



STATE TAX COMMISSION OF MISSOURI

JOYCE A KUESER,)
)
 Complainant(s),)
) Appeal No. 21-18457
 v.) Parcel No. 21S210240
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
)
 Respondent.)

ORDER OF THE COMMISSION DENYING APPLICATION FOR REVIEW

HOLDING

On August 26, 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). Joyce A Kueser (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

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

the 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



STATE TAX COMMISSION OF MISSOURI

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DECISION AND ORDER

Joyce A. Kueser (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 \$240,000. Complainant alleges overvaluation and discrimination and proposed at the evidentiary hearing that the TVM of the subject as of that date was between \$198,000 and \$200,000.² The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$240,000.

The evidentiary hearing was held on June 9, 2022, via Webex. Complainant appeared *pro se* by phone. Respondent was represented by counsel Tim Bowe who

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.

appeared via Webex. 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 357 Greenbriar Lane, Ballwin, Missouri. The subject property consists of a one-story ranch-style home that was built in 1961 on a 0.32 acre lot. The home has four bedrooms, two and a half bathrooms, and 2,166 square feet. Complainant testified that the half bathroom was destroyed by mold and is unusable. Complainant has had routine maintenance performed on the house, but has not made any significant improvements to the property in the last three years. Complainant has someone maintain the subject property for her because she lives out of state and does not reside there.

2. Assessment and Valuation. The BOE determined the TVM of the subject property as of January 1, 2021, was \$240,000. The BOE decision indicates this value represents a reduction from Respondent's appraised value of \$259,500.

3. Complainant's Evidence. Complainant offered Exhibit A consisting of 61 pages of material compiled by Complainant. The Exhibit contains handwritten notes by Complainant stating her arguments for overvaluation and discrimination, pictures of the subject property, a copy of a stipulation entered into between Respondent and Complainant for the subject for the previous assessment period, invoices from contractors concerning routine maintenance performed on the subject property, and finally information from redfin.com put together by Complainant on other properties that she stated were used by the County as comparables for the assessment of the subject.

Pages 7-14 of Complainant's Exhibit A contain conclusions and opinions of value for the subject property by two realtors, Jessica Wallace of Better Homes and Gardens Real Estate and Don Sternhagen from Keller Williams Southwest. Respondent objected to pages 7-14 on the grounds of lack of foundation and hearsay. Respondent noted that if Complainant was offering the contents as appraisal evidence, that Respondent did not have the opportunity to cross-examine these realtors because they were not present at the hearing to testify. The objections were overruled as to admissibility, and the entirety of Exhibit A was received into evidence subject to the objections to be given the weight it is due.

Complainant asserted at hearing that based on her supporting evidence, she believes the TVM of the subject property as of January 1, 2021 to be between \$198,000 and \$200,000. Complainant's primary argument for overvaluation is based on the two realtors' opinions. Examining Exhibit A, it appears Ms. Wallace took an original estimated value of the property (\$329,000), and then subtracted \$116,000 for "needed improvements" and \$194,755 for "market conditions" to reach an estimated value of \$194,755.

In his one-page letter to Complainant, Mr. Sternhagen stated that the subject property "is in adequate maintenance with several functional obsolesce [sic]" after noting that he toured the home. Mr. Sternhagen suggested a value of \$200,000 after listing three comparable sales that he found to be more like the subject than those used by Respondent. Complainant argues that these realtor opinions of value should be accepted over the BOE's TVM because these realtors have been in the homes and are much more familiar with the actual condition of the property. Complainant admitted on cross examination that she did not have any knowledge or information regarding the realtors' professional qualifications

and training in residential appraisal. Additionally, Complainant could not explain the realtors' methodology in reaching their opinions of value for the subject. Complainant testified that she did not hire the two realtors who provided these opinions. Complainant also testified that she is not a licensed appraiser in the state of Missouri.

Complainant also asserts that the \$227,000 market value stipulation she entered into with Respondent for the subject property in the previous assessment cycle (2019-2020) shows that, because Respondent overvalued her property before and reduced his assessment, he did so again here. Last, Complainant argues that the comparables used by Respondent for assessment have had significant upgrades, renovations, improvements and enhancements made to the properties, unlike the subject property where only routine maintenance has been performed.

For her claim of discrimination, Complainant argues that discrimination occurred when assessing her property because the comparables used by Respondent are two-story homes, and it is unfair to compare a one-story ranch-style home like the subject with those. During cross examination by Respondent, Complainant stated she different have any evidence showing that Respondent discriminated against her personally in making his assessment for the subject.

4. Respondent's Evidence. Respondent introduced Respondent's Exhibit 1, a copy of the BOE decision letter determining the subject appraised value as of January 1, 2021, was \$240,000. The BOE decision letter was also contained in Complainant's Exhibit A, and so Respondent's Exhibit 1 was admitted without objection.

Steven Zahner, a Senior Residential Appraiser for the Assessor's Office of St. Louis County with over 40 years of total appraisal experience, testified on behalf of Respondent. As part of his duties at his current position, Mr. Zahner performs appraisals of residential real property.

In preparation for the hearing, Mr. Zahner examined Mr. Sternhagen's comparable properties listed in Exhibit A and pulled them up in the Multiple Listing Service (MLS). Mr. Zahner testified that these three comparables were not reliable in determining TVM for the subject because they were not typical sales on the open market. Mr. Zahner noted that these three sales were to an investor purchaser, two of them to ALFI Flip, Inc. Mr. Zahner also asserted that in his experience he has observed that sales of property to investors are typically distressed properties where the seller wishes to sell quickly. Looking specifically at these comparables, Mr. Zahner stated that while they were placed on the MLS, two were on the market for zero days and one was only on the market for four days. Mr. Zahner said this was most likely because the investor offered a cash amount for these properties in an "as is" condition. Because they are not arms-length sales, Mr. Zahner said he would not in his professional opinion use these sales as comparables for an appraisal.

5. Value. The TVM of the subject property as of January 1, 2021, was \$240,000.

CONCLUSIONS OF LAW

1. Assessment, Valuation, and Discrimination. 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.

To obtain a reduction in assessed value based upon discrimination, a complaining taxpayer must (1) prove the true value, also known as the fair market value (FMV), of the subject property as of the taxing date, and (2) show an intentional plan of discrimination by the assessor resulting in an assessment at a greater percentage of value than other property within the same class and the same taxing district, or, in the absence of such an intentional plan, show that the level of assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment. *Zimmerman v. Mid–America Financial Corp.*, 481 S.W.3d 564, 571 (Mo. App. E.D. 2015), quoting *Savage v. State Tax Comm’n of Missouri*, 722 S.W.2d 72, 78 (Mo. banc 1986). Evidence of value and assessments of a few properties does not prove discrimination. Substantial evidence must show that all other property in the same class, generally, is actually undervalued. *State ex rel. Plantz v. State Tax Commission*, 384 S.W.2d 565, 568 (Mo. 1964). The difference in the assessment ratio of the subject property the average assessment ratio in the subject county must be shown to be grossly excessive. *Savage* at 79. No other methodology is sufficient to establish discrimination. *Cupples-Hesse, supra*.

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 her \$198,000 to 200,000 opinion of value and claim of overvaluation.

The comparable sales approach is typically used to value residential properties. "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 as evidence other than those indirectly listed by Mr. Sternhagen in his letter. Rather, Complainant stated that her opinion of value is primarily based on the conclusions of two realtors who offered her their conclusions as to value. While these realtors may have toured the subject property and may have intimate knowledge regarding its condition, their methodologies for determining a TVM cannot be accepted. First, they were unavailable to testify to explain their methodologies used in reaching their conclusions. Second, there is no evidence that these two individuals are certified or trained in residential appraisal. Last, even when attempting to determine how they made their estimates without the aid of testimony, their conclusions appear inconsistent with one another. For example, while Mr. Sternhagen concludes that the property is in good overall condition and well maintained, Ms. Wallace finds that \$116,000 of improvements are needed to make the property marketable.

Complainant also argued that the comparables used by Respondent should not have

been used because they are in much better shape than the subject and have several improvements, upgrades etc. Complainant also noted that they are two-story houses as opposed to her one-story ranch-style home. However, Complainant offers no evidence showing that Respondent failed to make market-based adjustments to appropriately account for these differing characteristics. Further, Complainant neither demonstrated that the BOE's valuation fails to take into account conditions of her property that are outdated as she argues, nor the specific monetary impact that such conditions have on the TVM of the subject property. As for Mr. Sternhagen's comparable sales listed in his letter, these are not reliable for determining the TVM of the subject. Respondent's witness Mr. Zahner, who is certified in residential appraisal and has a plethora of experience in the field, testified that upon examination he found that these sales were not on the open market but quick sales made to investors. Because they are not arms-length sales, Mr. Zahner said he would not in his professional opinion use these sales as comparables for an appraisal. We find this testimony credible and persuasive.

Last, Complainant's contention that a previous stipulation of value between the parties should control is not well founded. 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 value as of January 1 of the odd numbered year remains the value for the following even numbered year unless there is new construction or improvement to the property. Section 137.115.1. The stipulation for a market value of \$227,000 with an

assessed value of \$43,130 contained in Complainant's Exhibit A appears to be a stipulation between Complainant and Respondent for the subject property's value as of January 1, 2019 (and applying to 2020 as well). Therefore, it is not applicable to the current appeal which concerns the subject property's value 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 \$198,000 to \$200,000 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).

5. Complainant Did Not Prove Discrimination.

Complainant did not prove discrimination for the subject property. Missouri courts have consistently held that (1) a taxpayer alleging discrimination must show the true value in money of his or her property as a necessary part of her discrimination claim; and (2) the proper method of determining discrimination is to compare the actual level of assessment of the subject property as determined by the assessor to the common level of assessment for the subject property's subclass. *Mid-America Financial Corp.*, 481 S.W.3d at 574, citing *Savage*, 722 S.W.2d at 72.

Regarding the first point, Complainant did not rebut the correctness of the BOE's valuation. As discussed above, Complainant did not present substantial and persuasive

evidence rebutting the presumption of correctness of the BOE's value and establishing that her value was correct. Complainant did not present any recent comparable sales or a properly-authenticated appraisal report supported by the testimony of the appraiser who performed the appraisal to establish the TVM was lower than \$240,000. Therefore, Complainant failed to establish a market value which would point to discrimination.

Regarding the second point, Complainant presented no evidence of additional properties for comparison with the subject property in order to establish an intentional plan of discrimination by St. Louis County. Complainant's Exhibit A contains information taken from redfin.com regarding five other properties that she believes are better comparables to use for valuation of the subject, but this information contains no specific for these properties showing actual assessed values versus the subject. There was no evidence presented that a statistically significant number of other residential properties within St. Louis County are being assessed at a lower ratio of market value than the subject property. In other words, Complainant presented no evidence of several properties which sold for prices in excess of their appraised value. She testified that the subject property was appraised higher based on her observations, but again presented no persuasive comparable sales in support of her testimony. Because the Complainant failed to establish the market value of the subject property and failed to establish that it is being assessed at a higher percentage of market value than a statistically significant number of other properties in St. Louis County, the claim of discrimination fails.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$240,000.

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 August 26, 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 August 26, 2022, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Noah Shepard
Legal Coordinator