



# STATE TAX COMMISSION OF MISSOURI

KURT EICHOLZ, )  
 )  
Complainant(s), )  
 ) Appeal No. 21-18251  
v. ) Parcel No. 27M310366  
 )  
JAKE ZIMMERMAN, ASSESSOR, )  
ST. LOUIS COUNTY, MISSOURI, )  
 )  
Respondent. )

## DECISION AND ORDER

Dr. Kurt Eicholz (Complainant) appeals 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 \$169,400. Complainant alleges overvaluation and proposes that the TVM of the subject property as of that date was \$102,700.<sup>1</sup> The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$169,400.

The evidentiary hearing was held on October 12, 2022, via Webex. Complainant appeared *pro se*. Respondent was represented by counsel Tim Bowe. The appeal was

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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.

heard and decided by Senior Hearing Officer Benjamin Slawson.

## **FINDINGS OF FACT**

**1. The Subject Property.** The subject residential real property is a 1.3 acre empty lot located at 9625 Mill Hill Lane. Complainant has not made any improvements to the property. Complainant has to pay landscapers to maintain the detention pond located on the back half of the property. Complainant purchased the property in 2012. Complainant has not had the property appraised in the last three years.

**2. Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$169,400. The BOE independently also determined the TVM of the subject property as of January 1, 2021, was \$169,400.

**3. Complainant's Evidence.** Complainant offered Exhibit A, which consists of four photographs of the subject property. Exhibit A was admitted without objection.

Complainant's opinion of value of the subject for January 1, 2021, is \$102,700, which was Respondent's appraisal in 2019 and 2020. Complainant believes that even the \$102,700 appraised value was high for this parcel.

Complainant's primary argument is that Respondent's 70% increase of value in the current assessment cycle is unreasonable due to the fact he has not made any improvement to the property since the last cycle. Complainant also testified that the back half of the property contains a detention pond with concrete basins, which are required for water drainage for the entire subdivision. Because of this fact, Complainant said that no structures or improvements can be made on this back 40% portion of the property, making it unusable and negatively affecting value. Complainant's Exhibit A provides four

photographs of the subject property showing the detention pond system. Complainant testified that he is not a licensed appraiser in the State of Missouri.

**4. Respondent's Evidence.** Respondent introduced Exhibit 1, the BOE decision letter dated October 29, 2021, stating the BOE TVM was \$169,400. Exhibit 1 was admitted into evidence without objection.

**5. Value.** The TVM of the subject property as of January 1, 2021, was \$169,400.

### 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 \$102,700 opinion of value and claim of overvaluation. Complainant did not produce substantial and persuasive evidence rebutting the presumptively correct BOE

value of \$169,400. 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. Further, the observation that the appraised value increased from one reassessment cycle to the next does not rely on any generally accepted approach to show overvaluation.

Complainant testified as to alleged undesirability of the subject property due to the detention pond located on its back half. However, Complainant did not provide evidence of the specific monetary impact, if any, these features of the subject property have 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 \$169,400.

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 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 \$169,400, with an assessed value of \$32,186.

### **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.

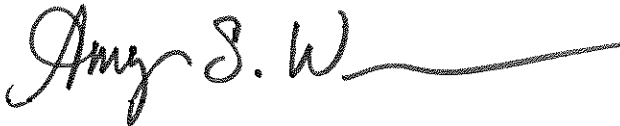
SO ORDERED December 30, 2022.



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 30, 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