



STATE TAX COMMISSION OF MISSOURI

ERNEST A. BROOKS,)
)
 Complainant(s),)
) Appeal No. 21-18391
 v.) Parcel No. 17L330070
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
)
 Respondent.)

DECISION AND ORDER

Ernest A. Brooks (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 \$415,000. Complainant alleges overvaluation and proposes that the TVM of the subject as of that date was \$375,000.¹ Complainant did not produce substantial and persuasive evidence of overvaluation, and therefore the BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$415,000.

The evidentiary hearing was held on August 24, 2022, via Webex. Complainant, appeared *pro se*. Respondent was represented by counsel Tim Bowe. The appeal was

¹ 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 1954 single family two-story brick home located at 567 N. Price Rd., Olivette, Missouri. Complainant testified that the house has three bedrooms, an office, two bathrooms, a garage, and a basement. Complainant stated that Respondent's records indicate that the house has about 2,000 square feet of living space. Complainant believes it should only be 1,800 because the home has a 200 square foot sun room that, while connected to the main house, does not have any heat or air conditioning. In the last three years, Complainant has not made any significant improvements to the home, nor has he had the property appraised by an appraiser.

2. Assessment and Valuation. Respondent determined the TVM of the subject property as of January 1, 2021, was \$440,000. The BOE independently determined the TVM of the subject property as of January 1, 2021, was \$415,000.

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

Exhibit	Description
A	Notes regarding neighboring properties 575 N. Price Rd. and 560 N. Price Rd., pictures of those properties
B	Descriptions of condition issues of subject property, pictures of those issues

C	Information regarding neighboring 559 N. Price Rd. and sale of that property, 2019 assessment information for that property
D	List of comparable sales compiled by Complainant
E	2017 printout from Respondent's webpage regarding fairness and clear information
F	N/A ²
G	2021 Physical Inspection Notice for subject property

Complainant's opinion of value for the subject property as of January 1, 2021, is \$375,000.

Complainant testified that his property is overvalued for several reasons. First, and described in Complainant's Exhibits, especially Exhibit A, Complainant testified that two neighboring properties severely devalue the subject property. Complainant stated that the first, 575 N. Price Rd., contains trash and other undesirable items in the yard. Complainant put up a fence in 2008 to partially block the view of the neighbor's yard. Another back fence was installed in 2013. Complainant also argued that according to St. Louis County records, this property's assessment decreased between the 2019 and 2021 cycles, despite Respondent using the same comparable sales as the subject property. Complainant noted he believes that it is improper to use the same comparables for the two properties when 575 N. Price Rd. is a single story home unlike the subject. He also stated that this seems

² In the copy of Complainant's Exhibits submitted to the State Tax Commission, no Exhibit F was included or mentioned by Complainant in his testimony.

inconsistent with Respondent's stated fairness policy on his website, a copy of which was submitted as Exhibit E. The other property, 560 N. Price Rd. across the street, is a vacant property which Complainant noted is not well-maintained. Complainant testified that the owner died years ago and now the house is being used for storage.

Complainant testified to the many condition issues which he also believes devalue his home. These are described in detail in Exhibit B, and that Exhibit contains pictures of these issues. Complainant introduced Exhibit C regarding information about 559 N. Price Rd., a property that Complainant asserts is very similar yet has not been used by Respondent for valuation. He testified that when he appealed the subject property assessment for 2019, Respondent informed him that the 2017 sale of 559 N. Price Rd. was not a valid sale. Complainant disagrees with this after reviewing public County information regarding that property.

Complainant offered Exhibit D for consideration, which is a list of comparable sales he found using the St. Louis County real estate database. According to Complainant's exhibit, these sales range from \$286,000 to \$387,500. Last, Complainant offered Exhibit G, which he testified is the 2021 physical inspection notice that he received on his door from Respondent for the 2021 assessment cycle. Complainant noted that he questioned the thoroughness of such an inspection and mentioned that several neighborhood conditions such as heavy traffic were probably not observed by the inspector. He believes it is unfair to compare such a busy neighborhood such as that of the subject property with comparable sales in private, quiet neighborhoods.

Complainant presented all these issues to the BOE, but noted that he is not sure whether his documentary evidence was considered at that hearing. Complainant is not a licensed appraiser in the State of Missouri, nor does he have experience making market-based valuation adjustments to comparable sales to determine the TVM of a subject property.

4. Respondent's Evidence. Respondent introduced Exhibit 1, the BOE decision letter dated October 21, 2021. Exhibit 1 was admitted without objection.

5. Value. The TVM of the subject property as of January 1, 2021, was \$415,000.

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 \$375,000 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 that he believes that it is improper to use the same comparables for 575 N. Price Rd. and the subject property when 575 N. Price Rd. is a single story home unlike the subject. He also took issue with the comparables that Respondent used in appraising his home for tax purposes. First, the comparable sales that Respondent used for the 2021 assessment of the subject property were not offered by Complainant and are not in evidence. Second, Complainant offers no evidence showing that Respondent did not make appropriate market-based adjustments for value considering the differing characteristics between comparable properties and the subject when determining the TVM of the subject as of January 1, 2021.

Complainant offered Exhibit D, his own list of comparable sales that he believes better represent a range of values for the subject for 2021. These sales range from \$286,000 to \$387,500. However, Complainant's evidence does not make market-based adjustments to these comparable properties to find a proper appraisal comparison. 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 also testified that he believes that the BOE overvalued his property

due to the fact that his house is showing some wear with age is in need of repair, evidenced by his testimony and descriptions and pictures contained in Exhibit B. Complainant also claimed that neighboring properties in unkempt condition bring down the property value of the subject. However, Complainant neither demonstrated that the BOE's valuation fails to take into account these issues, nor did Complainant provide proof of the specific monetary impact that these condition issues have on the TVM of the subject property.

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 \$375,000 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 \$415,000.

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 January 13, 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 13, 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