



# STATE TAX COMMISSION OF MISSOURI

EDWARD A. WEINHAUS, ) Appeal No. 21-10102  
 ) Parcel/Locator: 18P240383  
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 Complainant(s), )  
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 v. )  
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 JAKE ZIMMERMAN, ASSESSOR, )  
 ST. LOUIS COUNTY, MISSOURI, )  
 Respondent. )

## DECISION AND ORDER

Edward A. Weinhaus (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 \$675,000. Complainant claims the property is overvalued and proposes a value of \$535,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.<sup>1</sup>

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

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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, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

## FINDINGS OF FACT

**1. Subject Property.** The subject property is located at 102 Ladue Aire Drive, St. Louis, Missouri. The parcel/locator number is 18P240383.

The subject property consists of a split level single-family home built in the 1980s. The house has five bedrooms, two full baths, one three quarter bath, and two half baths. Complainant testified that the St. Louis County records indicate that the house has around 4,000 square feet of living space and that the lot size is 1.25 acres. However, Complainant says that he does not agree with these figures because he disputes what is counted as finished living space. Complainant testified that the lower level has many unfinished crawlspace areas. In addition, Complainant stated that some of the finished area in the lower level is unusable due to water damage and sewage backup infiltration. Complainant purchased the property in June 2007. It is Complainant's primary residence but sometimes he rents it out as a short-term rental. Complainant has not made any significant improvements to the property in the last three years other than remedial improvements after the water and sewage damage occurred in December 2021.

**2. Respondent and BOE.** Respondent classified the subject property as residential and determined the TVM on January 1, 2021, was \$750,200. The BOE classified the subject property as residential and independently determined the TVM on January 1, 2021, was \$675,000.

**3. Complainant's Evidence.** Complainant submitted the following exhibits which were admitted without objection. At the hearing, Complainant noted that a portion of

Exhibit	Description
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A	Summary of Appeal by Complainant
B	Pictures of subject property with notations of condition issues
C	Pictures of 2021 water and backup sewer damage

Complainant testified that his opinion of value for the subject property as of January 1, 2021, is \$535,000. Complainant obtained this value by multiplying \$133.86 price per square foot by the estimated square feet of living space of the subject. The \$133.86 price per square foot was derived from the December 11, 2019, sales price of 309 Falaise, a property that Complainant found which he believes is more like the subject property than those used by Respondent in his valuation. In Exhibit A, page 4, Complainant listed other comparable sales he also found using the St. Louis County online database, which he believes support his opinion of value.

Complainant took issue with the comparables used by Respondent in his valuation. As outlined in Exhibit A and his testimony, Complainant argued that these properties are not split levels like the subject, were not assigned extra value for a basement, have undergone significant remodeling and updating, have additional amenities such as a pool, or are located on a less busy street than the subject. Complainant also asserted that his property is worth less due to the fact that it suffered the water and sewer damage in the lower level. Respondent's comparables used in the valuation of the subject are not contained in Complainant's Exhibits, nor were they identified in detail in his testimony.

Complainant testified that many condition issues devalue the subject property. Complainant testified that the house has not been updated in many years and repairs are needed. Complainant's Exhibits A and B are descriptions and pictures of the

interior and exterior of the subject property. Exhibit B contains brief captions of what is depicted in the pictures, and Complainant's notes concerning the many condition issues and needed repairs for the property. Complainant presented all of these issues to the BOE except for the basement damage, which occurred in December of 2021.

Complainant is not a licensed appraiser in the state of Missouri, nor does he have specialized education, training, and job experience in that specific field of work. Complainant has worked previously as a licensed realtor and licensed property tax protester in Texas. Complainant testified that he also has general knowledge of real estate valuation from his experience as a licensed attorney.

**4. Respondent's Evidence.** Respondent introduced Exhibit 1, a copy of the BOE decision letter dated October 29, 2021, stating the BOE TVM as of January 1, 2021. The Exhibit was admitted without any legal objection.

**5. Value.** The TVM of the subject property on January 1, 2021, was \$675,000, with an assessed value of \$128,250.

## **CONCLUSIONS OF LAW**

### **1. Assessment and Valuation**

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. 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). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use,

which is the use of the property which will produce the greatest return in the reasonably near future." *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). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"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; *see also St. Louis Cty. v. Sec. Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977).

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**

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). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "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 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 BOE's valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *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*, 722 S.W.2d at 77 (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"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

#### **4. Complainant Did Not Prove Overvaluation.**

Complainant did not establish that the BOE valuation was erroneous, nor did Complainant produce substantial and persuasive evidence establishing a TVM of \$535,000. Neither Complainant's exhibits nor his testimony utilized the comparable sales approach, income approach, or cost approach to support his proposed value, nor did he offer an appraisal of the property as evidence of the TVM of the property as of January 1, 2021.

Complainant testified that many condition issues devalue the subject property. Complainant testified that the house has not been updated in many years and repairs are needed. Complainant's Exhibits A and B contain descriptions and pictures of the interior and exterior of the subject property. Exhibit B contains brief captions of what is depicted in the pictures, and Complainant's notes concerning the many condition issues and needed repairs for the property. Complainant presented all of these issues to the BOE except for the basement damage which occurred in December of 2021.

Concerning the condition issues with the subject property evidenced in Exhibit B, Complainant provided no evidence providing a way to quantify the effect of these issues

on value or showing the BOE value does not account for these issues. The fact that the BOE lowered Respondent's assessed value of \$750,200 to \$675,000 suggests that the BOE most likely did take at least some of these condition issues into account.

Complainant took issue with the comparable sales used by Respondent in his valuation of Complainant's property. Complainant argued that these properties are not split levels like the subject, were not assigned extra value for a basement, have undergone significant remodeling and updating, have additional amenities such as a pool, or are located on a less busy street than the subject. First, Respondent's comparables and their property details are not in evidence, so any detailed analysis of whether these comparables are appropriate cannot be performed. Second, even if these comparables were available, Complainant offered no substantial and persuasive evidence showing that Respondent did not make appropriate market-based adjustments for value considering the differing characteristics from the subject observed and noted by Complainant. Additionally, there is not substantial and persuasive evidence by Complainant evidence rebutting the value of \$675,000 assigned by the BOE, which is presumed to be correct.

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 the amount he has proposed, \$535,000. Complainant obtained this value by multiplying \$133.86 price per square foot by the estimated square feet of living space of the subject. The \$133.86 price per square foot was derived from the December 11, 2019, sales price of 309 Falaise, a property that Complainant found which he believes is more like the subject property than those used by Respondent in his valuation.



Complainant testified that he is not a licensed appraiser in the State of Missouri. Complainant's method of comparing properties simply on a price per square foot basis is also not an acceptable appraisal method to determine fair market value of a subject. Further, Complainant's proposed comparable sales were not analyzed using accepted appraisal methods, for example making appropriate market adjustments to determine value of the subject. 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.

While a property owner's opinion of value is generally admissible, the opinion lacks "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). The calculation of an average sale price of the comparables to determine the fair market value of the subject property is not a generally accepted approach to value property. The comparable sales approach is the method used to determine the TVM of the subject 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's evidence does not make adjustments to comparable properties to find a proper TVM for the subject. Further, Complainant admitted he was not an appraiser that was qualified to form a professional opinion as to value based on the comparable sale methodology.

## **CONCLUSION AND ORDER**

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$675,000, with an assessed value of \$128,250.

### **Application for Review**

A party may file with the Commission 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, 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, as well as 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 said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED January 27, 2023.  
STATE TAX COMMISSION OF MISSOURI

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 January 27, 2023, 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