



# STATE TAX COMMISSION OF MISSOURI

GERRY LISTENBERGER, )  
 )  
 Complainant(s), )  
 ) Appeal No. 21-16025  
 v. ) Parcel No. 24M620101  
 )  
 JAKE ZIMMERMAN, ASSESSOR, )  
 ST. LOUIS COUNTY, MISSOURI, )  
 )  
 Respondent. )

## DECISION AND ORDER

Gerry Listenberger (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 \$228,700. Complainant alleges overvaluation and proposes that the TVM of the subject property as of that date was \$172,490.<sup>1</sup> The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$228,700.

The evidentiary hearing was held on June 30, 2022, via Webex. Gerry Listenberger and Larry (Lawrence) Listenberger, Complainant's husband and co-owner of the subject

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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.

property, appeared *pro se* via telephone. Most of Complainant's testimony was provided by Mr. Listenberger. Respondent was represented by counsel Tim Bowe. The appeal was heard and decided by Senior Hearing Officer Benjamin Slawson.

## **FINDINGS OF FACT**

**1. The Subject Property.** The subject residential real property is located at 68 Fortune Ln., St. Louis, Missouri in the Kirkwood School District. The subject property consists of a single family home built in the 1950s. The house is located on a corner lot that includes three bedrooms, a bathroom, kitchen, a living room, dining room, family room, a two-car garage, and a full basement. Complainant testified that the County records indicate that the square footage of living space is around 1,310 square feet, but Complainant believes it is closer to 1,100 or 1,200 square feet. Complainant purchased the property in 1974 for \$27,500. Complainant has not made any significant improvements to the property in the last three years. Complainants have not listed the property for sale in the last five years.

**2. Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$228,700. The BOE independently determined the TVM of the subject property as of January 1, 2021, was \$228,700.

**3. Complainant's Evidence.** In Complainant's Complaint for Review, Complainant indicated an opinion of value of \$150,000. At hearing, Complainant testified that Complainant's revised opinion of value is \$172,490 based on bids Complainant received for repairing the foundation issues, one for \$48,290 and one for \$7,920. Complainant took Respondent's appraised value of \$228,700 and subtracted these amounts

to reach Complainant's revised opinion of value. Complainant testified that the house was built on a pond that was filled in. Because of poor construction, the drainage pipes that were installed beneath the house to drain water from the foundation became clogged with silt. Complainant stated that this has caused structural problems in the house's foundation. Complainant presented all of these issues to the BOE. Complainant obtained bids from two contractors<sup>2</sup> to repair these issues, which would require installing a sump pump and new drainage lines. Complainant offered Exhibit A which was admitted without objection. Exhibit A contains a March 2022 quote from Dannegger Bros. Waterproofing Co., Inc. for a total of \$48,290 to excavate, reinforce the foundation, and install a sump pump to fix the structural and drainage issues.

Complainant testified the property taxes on the subject property are becoming increasingly difficult to pay because they are retirees on a fixed income. Complainant testified that she and her husband do not have a desire to move, nor can they afford to move.

Mr. Listenberger testified that he is not a licensed appraiser in the State of Missouri, nor does Complainant have experience making market-based valuation adjustments to comparable sales to determine the TVM of a subject property.

**4. Respondent's Evidence.** Respondent introduced one exhibit that was admitted into evidence without objection. The exhibit is described as follows:

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<sup>2</sup> The record was left open until July 8, 2022, for Complainant to submit a copy of the second quote from the other contractor, which Mr. Listenberger referred to as the "Roberts" proposal. The Commission did not receive a copy of this second quote.

Exhibit	Description
1	The BOE decision letter dated October 29, 2021 stating the BOE TVM as \$228,700.

**5. Value.** The TVM of the subject property as of January 1, 2021, was \$228,700.

### 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 \$172,490 opinion of value and claim of overvaluation. Complainant did not produce substantial and persuasive evidence rebutting the presumptively correct BOE

value of \$228,700. 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 as to the various structural and foundation issues of the subject property. While Complainant did offer a bid to repair some of the problems under the house, Complainant did not provide evidence of the specific monetary impact that the foundation 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 these conditions and figured them into its valuation at \$228,700.

Complainant and her husband persuasively testified the property taxes on the subject property are difficult to afford because they are retirees on a fixed income. However, the undersigned hearing officer is bound by the General Assembly's directive to review the assessment to determine "the correct valuation to be placed on such property" and to "correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary or capricious." Section 138.430.1. As established, the benchmark for assessments is the property's TVM, or fair market value as of January 1, 2021. Sections 137.115.1; 137.115.5(1)(a). A property's fair market value does not vary according to the owner's ability to pay the taxes. Consequently, for purposes of this STC appeal, Complainant's ability to afford property taxes is not a basis for concluding the subject is overvalued. The Hearing Officer is certainly sympathetic to increasing tax demands on all of the citizens of the state and, especially, those who are living on fixed incomes from

pensions and Social Security. However, such factors are not probative of the value of Complainant's property.

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 did not offer any comparable sales in the subject property's area. Finally, 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.

Complainant's valuation is based on improper elements and therefore is speculative. 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).

### **CONCLUSION AND ORDER**

The BOE decision is set affirmed. The TVM of the subject property as of January 1, 2021, was \$228,700, with an assessed value of \$43,453.

### **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.

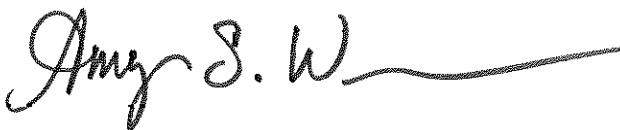
SO ORDERED December 2, 2022.



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.



Amy S. Westermann  
Chief Counsel