income and expense figures are exclusively used in assessing that property.

³⁴ Exhibit 37:7.

Instead, a market rate for rents, vacancy rates, expense rates, and capitalization rates are used.³⁵

At the hearing, Stanley provided a new opinion of value based upon the gross building area of 4,915 square feet, a rental rate of \$10 per square foot, a vacancy & collection loss rate of 10%, an expense rate of 10%. and a capitalization rate of 8%. Using these figures, Stanley calculated a value of \$497,647 for the Subject Property for tax year 2020. Stanley stated that while a different quality rating was assigned to each level of the Subject Property, he believes the different levels were close enough to justify use of a single rental rate. He also asserted that if he was valuing the Subject Property as a single-tenant building, a single rent rate would have been used.

VI. ANALYSIS

“[A] resident owner who is familiar with his or her property and knows its worth is permitted to testify as to its value without further foundation and that this principle rests upon the owner's familiarity with the property's characteristics, its actual and potential uses, and the owner's experience in dealing with it.”³⁶

Here, the testimony of Albers regarding the value of the Subject Property is competent evidence. Accordingly, the Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

If the taxpayer successfully rebuts the presumption, the Commission then examines whether the taxpayer has shown by clear

³⁵ Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis. International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

³⁶ *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 947, 911 N.W.2d 551, 561 (2018) (citing *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008)).

and convincing evidence that the County Board's valuation determination was arbitrary or unreasonable.³⁷

Albers' appeal primarily contests two issues: that the County Board relied upon an incorrect net leasable area in determining the potential income for the Subject Property; and that an incorrect expense rate was used. The County Board relied upon Stanley's testimony regarding the assessment model utilized and the income approach calculations used.

A. Leasable space

Regarding the dispute over the net rentable area of the Subject Property, Albers testified that based upon his measurements, the net rentable area on the lower level of the Subject Property was 1,458 square feet instead of the 2,238 square feet used by the County Board. Albers provided a set of schematic drawings of the Subject Property which were received in evidence.³⁸ The drawings are not conclusive regarding the exact square footage of the Subject Property as the first page, Exhibit 48, includes the caveat, "All [demensions] are approximations only." Accordingly, the Commission cannot conclude that Albers' square footage measurements constitute clear and convincing evidence that the County's measurements were arbitrary or unreasonable. Regarding Storage Room A, while Albers argued this space should not be included as rentable space, he effectively testified to the contrary when he conceded that the space was being used by one of the then-current tenants.

B. Expenses

Ultimately the burden is upon the appellant to demonstrate by clear and convincing evidence that the use of the market-typical triple-net leases in considering the expense ratio to assign to the Subject Property in performing its income approach valuation was arbitrary or unreasonable. "Clear and convincing evidence means that

³⁷ *Id.*

³⁸ Exhibits 48-51.

amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved.”³⁹

As Stanley testified, the gross-lease comparable property advanced by Albers should have been assessed using the market-typical triple-net lease assessment model. Essentially, because the use of a gross lease rental arrangement for the Subject Property is a management decision, and the evidence suggests the market generally uses triple-net leasing arrangements, the Commission finds the Appellant has not demonstrated by clear and convincing evidence the County’s use of its triple-net lease assessment model was arbitrary or unreasonable.

As to the dispute regarding the highest and best use of the Subject Property – as a single-tenant or multi-tenant office building – Stanley testified, based upon his training and experience that properties like the Subject Property are best utilized as single tenant buildings. Both Albers and Ball testified to the contrary, asserting a multi-tenant use was the highest and best use of the property. Based upon these conflicting assertions, the Commission finds the Appellant has not proven by clear and convincing evidence that the income approach methodology relied upon by the County Board viewing the highest and best use of Subject Property as a single-tenant office building was arbitrary or unreasonable.

C. Rent rate

Stanley offered an updated opinion of value at a lower value than the County Board’s decision. This valuation was based upon lowering the rent rate of the upper floor of the Subject Property from \$12 to \$10 per square foot, while increasing the rent rate of the lower floor from \$8 per square foot to \$10. Stanley testified he made these changes to the rental rates after an inspection of the Subject Property was done well after the valuation date. Based upon the evidence received, the Commission finds the opinion of value given by Stanley at the hearing

³⁹ *In re Interest of Zachary D. & Alexander D.*, 289 Neb. 763, 768, 857 N.W.2d 323, 328 (2015).

is clear and convincing evidence the County Board determination of value is arbitrary or unreasonable.

VII. CONCLUSION

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds there is clear and convincing evidence the County Board's determination of taxable value was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2020 is vacated and reversed.
2. The assessed value of the Subject Property for tax year 2020 is:

Land	\$ 137,200
<u>Improvements</u>	<u>\$ 360,447</u>
Total	\$ 497,647

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2020.

7. This Decision and Order is effective for purposes of appeal on June 21, 2024.⁴⁰

Signed and Sealed: June 21, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁴⁰ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.