



STATE TAX COMMISSION OF MISSOURI

THE CHRISTINE B. DERENSKI) Appeal No. 21-16697
LIVING TRUST,) Parcel/Locator: 23N130473
)
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)
)
Complainant(s),)
)
v.)
)
JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

The Christine B. Derenski Living Trust (Complainant) appeals 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 \$821,900. Complainant claims that the property is overvalued and at hearing proposed a value of \$544,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.¹

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, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

The evidentiary hearing was conducted on August 11, 2022, via WebEx. At the hearing, Anthony G. Tumminelo entered his appearance as counsel on behalf of Complainant. Respondent was represented by counsel Tim Bowe.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 1769 Dougherty Ferry Road, Missouri. The parcel/locator number is 23N130473.

The subject property consists of a single-family 2,610 square-foot one-story home that has three bedrooms and three and a half bathrooms. The house features an outdoor pool and sits on a 1.05 acre lot. Complainant purchased the property in 2017 for \$795,500. Complainant has not made any significant improvements to the property in the last three years. Complainant has not had the property appraised in the last three years.

2. Respondent and BOE. Respondent classified the subject property as residential and determined the TVM on January 1, 2021, was \$821,900. The BOE classified the subject property as residential and independently determined the TVM on January 1, 2021, was \$821,900.

3. Complainant's Evidence. Complainant submitted the following exhibits:

Exhibit	Description	Status
Derenksi Supporting Docs 1	St. Louis County CMA data for sales in 2020	Admitted
Derenksi Supporting Docs 2	PostCard from Kirkwood School District	Admitted
Derenksi Supporting Docs 3	St. Louis County CMA data for sales in 2020	Admitted

Appeal 21-16697 Word Document	Summary of arguments for appeal and info on proposed comparable sales for consideration that Complainant obtained	Admitted
A	Aerial GIS photograph for 502 Point Essex and 509 Point Essex	Admitted
B	Aerial GIS photograph for 2112 Pinecrest Manor	Admitted
C	Aerial GIS photograph for West Essex Avenue in relation to 502 Point Essex and 509 Point Essex	Admitted
D	Aerial GIS photograph for 1769 Dougherty Ferry Road	Admitted
E	Aerial GIS photograph for 1711 Dougherty Ferry Road	Admitted
F	Aerial GIS photograph for 1821 Dougherty Ferry Road	Admitted
G	Aerial GIS photograph for 1903 Dougherty Ferry Road	Admitted

Anthony Derenski, a trustee of Complainant, testified at hearing for Complainant. Mr. Derenski stated that Complainant’s opinion of value for the subject property as of January 1, 2021, is \$544,000.

Mr. Derenski testified that Complainant feels the increase in value of Respondent’s appraisal of the subject in 2021 is unreasonable because it represents an increase of \$147,800 or 21.9% since the last assessment cycle despite Complainant making no significant improvements or changes to the property.

Mr. Derenski testified that he examined Respondent’s comparable properties used for assessment and found them to be inconsistent. Mr. Derenski asserted that the three properties chosen as comps for estimating property value, although similar in size and attributes to the subject property, are not comparable based on location. He testified that in his opinion Respondent’s assessment was skewed higher for the subject because the 2017 sale value of the subject was not used by Respondent as a comparable sale for the properties that were used as comparable sales for the subject for their valuations. Mr.

Derenski also questioned why on the assessment notice there were market-based adjustments to sales prices used for the comparables for the subject but the subject's valuation was not altered or adjusted. Last, Mr. Derenski said he also wondered why there were sale dates listed for the comparables on the notice but not for the subject.

Using the St. Louis County Real Estate Database, Mr. Derenski found three comparable properties on Dougherty Ferry Road for consideration. He noted that because in his understanding location is the most important factor for valuation, he feels these comparables are superior to those used by Respondent because they are located along the same heavily traveled thoroughfare which connects the exit from I-270 to other major streets. Mr. Derenski asserted that they are generally more similar to the subject because they suffer from heavy traffic, noise pollution, and litter from students attending nearby Kirkwood High School. Mr. Derenski testified that in contrast the comparables used by Respondent are located in quiet cul-de-sacs. Mr. Derenski stated that Complainant presented all of these issues before the BOE.

Complainant reached its opinion of value of \$544,000 as follows. Mr. Derenski took Respondent's 2021 assessed values of the three comparable properties, added them up, and then divided by three to reach an average of \$544,000. Mr. Derenski stated that he is not a licensed appraiser in the state of Missouri, nor does he have specialized education, training, and job experience in that specific field of work.

4. Respondent's Evidence. Respondent introduced Exhibit 1, a copy of the BOE decision letter dated October 29, 2021, stating the BOE TVM as of January 1, 2021. The Exhibit was admitted without any legal objection.

5. Value. The TVM of the subject property on January 1, 2021, was \$821,900.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. 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). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *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). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"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; *see also St. Louis Cty. v. Sec. Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977).

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). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "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 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 BOE’s valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *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*, 722 S.W.2d at 77 (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"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC “in the nebulous twilight of speculation, conjecture and surmise.” *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

4. Complainant Did Not Prove Overvaluation.

Complainant did not establish that the BOE valuation was erroneous, nor did Complainant produce substantial and persuasive evidence establishing a TVM of \$544,000. Neither Complainant’s exhibits nor Mr. Derenski’s testimony utilized the comparable sales approach, income approach, or cost approach to persuasively support

Complainant's proposed value, nor did Complainant offer an appraisal of the property as evidence of the TVM of the property as of January 1, 2021.

Complainant took issue with the comparable sales used by Respondent in his assessment of Complainant's property. While the comparable properties Respondent selected in his valuation do have some differing characteristics from the subject, Complainant offered no substantial and persuasive 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, nor more importantly that the BOE did not determine an incorrect TVM for the subject.

While Respondent is obligated to assess property according to its TVM, the STC determines the TVM by sales, not assessments. "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. Complainant did not produce evidence of arm's-length sales or of the adjustments necessary to these comparable sales prices to the subject property based on market conditions and other attributes. The STC "cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation approach." *Id.*

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 the amount Complainant has proposed, \$544,000. To reach its opinion of value for the subject,

Complainant averaged three assessment values by Respondent of neighboring properties which is not a generally accepted approach to value.

In addition, no evidence was provided persuasively establishing why a property purchased in 2017 for \$795,000 has depreciated in value of over \$200,000 in a four year period. 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).

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$821,900, with an assessed value of \$156,161.

Application for Review

A party may file with the Commission 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, 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, as well as 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 said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED February 10, 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 February 10, 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