



STATE TAX COMMISSION OF MISSOURI

VALERIE BUDD,)
) Appeal Nos. 21-89530, 21-89531, and 21-
) 89533¹
) Parcel/locator Nos: See table in decision,
) below.
)
 Complainant(s),)
)
 v.)
)
 SUSAN CHAPMAN, ASSESSOR,)
 TANEY COUNTY, MISSOURI,)
 Respondent.)

DECISION AND ORDER

Valerie Budd (Complainant) appeals the Taney County Board of Equalization's (BOE) decisions finding the true values in money (TVM) and classifications of the subject properties on January 1, 2021², was as shown in the following table:

Appeal No.	Parcel/locator No.	TVM	Assessed Value	Classification
21-89530	20-4.0-18-002-001-001.018	\$182,500	\$58,400	Commercial
21-89531	20-4.0-18-002-001-001.008	\$186,490	\$59,677	Commercial
21-89533	20-4.0-18-002-001-001.026	\$185,088	\$41,182	Residential/Commercial

¹ Complainant also filed Complaints for Review of Assessment for the subject properties in appeal numbers 21-89529 and 21-89532. The appeals were voluntarily dismissed by Complainant.

² Missouri operates on a two-year reassessment cycle for valuing real property. See Section 137.115.1. Absent new construction or improvements to a parcel of real property, the assessment as of January 1 of the odd year remains the assessment as of January 1 of the following even year. *Id.* All statutory citations are to RSMo 2000, as amended, unless otherwise indicated.

Complainant did not produce substantial and persuasive evidence to rebut the presumption that the BOE’s decisions were correct and to support the asserted claims of misclassification. The BOE’s decisions are AFFIRMED.

The evidentiary hearing occurred on May 10, 2022, via WebEx. Complainant appeared in person and by counsel Robyn A. Horton. Susan Chapman, Assessor, Taney County, Missouri, (Respondent) appeared in person and by counsel, Travis Elliott. Case heard and decided by Amy S. Westermann, Chief Counsel.

FINDINGS OF FACT

1. The Subject Properties. The subject properties are identified and described in the following table:

Appeal No.	Parcel/locator No.	Address	Description
21-89530	20-4.0-18-002-001-001.018	155 Fruend Drive	Moose Lodge
21-89531	20-4.0-18-002-001-001.008	245 Fruend Drive	Camp Budd
21-89533	20-4.0-18-002-001-001.026	240 Fruend Drive	Three Bear Lodge

The subject property in Appeal No. 21-89530, known as Moose Lodge, consists of .3 acres of land improved by a single-family home with a living room, kitchen, two bedrooms, two full bathrooms, a fireplace, and log cabin construction. The subject property in Appeal No. 21-89531, known as Camp Budd, consists of .29 acres of land improved by a single-family home with a living room, kitchen, three bedrooms, two full bathrooms, fireplace, and log cabin construction. The subject property in Appeal No. 21-89533, known as Three Bear Lodge, consists of .18 acres of land improved by a single-family home with a living room,

kitchen, two bedrooms, two bathrooms, a fireplace, and log cabin construction. All of the subject properties were advertised on vacation home rental websites, such as Airbnb, in 2021.

2. Assessment and Valuation. Respondent and the BOE placed the following assessed value (AV) and classification on the subject properties as of January 1, 2021, as shown in the following table:

Appeal No.	Parcel/locator No.	Respondent's Assessment	BOE's Assessment
21-89530	20-4.0-18-002-001-001.018	\$62,860 AV/Commercial	\$58,400 AV/Commercial
21-89531	20-4.0-18-002-001-001.008	\$64,270 AV/Commercial	\$59,677 AV/Commercial
21-89533	20-4.0-18-002-001-001.026	\$63,630 AV/Commercial	\$26,375 AV/Residential \$14,807 AV/Commercial

Following decisions by the BOE, Complainant timely filed a Complaint for Review of Assessment with the STC for each of the subject properties alleging misclassification. Complainant alleged the subject properties should have been classified as residential property.

3. Complainant's Evidence. Complainant introduced Exhibits A through G for all of the appeals. Respondent objected to Exhibits A, B, D³, and F on relevance grounds.

³ In Exhibit D, an email from Respondent to Complainant, Respondent informed Complainant that she had attached statutes and a Missouri Supreme Court opinion from 2004, which Respondent believed were supportive of her decision to classify the subject properties as commercial property. The attachments were not included with the exhibit. The court case to which Respondent referred is *Shipman v. Dominion Hospitality*, 148 S.W.3d 821 (Mo. banc 2004). However, the facts of the *Shipman* case are distinguishable from the facts in this appeal. There, the property at issue, TownePlace Suites – Marriott, was a hotel facility advertised as an extended-stay hotel with suites containing full kitchens, access to a laundry, and housekeeping

The objections to Exhibits A, B, and D were overruled, while the objection to Exhibit F was sustained. Respondent objected to Exhibit G, Complainant’s written direct testimony (WDT), on the grounds that written direct testimony had not been ordered by the hearing officer’s scheduling order and that the WDT was neither signed nor authenticated by a sworn affidavit. The objection was sustained. Complainant’s exhibits are summarized as follows:

Exhibit	Description	Ruling
A	2020 and 2021 property tax receipts	Admitted
B	“Nightly Rental Letter” from Taney County Assessor’s Office, dated June 17, 2019, requesting “actual number of nights” subject properties were rented in 2018	Admitted
C	2021 Real Estate Value Change Notice	Admitted
D	Copy of email from Respondent to Complainant, dated May 26, 2021, requesting information about subject properties	Admitted
E	BOE decision letters for the subject properties	Admitted
F	Letter from Respondent to P&P Faithful Four LLC dated January 1, 2022, informing the owner that the property would be taxed as commercial property resulting in a higher tax bill if the property owner did not return the letter with the inclusion of requested	Excluded; not relevant because document not addressed to Complainant and was not related to subject

services. The property owner also accepted guests in the suites for short-term stays of less than 30 days, like a traditional hotel facility. The local assessor classified the hotel as commercial property. On appeal, the STC applied a mixed-use classification to assess the hotel facility, 60% residential and 40% commercial, on the ground that the use by long-term guests made up a substantial portion of the use of the property. The Supreme Court reversed on a finding that the entire property was “primarily used for transient housing” and that Section 137.016.1(1) defining residential property “requires that the hotel be classified not by its use, but rather its availability for use.” See *Dominion*, 148 S.W.3d 821, 823. The Supreme Court’s reasoning recognized the fact that, given the property at issue in *Dominion* was a *hotel* and all of the rooms within the *hotel* were available for short-term occupancy and not only extended stays, no portion of the *hotel’s* use could be classified as residential. The decision repeatedly referred to the property in that case as a “hotel.” The common sense of the Supreme Court’s ruling cannot be overlooked. *Dominion* did not prohibit the mixed classification of property under Section 137.016.4 as both residential and commercial to properties that are *not* hotels, such as the subject properties in the instant appeals.

	information.	properties.
G	WDT of Complainant	Excluded; lack of foundation; Complainant present to testify at trial and to be cross examined.

Complainant testified regarding the exhibits. Exhibit A established that the subject properties had been classified as a mixed classification of residential and commercial in 2020 reflecting the actual number of nights the properties were rented to others. Complainant testified that the subject properties were zoned as residential property and were permitted to be rented on a nightly basis. Exhibit B established that the subject properties had been rented approximately 30% of the nights in 2018. Complainant testified that she disputed the classification of the subject properties as commercial property. Complainant testified that the properties are for residential use, a restaurant cannot be operated in the subject properties, and if the properties were rented for a month or longer during the year they would be classified as residential property.

On cross examination, Complainant testified that the subject properties were not her primary residence but that her children had resided in two of the properties for a period of time. Complainant testified that her son had resided in the subject property in Appeal No. 21-89530, Moose Lodge, for part of 2020 and part of 2021. Complainant testified that her daughter had resided in the subject property in Appeal No. 21-89531, Camp Budd, in 2020 and a short time in 2021. Complainant testified that the subject properties were used for nightly rentals and for the use of friends and family. Complainant testified that the subject properties were listed with nightly rental companies except when they were “blocked off”

for personal use. Complainant testified that she did not know how many nights she and her family and friends had spent in the subject properties during 2021.

4. Respondent's Evidence. Respondent introduced similar exhibits for each of the appeals. Complainant did not object to Respondent's exhibits. Respondent's exhibits are summarized as follows:

Appeal No. 21-89530

Exhibit	Description	Ruling
1	Beacon Taney County parcel viewer map	Admitted
2	Photograph of exterior of subject property	Admitted
3	Find Rentals Internet Listing for Moose Lodge	Admitted
4	Airbnb Internet Listing for Moose Lodge	Admitted
5	2021 Real Estate Value Change Notice	Admitted
6	BOE Property Assessment Appeal Form	Admitted
7	Complaint for Review of Assessment	Admitted
8	BOE Decision Letter dated April 21, 2022	Admitted
9	2021 Value Change Sheet including text of "Motion to set the classification of nightly rental properties"	Admitted
10	Property Record Card	Admitted
11	Beacon Taney County data sheet showing subject property values 2007 to 2023	Admitted
12	Beacon Taney County data sheet showing detailed values in relation to classification, land, and improvements for subject property	Admitted
13	Beacon Taney County data sheet showing detailed values in relation to classification, land, and improvements for property located at 150 Walnut Drive	Admitted

Appeal No. 21-89531

Exhibit	Description	Ruling
1	Photograph of exterior of subject property	Admitted
2	Find Rentals Internet Listing for Camp Budd	Admitted
3	RentBranson.com Internet Listing for Camp Budd	Admitted
4	Explorebranson.com Internet Listing for Camp Budd	Admitted

5	Nightly Rental Letter dated April 1, 2020	Admitted
6	2021 Real Estate Value Change Notice	Admitted
7	BOE Property Assessment Appeal Form	Admitted
8	Complaint for Review of Assessment	Admitted
9	BOE Decision Letter dated April 21, 2022	Admitted
10	Property Record Card	Admitted
11	Beacon Taney County data sheet showing subject property values 2007 to 2023	Admitted
12	Beacon Taney County data sheet showing detailed values in relation to classification, land, and improvements for subject property	Admitted

Appeal No. 21-89533

Exhibit	Description	Ruling
1	Photograph of exterior of subject property	Admitted
2	RentBranson.com Internet Listing for Three Bear Lodge	Admitted
3	Airbnb Internet Listing for Three Bear Lodge	Admitted
4	Nightly Rental Letter dated April 1, 2020	Admitted
5	2021 Real Estate Value Change Notice	Admitted
6	BOE Property Assessment Appeal Form	Admitted
7	Complaint for Review of Assessment	Admitted
8	BOE Decision Letter dated April 21, 2022	Admitted
9	2021 Value Change Sheet including text of “Motion to set the classification of nightly rental properties”	Admitted
10	Property Record Card	Admitted
11	Beacon Taney County data sheet showing subject property values 2007 to 2023	Admitted
12	Beacon Taney County data sheet showing detailed values in relation to classification, land, and improvements for subject property	Admitted
13	BOE Nightly Rental Decision Letter	Admitted
14	Minutes of BOE detailing “mass motions”	Admitted

Respondent introduced the testimony of Respondent. Respondent testified that the subject properties were located in the Oakmont Hills subdivision, a resort “zoned” for nightly rentals. Respondent testified that the subject properties all were situated on the same street.

Respondent testified that she understood that the subject property in Appeal No. 21-89533 had a mixed-use residential and commercial classification because the BOE classified an owner’s highest-valued nightly rental property mixed use and classified the owner’s other nightly rental property as 100% commercial to give the taxpayers a break. Respondent testified that she believed the subject properties as well as all property “zoned” as nightly rental property should be classified as 100% commercial.

5. Classification. The classification of the subject properties as of January 1, 2021, was as shown in the following table, consistent with the BOE’s determination to classify according to the terms of the “BOE Nightly Rental Decision”:

Appeal No.	Parcel/locator No.	Respondent’s Assessment	BOE’s Assessment
21-89530	20-4.0-18-002-001-001.018	\$62,860 AV/Commercial	\$58,400 AV/Commercial
21-89531	20-4.0-18-002-001-001.008	\$64,270 AV/Commercial	\$59,677 AV/Commercial
21-89533	20-4.0-18-002-001-001.026	\$63,630 AV/Commercial	\$26,375 AV/Residential \$14,507 AV/Commercial

CONCLUSIONS OF LAW

1. Jurisdiction. The STC has jurisdiction to hear this appeal and shall correct any assessment or valuation that is shown to be unlawful, unfair, improper, arbitrary, or capricious. Section 138.430.1. The hearing officer shall issue a decision and order which may affirm, modify, or reverse the determination of the BOE. Section 138.431.5. The STC may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the STC or based solely upon evidence presented by the parties to the STC. Section 138.430.2.

2. Assessment, Valuation, and Classification. Real property is assessed at set percentages of its TVM as of January first of each odd-numbered year. Section 137.115.1. Residential real property is assessed at 19% of its TVM. Section 137.115.5(1)(a). Commercial real property is assessed at 32% of its TVM. Section 137.115.5(1)(c). In this case, the relevant date for determining classification is January 1, 2021.

Under Missouri law, “residential property” is defined as:

all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, manufactured home parks, bed and breakfast inns in which the owner resides and uses as a primary residence with six or fewer rooms for rent, and time-share units as defined in section 407.600, except to the extent such units are actually rented and subject to sales tax under subdivision (6) of subsection 1 of section 144.020, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, "transient housing" means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to subdivision (6) of subsection 1 of section 144.020[.]

Section 137.016.1(1).

“Commercial property” is defined as:

all real property used directly or indirectly for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but shall not include floating docks, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person business entity owns more than five individual units. All other real property not included in the property listed in subclasses (1) and (2) of Section 4(b) of Article X of the Missouri Constitution, as such property is defined in this section, shall be deemed to be included in the term “utility, industrial, commercial, railroad and other real property”.

Section 137.016.1(3).

Section 137.016.4 provides:

Where real property is used or held for use for more than one purpose and such uses result in different classifications, the county assessor shall allocate to each classification the percentage of the true value in money of the property devoted to each use; except that, where agricultural and horticultural property, as defined in this section, also contains a dwelling unit or units, the farm dwelling, appurtenant residential-related structures and up to five acres immediately surrounding such farm dwelling shall be residential property, as defined in this section, provided that the portion of property used or held for use as an urban and community garden shall not be residential property. This subsection shall not apply to any reliever airport.

3. 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).

4. 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 misclassified. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's classification of the subject property is presumptively correct. *Rinehart v. Bateman*, 363 S.W.3d 357, 367 (Mo. App. W.D. 2012). "Substantial and persuasive controverting evidence is required to rebut the presumption, with the burden of proof resting on the taxpayer." *Id.* (internal quotation omitted). "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 a “party’s duty to convince the fact-finder to view the facts in a way that favors that party”). “Determining whether a property’s use falls within one of the subclassification definitions set forth in section 137.016.1 is an issue of fact for the STC.” *Rinehart*, 363 S.W.3d at 366.

5. Complainant did not produce substantial and persuasive evidence of misclassification.

In this appeal, Complainant did not produce substantial and persuasive evidence to rebut the presumption that the BOE correctly classified the subject properties and to establish a different classification. The evidence established that the uses and resulting classifications of the subject properties were in conformity with the terms of the “BOE Nightly Rental Decision” for similarly situated properties in Taney County.

Complainant credibly testified that she and her family and friends personally had used the subject properties in Appeal Nos. 21-89530 and 21-89531 for part of the year and that all of the subject properties were used as income-producing properties for part of the year or all of the year. Complainant did not dispute Respondent’s evidence establishing that the subject properties were rented through nightly rental websites for part of the year in order to generate income. The evidence also established that Complainant owned multiple properties in the same subdivision, all advertised for nightly rental. According to the terms of the BOE’s own determination, shown in Appeal No. 21-89530 Exhibit 13, BOE Nightly Rental Decision, and included as Appendix A to this Decision and Order,

owners of multiple nightly rental properties were assessed so that one property was designated personal vacation property/income-generating nightly rental property, classified as both commercial and residential, while all other income-generating nightly rental properties owned by the same owner would be classified as commercial property only.

With regard to the subject properties, Complainant's evidence did not rebut the presumption that the BOE appropriately allocated to each classification the percentage of the TVM the BOE believed the subject properties devoted to each use in accordance with its determination shown in Appeal No. 21-89533 Exhibit 13, the BOE Nightly Rental Decision.

To the extent that Respondent argued all the subject properties were zoned as a nightly rental properties and therefore all should have been classified as 100% commercial property only, this argument is neither substantial nor persuasive. Section 137.016 does not define residential or commercial property according to zoning. The only reference to zoning in section 137.016 is in the context of determining the classification of property that is "vacant, unused, or held for future use . . . or for which a determination as to its classification cannot be made under the definitions set out in subsection 1 of this section[.]" Section 137.016.5. Section 137.016.5 provides eight factors for classifying otherwise unclassified property. Specifically, Section 137.016.5(3) provides "a zoning classification shall not be considered conclusive, if upon consideration of all factors, the zoning classification does not reflect the immediate most suitable economic use of the property." Section 137.016.5(3) therefore expressly contemplates classifications

inconsistent with current zoning and relegates it to one of eight non-dispositive factors. *Bateman v. Rinehart*, 391 S.W.3d 441, 448 (Mo. banc 2013). The fact the subject properties were “zoned” as nightly rental properties is a non-factor in this case.

Consequently, the evidence established that the BOE’s determination of classification regarding the subject properties in these appeals was consistent with the BOE’s determination regarding similar properties throughout Taney County in that the subject properties were used or held for use as both personal vacation property/income-generating nightly rental property (Appeal No. 21-89533) and income-generating nightly rental properties (Appeal Nos. 21-89530 and 21-89531).

CONCLUSION AND ORDER

The BOE's decisions are AFFIRMED. The subject properties were properly classified by the BOE as of January 1, 2021.

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 Taney 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 27, 2023.
STATE TAX COMMISSION OF MISSOURI

Amy S. Westermann
Chief Counsel

Appendix A

BOE NIGHTLY RENTAL DECISION

BACKGROUND

This Board of Equalization (BOE) is tasked with determining an issue which has a scope well beyond the borders of our county. Our volunteer citizen board, appointed by the county commission, acts as an independent panel to review tax appeals by Taney County citizens who take issue with the decision of the county assessor's determination as to their appraised value, or as in this circumstance, the classification of their real property.

While the recent trend of utilizing homes in residential neighborhoods for the purpose of nightly rental is happening all around the country, perhaps nowhere has the issue become more polarizing than in our small county in southern Missouri. Branson and the surrounding area have more hotel/motel rooms than many of the metropolitan areas in this country. For years these businesses have serviced the millions of tourists that stay overnight in our county, and those same businesses now face a burgeoning number of citizens and investors who utilize single-family homes and condominium units to offer nightly rental accommodations for many of those same visitors to the Branson area.

While hotels/motels have long been subject to a classification of "commercial"

for real property tax purposes, single-family residences and condominiums which have been utilized for nightly rental have largely been taxed at the residential rate. The Assessor now seeks to re-classify all those properties as "commercial" and therefore subject them to the higher rate.

Under previous Assessors, most taxpayers who reported that their property was being used for nightly rental were given a "mixed-use" classification. The Assessor relied upon taxpayer self-reporting of the number of nights actually utilized for nightly rental, and that portion of the tax year was taxed at the commercial rate. Due to the reclassification to entirely "commercial", and an across the board factor increase applied to residential properties, this BOE now faces a record number of tax appeals.

Members of this board have consulted with legal counsel, assessors and BOE members from other Missouri counties, as well as the Missouri State Tax Commission in order to obtain information and various points of view on this issue. During the appeals process, we have heard from hotel owners, commercial property developers and real property investors who have multiple properties in nightly rental programs, as well as property owners who have one property which they use as a vacation home and also put the property into a nightly rental program. Various allegations have been made as to the motivations driving the proposed classification changes, but both sides to this issue can be said to have their own financial and/or political motivations, which is largely irrelevant to this Board. Good people on both sides of the issue have presented their case through their appeal, and it is the duty of this board to make a decision based on the facts presented and the law applicable to this issue.

DISCUSSION

Taney County is home to a large number of people who feel strongly that government and taxation should be minimized. The members of this Board are all long-time residents of the county and share many of the same sentiments. We all want to be free to utilize our homes and property as we see fit with minimal interference. With this said, it is the function of our Board to treat ALL the citizens of this county as fairly as we can, and to "equalize" the tax impacts imposed on county taxpayers.

The fundamental argument in favor of the reclassifying nightly rental properties

as "commercial" for tax purposes is that a home or condominium is being used to produce a profit for the owner, and is therefore not fundamentally different from a hotel or motel owner renting a room or rooms, and both are simply providing "transient" accommodations as opposed to long-term rental. This Board certainly does not view its function as to help protect hotel/motel owners from an emerging competitor, we only seek to ensure that both of these groups are treated fairly from a tax perspective.

This Board has heard from numerous property owners who offer nightly rental, and the vast majority of those have focused on the issue of zoning, arguing that their property is zoned as residential and therefore their real property tax classification should also be residential. Indeed, many of these same taxpayers have provided citations to caselaw in which courts have found that nightly rental did not qualify as a commercial use under various local ordinances and owner association restrictive covenants, and therefore did not violate those covenants or ordinances. In this line of cases the association or city was seeking to stop the owner from utilizing a home or condominium for nightly rental, but none directly address the issue of taxation of those properties. While the law certainly appears to say that nightly rental can be conducted in a property which is zoned as residential, where covenants and ordinances allow, to say this also applies to the property's classification for tax purposes would leave the tax classification to the Planning and Zoning Board or the Board of Adjustment, instead of the Assessor and the BOE.

In addition to zoning, nightly rental owners also point to the differences in the product being sold to the consumer. Although both a homeowner and a hotel owner charge a fee for overnight accommodations, the homeowner argues that no on-site amenities such as a restaurants, vending machines, etc. are provided for sale to the guest other than the home itself. Indeed, some hotels offer extensive amenities, while some do not, just as some homes have extensive amenities, while some do not. Nightly rental owners also point out that with hotels, some amenities are for sale and are subject to sales tax, while others are simply part of the nightly room rate. The Board does not find these differences as conclusive.

The most persuasive argument for a tax classification of "residential" with respect to nightly rental is that often, if not in most cases, the owner utilizes the home or condominium as a vacation home for themselves, family and friends for some portion of the year, though usually only for a short period. In such

cases, this Board finds it pivotal that the nightly rental is more incidental to the actual use by the owner, family and friends. This distinction fades quickly when multiple homes and condominiums are owned by the same person, family or investment group, usually in the form of limited liability companies, and it becomes clear that the ownership is purely for the production of income.

Thus far the legislature has failed to formulate any legislation to address the issue facing this Board, although we have been informed that at least a few attempts have been made but without a result. Guidance from other states can be difficult to apply here, not only because of the relative uniqueness of our county's situation, but because their tax laws differ from Missouri. The often cited *Shipman* case from the Missouri Supreme Court dealt with a Marriot hotel property and held that the "availability" of the rooms more than half the year classified the property as commercial for tax purposes. The Board finds that case distinguishable at the very least in the case of a property purchased as a vacation home that produces nightly rental income on occasion, even if it happens to be in a rental program year-round.

DECISION

Nothing we formulate here will ever be perfect for every situation, and indeed we fully expect, due to the diversity of opinions on the issue before us, that our decision will be appealed to the State Tax Commission and perhaps ultimately to the Missouri Supreme Court. All we can do is attempt to fulfill our obligations as members of this BOE and attempt to come up with something reasonable and fair considering everything that has been presented to us over the last several weeks of tax appeals.

To clarify, our decision has no effect whatsoever on individuals or companies that own residential properties which are utilized as a residence, for long term rental (30 days or more), or a vacation home, so long as such properties are not put into a nightly rental program.

With respect to a non-resident owner of one home or condominium in Taney County which is utilized as a vacation home but is also offered for nightly rental, such home or condominium shall be taxed as 25% commercial and 75% residential. The Board perceives that this classification covers most of the nightly rental properties in the county. This "mixed use" classification eliminates the self-reporting of actual nights rented and relieves the Assessor of the

practical difficulty of having enough funds to hire staff to handle all of the self-reporting of the past, so those resources can be directed toward the duties of reassessment.

With respect to owners of multiple homes or condominiums which are all utilized for nightly rental, we can find no decisive difference, other than physical appearance and structure, from that of a hotel or motel. Both are being used exclusively to generate an income from transient housing and this Board must fulfill its obligation to try and equalize similar properties.

Therefore, owners of multiple nightly rental properties may designate one property in Taney County as a vacation home to be taxed as set forth above if it is put in a rental program, but all other properties owned by the same individuals and/or business entities and utilized for nightly rental in Taney County shall be taxed as 100% commercial.

For properties designated as 100% commercial due to nightly rental, the Assessor is directed to use the commercial factor for any rate increases instead of the residential factor.

Any nightly rental property owners which received a notification of increased appraised value from the Assessor, the amount designated on the original notice shall be set as their appraised value for 2021, unless such value was appealed and further reduced by the BOE this session, and further any notification of appraised value sent to a nightly rental owners after June 15, 2021, shall be void in accordance with statute.

MOTION

With respect to a non-resident owner or owners of one home or condominium in Taney County which is utilized as a vacation home but is also offered for nightly rental, such home or condominium shall be classified as 25% commercial and 75% residential. With respect to owners of multiple homes or condominiums which are all utilized for nightly rental, such owners may designate one property in Taney County as a vacation home to be classified as set forth above, but all other properties which are utilized for nightly rental in Taney County and owned by the same individuals and/or business entities with common owners shall be classified as 100% commercial.

For properties designated as 100% commercial due to nightly rental, the

Assessor is directed to use the commercial factor for any rate increases instead of the residential factor.

With respect to any nightly rental property owners which received a notification of increased appraised value from the Assessor, the amount designated on the original notice shall be set as their appraised value for 2021, unless such value was appealed and reduced by the BOE this session, and further, any notification of an increase in appraised value sent to a nightly rental owners after June 15, 2021, shall be void in accordance with statute.

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