



## STATE TAX COMMISSION OF MISSOURI

PAULA M. GIANELLA, )  
 )  
 Complainant(s), )  
 ) Appeal No. 21-15914  
 v. ) Parcel No. 22U620275  
 )  
 JAKE ZIMMERMAN, ASSESSOR, )  
 ST. LOUIS COUNTY, MISSOURI, )  
 )  
 Respondent. )

### DECISION AND ORDER

Paula M. Gianella (Complainant) appealed the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$239,400. Complainant alleges overvaluation and proposes that the TVM of the subject as of that date was \$180,000.<sup>1</sup> The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$239,400.

The evidentiary hearing was held on August 31, 2022, via Webex. Complainant, appeared *pro se*. Respondent was represented by counsel Tim Bowe. The appeal was heard and decided by Senior Hearing Officer Benjamin Slawson.

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<sup>1</sup> Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

## FINDINGS OF FACT

**1. The Subject Property.** The subject residential real property is located at 339 Quails Hill Ct., Ellisville, Missouri. The subject property consists of a single family ranch-style home with three bedrooms, two bathrooms, and an unfinished walk out basement. The home was built in 1977 and has aluminum and vinyl siding. Complainant estimated the house to have around 2,000 square feet of living space. Complainant purchased the property in 1996. Complainant has not made any improvements to the property in the last three years.

**2. Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$249,600. The BOE independently determined the TVM of the subject property as of January 1, 2021, was \$239,400.

**3. Complainant's Evidence.** Complainant submitted the following exhibits which were admitted without objection. They are described as follows:

<b>Exhibit</b>	<b>Description</b>
1	2015 (successful appeal) from \$231,900 to \$185,700
2	2017 (successful appeal) from \$185,700 to \$175,200
3	2019 change of assessment from \$175,200 to \$264,000
4	2019 from \$264,000 to \$250,000
5	2019 and 2020 (per Court Order) from \$250,000 to \$175,200
6	2021 from \$175,200 to \$249,600
7	2021 Real Estate Information from \$175,200 to \$249,600

8	Correspondence, 8/24/2020 from Kathy Anderson
9	Appraiser's card placed on door 4/22/2021
10	Video of Appraiser (on CD)
11	Appraiser's card mailed to Complainant
12	John Page's Review of Deck Construction
13	Steve Kizer's Structure Inspection
14	Paul Metzler's Review of Deck Construction
15	Rick Hill's Review of Electrical on Deck
16	Photo of sign restricting access to deck for safety reasons
17	John Page's report of problems of home
18	Yvonne Allen's affidavit of home assessment
19	Woods Basement Systems estimate for foundation work
20	"Sales Comparison Approach"
21	"Real Estate Comps" How to find Comparables for Real Estate
22	"Five Elements of Good Real Estate Comps"
23	2021 Assessor's Comparable Sales
24	Photographs of Comparable Properties (on CD)
25	Comparables/Prop Desc
26	Chesterfield Fence & Deck Estimate
27	Archadeck Estimate
28	"When is a Permit Required?"

29	“Decks”
30	Building Permit
31	John Page’s opinion on Ellisville’s Liability
32	KSDK story – “Ellisville Inspector Approves Dangerous Deck”
Videos	55 videos of subject property deck structural issues
Additional Documents	Additional .PDF documents, including Mail receipts, Petition in Support of Appeal, and Statute Violations & Additional Materials

While Complainant in her Complaint for Review indicated a proposed value of \$175,200, Complainant testified at hearing that her opinion of value for the subject property as of January 1, 2021 is \$180,000. This is a slight increase from the stipulated value between Complainant and Respondent for 2019 and 2020, which was \$175,200.

First, Complainant testified that she believes Respondent failed to perform a proper exterior appraisal pursuant to 137.115, RSMo. In support of this contention, Complainant submitted video evidence from her Ring doorbell camera, Exhibit 10. Complainant testified that the video shows the County Appraiser walk up to the front of the subject property, place a notice card on the front door, and leave. Exhibit 9 is a copy of this notice. Complainant testified that the rear of the property was not examined, and therefore no complete exterior inspection was performed. On cross examination, Complainant admitted that there is no public walkway on either side of her house. Complainant asserted that there is a public trail that runs through the back of her yard, so in her opinion inspection of the

rear was possible. However, she admitted this walkway is not accessible from Quails Hill Ct., but from the road perpendicular to it -- W. Field Ave.

Second, Complainant testified as to the many issues with the large composite deck on the back of the property which she argues significantly devalues the property. Complainant is currently in litigation with the builder regarding the deck. Complainant's videos and documentary evidence show that the deck has major structural issues, poor drainage, and needs to be rebuilt for safety. Complainant has a sign posted to warn others about the potential danger of the deck. Complainant got bids to replace the deck in 2014 and 2018 from two different contractors, which are offered as Exhibits 26 and 27 respectively. Complainant also testified that the deck is actually pulling the ban board away from the house, most likely due to significant water damage. Complainant also mentioned condition issues on the interior of the house due to the poor deck construction, including the bowing and cracking in the walls. Complainant also noted that the City of Ellisville's building inspector passed approval on the deck, but later determined that it was unsafe and should not be used.

Complainant also argued that the comparables used by Respondent to assess her home are very different than the subject and thus cannot be used to determine value. Complainant submitted Exhibit 23 providing information on these properties. She testified that two of the properties are in a different jurisdiction with higher median property values, and that the comparables in Ellisville have additional bedrooms, have larger square foot living spaces, finished basements, or are two story homes unlike the ranch-style subject.

Complainant presented all these issues to the BOE, but mentioned that the BOE did not have some of her documentary evidence when she had that hearing. Complainant is not a licensed appraiser in the State of Missouri, nor does she have experience making market-based valuation adjustments to comparable sales to determine the TVM of a subject property.

**4. Respondent's Evidence.** Respondent introduced two exhibits that were admitted into evidence without any legal objection. The exhibit is described as follows:

<b>Exhibit</b>	<b>Description</b>
1	The BOE decision letter dated October 29, 2021 stating the BOE TVM as \$239,400
3	Copy of Section 137.115, RSMo.

**5. Value.** The TVM of the subject property as of January 1, 2021, was \$239,400.

### **CONCLUSIONS OF LAW**

**1. Assessment and Valuation.** Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). The TVM is "the fair market value of the property on the valuation date[.]" *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). "True value in money is defined in terms of value in exchange not value in use." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d

1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). "Determining the true value in money is an issue of fact for the STC." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48. The STC has wide discretion in selecting the appropriate valuation method but "cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation approach." *Id.*, at 348.

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id.* at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id.* at 348.

**2. Evidence.** "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax Comm'n*, 560 S.W.2d 837, 839 (Mo. banc 1977). The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly*

*v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id.*

**3. Complainant's Burden of Proof.** The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's valuation is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *Id.*

"Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting



the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party").

#### **4. Complainant Did Not Produce Substantial and Persuasive Evidence of Overvaluation.**

Complainant did not produce substantial and persuasive evidence to support Complainant's \$180,000 opinion of value and claim of overvaluation. Complainant did not produce evidence supporting a comparable sales approach, income approach, or cost approach to value, nor did Complainant offer a recent appraisal of the subject property as evidence of the TVM of the property as of January 1, 2021.

Complainant testified at length concerning the condition issues of the subject property, specifically the structural issues with the deck that was installed. Complainant's testimony and exhibits persuasively establish that the deck is in terrible condition, has caused other damage to the house, and is hazardous. However, while Complainant did offer estimates to reconstruct a new deck, Complainant did not provide evidence of the specific monetary impact that the deck has on the TVM of the subject property as of January 1, 2021. In other words, there is no documentation or testimony rebutting the presumption that the BOE examined this issue and figured it into its valuation at \$239,400.

The comparable sales approach is the usual method used to determine the TVM of residential real property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Snider*, 156 S.W.3d at 347-48 (internal quotation omitted). Complainant took issue with the comparable sales used by Respondent in his

assessment. However, Complainant offers no evidence showing that Respondent did not make appropriate market-based adjustments for value considering the differing characteristics between these properties and the subject when determining the TVM of the subject as of January 1, 2021. Complainant did not offer testimony of an appraiser, nor an appraisal of the property as evidence of the TVM of the property as of January 1, 2021. Thus, Complainant's valuation is based on improper elements and therefore is speculative.

Even if Complainant had rebutted the presumption of correct valuation by the BOE, Complainant has not proven that the TVM of the subject property is \$180,000 as of January 1, 2021. While a property owner's opinion of value is generally admissible, the opinion "is without probative value where it is shown to have been based upon improper elements or an improper foundation." *Shelby Cty. R-IV Sch. Dist. v. Herman*, 392 S.W.2d 609, 613 (Mo. 1965); see also *Cohen v. Bushmeyer*, 251 S.W.3d 345, 349 (Mo. App. W.D. 2008) (noting a property owner's opinion of value loses probative value when it rests on an improper foundation).

##### **5. Sections 137.115.10 and 137.345.5.**

Complainant argues that Respondent did not make a proper outside inspection of her property under Section 137.115.10. In pertinent part, Section 137.115.10 provides "[b]efore the assessor may increase the assessed valuation ... by more than fifteen percent ... the assessor shall conduct a physical inspection of such property." (Emphasis added). In other words, the statute expressly conditions a valuation increase of more than 15 percent ("[b]efore the assessor may increase the assessed valuation ... by more than 15 percent") on a mandatory physical inspection ("shall conduct a physical inspection"). Because a

physical inspection is a condition precedent to a valuation increase in excess of 15 percent, an assessor is precluded from increasing an assessment by more than 15 percent without conducting the statutorily required physical inspection. It follows that the failure to conduct a sufficient physical inspection negates any increased valuation to the extent it exceeds 15 percent.<sup>2</sup>

The necessary elements of a Section 137.115.10 physical inspection are set forth in Section 137.115.11 and Section 137.115.12. In pertinent part, Section 137.115.11 requires the assessor to provide the property owner with “clear written notice” of the right to an inspection. The inspection “shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land.” Section 137.115.12. “Mere observation of the property via a drive-by inspection or the like shall not be considered sufficient to constitute a physical inspection as required by this section.” *Id.*

The 2021 assessment of the subject property was increased by approximately 42% by Respondent from last assessment, from \$175,200 to \$249,600. However, the evidence submitted in this case does not show that Respondent violated Section 137.115.10 before increasing his assessment. First, Complainant admits that Exhibit 9 is a copy of a notice she received from Respondent concerning the subject property. Exhibit 9 provides clear

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<sup>2</sup> This conclusion is confirmed by considering the converse: if the failure to conduct a physical inspection does not negate a valuation increase in excess of fifteen percent, then the condition precedent to increasing the assessment by more than 15 percent – “[b]efore the assessor may increase the assessed valuation” – is rendered superfluous. *See Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013) (courts “must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language.”)

notice that an appraiser performed a visual inspection of the subject property to the extent possible from the property line, and/or the walkway leading to the front door. Due to COVID-19, this was a “no contact” inspection. The notice also provides Complainant an option to request a more detailed inspection.

Exhibit 10, video evidence of the appraiser, proves that the inspection was in fact performed. The appraiser was on foot and did not do a simple “drive by” inspection. The parties dispute whether or not the appraiser had access to the rear of the property to perform an inspection of that side of the property, and whether he had a duty to walk around all sides of the property during inspection. On cross examination, Complainant admitted that there is no public walkway on either side of her house. This fact means that an appraiser attempting to access the back yard would have to commit a trespass to do so. Complainant asserted that there is a public trail that runs through the back of her yard, so in her opinion inspection of the rear was possible. However, this walkway is not accessible from Quails Hill Ct., but from the road perpendicular to it -- W. Field Ave. Under these circumstances, Respondent has proven that the requirements of Section 137.115 have been met and that an adequate inspection was performed.

Complainant also argues that Respondent did not base the 2021 increase in assessment of the subject property from valuations established from previously successful appeals. Complainant cites Section 137.345.5, which provides:

In every instance where a taxpayer has appealed to the board of equalization or the state tax commission the assessment of the taxpayer's property, real or personal, and that appeal has been successful, then in the next following and all subsequent years the basis upon which the assessor must base future

assessments of the subject property shall be the basis established by the successful appeal and any increases must be established from that basis.

Complainant has not successfully proven with substantial and persuasive evidence that Respondent has failed to do this. In fact, Complainant's own evidence shows otherwise. Exhibits 1 through 7 show that in every instance where Respondent increased assessment value of the subject property, it was increased from the previously stipulated value between Complainant and Respondent. However, the amount of increase in an assessment is irrelevant.

Section 137.345.5 must be read in light of the other statutes relating to assessment which require that the Assessor assess residential property at 19% of its true value in money in each assessment cycle. Section 137.115, RSMo. The overriding standard which must be met in valuing property for assessment purposes is the true value in money of the subject property. No ceiling is set on the amount the assessment may increase so long as it reflects market value. Section 137.345.5 cannot be read in such a manner to require that in a subsequent assessment cycle that property be artificially and arbitrarily assessed at a value which is not reflective of the fair market value of the property on the given assessment date. Such an application of Section 137.345.5 would result in unfair, unlawful, improper, arbitrary and capricious valuations which cannot be permitted to stand and must be corrected in the Commission appeal process. Section 138.430.1.

### **CONCLUSION AND ORDER**

The BOE decision is set affirmed. The TVM of the subject property as of January 1, 2021, was \$239,400, with an assessed value of \$45,486.

### **Application for Review**

A party may file an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. *Failure to state specific facts or law upon which the application for review is based will result in summary denial.* Section 138.432.

### **Disputed Taxes**

The Collector of St. Louis County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED December 2, 2022.

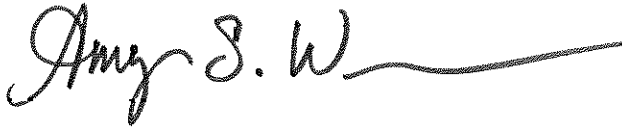


Benjamin C. Slawson  
Senior Hearing Officer  
State Tax Commission

### Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on December 2, 2022, to: Complainant(s) and/or Counsel for

Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

A handwritten signature in black ink that reads "Amy S. W" followed by a long, horizontal, slightly wavy line extending to the right.

Amy S. Westermann  
Chief Counsel