



STATE TAX COMMISSION OF MISSOURI

MILES WHITENER,)
)
 Complainant,)
) Appeal No. 21-18458
 v.) Parcel No. 24P141209
)
 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). Miles Whitener (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



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DECISION AND ORDER

Miles Whitener (Complainant) appeals the St. Louis County Board of Equalization's (Respondent) decision valuing the subject residential property at \$232,500 as of January 1, 2021. Complainant alleges overvaluation and asserts the true value in money (TVM) of the subject property as \$100,247 as of January 1, 2021. The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021 is \$232,500.²

The evidentiary hearing was held on August 3, 2022, via Webex. Complainant appeared *pro se*. Respondent Jake Zimmerman, Assessor, St. Louis County, Missouri, was

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.

represented by counsel, Tim Bowe. The case was heard and decided by Senior Hearing Officer Benjamin C. Slawson.

FINDINGS OF FACT

1. The Subject Property. The subject residential property consists of a small lot improved with a single-family two-story home located at 1583 Woodside Village Ln., Manchester, Missouri. The house has 1,766 square feet of total living area and includes three bedrooms, two full bathrooms, and one half bathroom. Complainant purchased the property in 1998. Complainant has not made any significant improvements to the property in the last three years. Complainant did install hardwood kitchen flooring himself, but he testified that he believed this to be over three years ago.

2. Assessment and Valuation. Respondent determined the subject property's appraised value was \$232,500 as of January 1, 2021. The BOE independently also determined that the subject's appraised value as of January 1, 2021 was \$232,500.

3. Complainant's Evidence. Complainant introduced Exhibits A through AE which are 31 pictures of the interior and exterior of the subject property. Complainant also offered seven (7) email chains which contain Exhibits A through AE as attachments. The email exhibits also contain Complainant's descriptions of the condition issues the Complainant believes devalue the subject property, as well as his estimates to repair these issues. All of the exhibits were admitted without objection.

Complainant testified his opinion of value for the subject property is \$100,427. Complainant obtained this figure by taking Respondent's appraised value of \$232,500 and

subtracting the cost estimates he obtained for the repairs and maintenance of the condition issues.

Complainant stated that the property requires over \$132,253 of repairs. Complainant testified that he calculated the repair estimates by using cost estimates from the online websites of big box home repair retailers like Home Depot, or finding an actual listed price of a product used for repair. Complainant testified that he cannot afford to have any of these repairs done right now, and therefore believes it would be dishonest to obtain bids from contractors when he has no intention of hiring them. Complainant also offered several pictures (Exhibits A through AE) as evidence of all of the condition issues he believes devalue the property, which are summarized as follows:

1. All carpet is more than 23 years old, very worn with stains that will not come out
2. Roofing over 23 years old and needs replacement
3. All windows original and failing (43 years old)
4. The living room sliding window is original and shows severe wear and aging
5. Gutter repair or replacement is needed in several locations
6. Bathrooms are at least 23 years old without updates
7. Landscaping and fencing has failed
8. Sidewalk and driveway tilted and cracked, needing replacement
9. Garage door has failed, needing replacement
10. The furnace is original (43 years old) and has functional problems

11. Kitchen has original cabinets, lighting and appliances and needs many updates

12. The deck has failed where it joins the house. Both the deck joists and the house rim joist need replacing

13. Non-carpeted flooring areas are completely worn out and in need of replacement.

Complainant's opinion is that every condition issue here would need attention before the subject property could be sold for a price anywhere near the sales price of the comparable sales. He notes in one of the Exhibit emails that "[i]f this house had to sell as-is without substantial new investment, it would see substantially below the comparables."

While Complainant admitted that it is easy to find comparable sales in his area because they are tract homes and they are all generally similar in construction, Complainant also asserted at hearing that the comparable sale properties used by Respondent are not similar to the subject because, he argued, many of the comparable homes have upgrades and more desirable features or have undergone a recent renovation.

Complainant is not a licensed appraiser in the State of Missouri, nor does he have professional training in making market-based adjustments to comparable sales to determine the TVM of a subject property. Complainant presented factual information concerning condition issues to the BOE, but is not aware of whether the BOE received or examined the pictures of the subject property that he submitted at the evidentiary hearing.

4. Respondent's Evidence. Respondent introduced Exhibit 1, consisting of the October 29, 2021, BOE decision letter for the subject property. Exhibit 1 shows the BOE valued the subject property at \$232,500.

5. Value. The TVM of the subject property as of January 1, 2021, was \$232,500.

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. Sections 137.115.1; 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). The TVM "is a function of [the property's] highest and best use[.]" *Snider*, 156 S.W.3d at 346. "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. 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). "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).

3. Complainant's Burden of Proof. The taxpayer bears the burden of proof and must show by a preponderance of the evidence the property is 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").

Property owners are competent to testify to the reasonable fair market value of their property. *Cohen*, 251 S.W.3d at 348. However, if owner's testimony is based on "improper elements or an improper foundation[.]" it is not substantial and persuasive evidence rebutting the presumptively correct BOE value. *Id.* at 349.

4. Complainant Did Not Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant did not produce substantial and persuasive evidence to support his \$100,247 opinion of value. Complainant did not produce any evidence supporting a comparable sales approach, income approach, or cost approach. Complainant introduced no evidence pertaining to a recognized valuation method.

The comparable sales approach is typically used to value residential properties improved with a single-family home. "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). The comparable sales approach requires sales. *Snider*, 156 S.W.3d at 347-48.

Complainant did not offer or analyze any comparable sales in support of his overvaluation claim. Therefore, Complainant did not produce substantial and persuasive evidence showing that the subject property was overvalued based on comparable sales data.

Complainant took issue with Respondent's comparable sales used to assess the subject property, arguing that many of them had updated features or were in much better condition than the subject. However, the comparable sales used by Respondent were not identified by either party, and there is no exhibit in evidence providing a listing of such sales or the characteristics of these properties. Additionally, 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.

Complainant's calculated repair estimates do not alter this conclusion. Complainant's exhibits indicate estimated repair costs totaling \$132,073. Complainant, however, offered no persuasive estimate of value from which a deduction for deferred maintenance could be made. Complainant made these deductions from Respondent's assessed value for January 1, 2021. Complainant's proposed value of \$100,247 based on these estimates is therefore speculative and unpersuasive. *See Cohen*, 251 S.W.3d at 349 (holding an opinion of value loses probative value when based on an improper foundation).

Complainant did not produce substantial and persuasive evidence showing that the BOE's value was incorrect. Further, Complainant's testimony does not provide the necessary foundation and elements to support his overvaluation claim. Complainant admitted he is neither a certified appraiser, nor does he have experience in appraising

properties to determine the TVM of a subject property. Because the STC “cannot base its decision on opinion evidence that fails to consider information that should have been considered” under a recognized approach to value, *Snider*, 156 S.W.3d at 348, the BOE decision is affirmed.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021 is \$232,500, with an assessed value of \$44,175.

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