



STATE TAX COMMISSION OF MISSOURI

LEONARD H REA,)
)
 Complainant(s),)
) Appeal No. 21-16967
 v.) Parcel No. 21T230380
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
)
 Respondent.)

ORDER OF THE COMMISSION DENYING APPLICATION FOR REVIEW

HOLDING

On December 2, 2022, Senior Hearing Officer Benjamin Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the Board of Equalization of St. Louis County (BOE). Leonard H. Rea (Complainant) subsequently filed an Application for Review of the Decision and Order of the Hearing Officer.

A party subject to a Decision and Order of a hearing officer of the STC may file an application requesting the case be reviewed by the Commission. Section 138.432¹. The Commission may summarily allow or deny the request. Section 138.432. If an application for review is denied, the decision and order of the hearing officer shall be deemed to be the

¹ All statutory citations are to RSMo. 2000, as amended, unless indicated otherwise.

final decision of the Commission for the purpose of judicial review. Section 138.432.

Commission's Ruling

The Application for Review is DENIED. The Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, as the final decision of the Commission.

Judicial review of the Decision and Order may be had in the manner provided in Section 138.432 and Sections 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order. The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes associated with this appeal pending the possible filing of a petition for judicial review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031. If no judicial review is made within 30 days, the Decision and Order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes in accord with the Decision and Order.

SO ORDERED January 24, 2023.

STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

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 24, 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



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DECISION AND ORDER

Leonard H. Rea (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 \$499,800. Complainant alleges overvaluation and proposes that the TVM of the subject as of that date was \$300,000.² The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$499,800.

The evidentiary hearing was held on August 31, 2022, via Webex. Complainant, appeared *pro se*. His wife and co-owner of the subject property, Catherine Rea, also appeared. Respondent was represented by counsel Tim Bowe. The appeal was heard and

² 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.

decided by Senior Hearing Officer Benjamin Slawson.

FINDINGS OF FACT

1. **The Subject Property.** The subject residential real property is located at 106 Highgrove Lane, Chesterfield, MO 63005. The subject property consists of a single-family two-story masonry and frame home constructed on a 0.88 lot. Construction of the house occurred in 1978, and Complainants purchased and moved into the home in 1979. The home has a total of eight rooms and 2,840 square feet of living space. The house has four bedrooms and two and half bathrooms. Complainant has not listed the property for sale in the last three years. Other than replacing the fence, Complainant has not made any improvements to the home in the last three years.

2. **Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$499,800. The BOE independently determined the TVM of the subject property as of January 1, 2021, was \$499,800.

3. **Complainant's Evidence.** Complainant submitted the following exhibits, described below and all admitted without objection:

Exhibit	Description
1	68-page document containing communications and other documentation concerning the appeal, information regarding Respondent's comparable sales used for assessment, and bids/proposals from contractors obtained by Complainant

2	Pictures of the subject property and emails from Complainant to the State Tax Commission
3	Nine-page letter from Mrs. Catherine Rea dated August 20, 2022 summarizing arguments for overvaluation and containing information and notes on Respondent's comparable sales used for assessment

Complainant's opinion of value is \$300,000. First, Complainant said that he and his wife chose this value because a relative and friend told them "that's what it's [the subject property]" is worth." Complainant's wife later testified that this individual owns property and is very knowledgeable, but is not an appraiser nor a licensed realtor. Complainant also used Respondent's assessment of 15 Crownhill Ln. for his opinion of value. According to Complainant's evidence, 15 Crownhill Ln. sold for \$400,000 on December 2, 2020. In 2021, in his assessment of that property, it was appraised at \$595,000. Using these the change of appraised value of this property from 2020 to 2021, Complainant performed a mathematical ratio calculation to arrive at \$336,000 for the subject property.³ Given the devaluation caused by the easement discussed infra, Complainant then subtracted \$36,000 to reach a value of \$300,000. Complainant first testified that he and his wife thought 15 Crownhill Ln. should be used as a comparable sale.

³ Exhibit A, p. 9.

However, later Complainant's wife stated that it is a custom-built property and not a spec home like the subject. Complainant offered no other comparable sales for consideration.

Complainant and his wife also believe Respondent has incorrectly and unfairly compared their property to those that have much nicer amenities and features. 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 also pointed out that many of the specifications of these comparables had errors or incomplete information and therefore cannot be used.

Complainant and his wife both testified that their property has been devalued due to a number of issues. First, the Missouri Department of Transportation has an easement on the rear side of the property and expanded a busy highway in that location, causing excessive traffic noise and a loss of privacy. In around 1989, Complainant was compensated \$60,000 by the MODOT for this easement. Complainant also stated that MODOT has not maintained the easement by clearing the brush on the embankment. The subject property is the second closest house to the highway within the entire subdivision. Complainant noted that the comparable properties used by Respondent are inside the subdivision on quiet cul-de-sacs and not near this highway. The steep embankment of the easement has also created water drainage and erosion problems, which are evidenced in the pictures located in Exhibit A. Second, Complainant argued that the property has been overvalued as no remodeling or updating of the house has been performed recently.

Complainant presented evidence showing an outdated but still functional original 1979 kitchen with dark walnut cabinets, Formica countertops, and fluorescent tube lighting. The original GE almond-colored enamel appliances work and are still in use. Only the dishwasher has been replaced. Similarly, Complainant also noted the outdated condition of the bathrooms. Original carpet and floor tile also exists throughout the house. Third, Complainant argued that a neighboring property devalues the subject. This property's landscaping is unkept with tree limbs and yard litter generally strung around the house. The neighbor's trees are shaggy and in need of trimming and shaping; dead and dying trees need to be removed.

Complainant presented all these issues to the BOE. Complainant nor his wife are licensed appraisers in the State of Missouri, nor do they have experience making market-based adjustments to comparable sale values to determine the TVM of a subject.

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 as of January 1, 2021, was \$ \$499,800.

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 \$300,000 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 concerning the condition issues of the subject property, which are listed in Exhibit A and are also evidenced with the pictures in that exhibit. However, Complainant did not provide evidence of the specific monetary impact that these issues or surrounding neighborhood conditions (such as the MODOT easement) 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 this issue and figured it into its valuation at \$499,800.

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. Thus, Complainant’s valuation is based on improper elements and therefore is speculative.

Complainant and his wife first base their proposed value based on an unidentified individual’s opinion who did not testify at the hearing. “Hearsay evidence is objectionable because the person who makes the statement offered is not under oath and is not subject to cross-examination.” *Saint Louis Univ. v. Geary*, 321 S.W.3d 282, 291 (Mo. banc 2009). Hearsay is inadmissible unless an exception applies. *Id.* Further, Complainant admitted this individual had no specialized knowledge or training as an appraiser qualifying them to reach this opinion of \$300,000.

Complainant’s method of calculating the TVM of the subject property based on a ratio of assessed values of 15 Crownhill Ln., a property Complainant’s wife stated was a custom-built home and not comparable, is not an acceptable appraisal method to determine fair market value of a subject property. Further, Complainant’s two 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.

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 \$300,000 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).

CONCLUSION AND ORDER

The BOE decision is set affirmed. The TVM of the subject property as of January 1, 2021, was \$499,800, with an assessed value of \$94,962.

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