



# STATE TAX COMMISSION OF MISSOURI

ROBERT D STONE TRUSTEE, ) Appeal Nos. 21-79023 through 21-  
Complainant(s), ) 79028  
)  
v. )  
)  
)  
)  
DAVID COX, ASSESSOR, )  
PLATTE COUNTY, MISSOURI, )  
Respondent. )

## DECISION AND ORDER

Robert D Stone Trustee (Complainant) appeals the Platte County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$1,170,000 (\$195,000 per parcel). Complainant claims the property is overvalued and proposes a value of \$225,000 (\$55,000 per parcel). Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.<sup>1</sup>

Complainant was represented by counsel, Bob Megraw. Respondent was represented by counsel, Stephen Magers. The evidentiary hearing was conducted on July 21, 2022, via WebEx.

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<sup>1</sup> 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.

## FINDINGS OF FACT

**1. Subject Property.** The subject property is six separate buildings in Kansas City, Platte County, Missouri.

Appeal	Parcel Number	Address
21-79023	19-9.0-29-400-009-014.000	5705-5707 Northwest Hillside Drive
21-79024	19-9.0-29-400-009-015.000	5701-5703 Northwest Hillside Drive
21-79025	19-9.0-29-400-009-016.000	5627-5629 Northwest Hillside Drive
21-79026	19-9.0-29-400-009-017.000	5623-5625 Northwest Hillside Drive
21-79027	19-9.0-29-400-009-018.000	5619-5621 Northwest Hillside Drive
21-79028	19-9.0-29-400-009-019.000	5615-5617 Northwest Hillside Drive

The subject property consists of six two-level duplex dwellings with brick exteriors, concrete foundations, and gable-style roofs with composition-shingle coverings. Each has a single built-in garage, are all located on the same side of the Northwest Hillside Drive, and none have a basement. Complainant purchased five parcels of the subject property in 1976 and the final parcel in 1996.

**2. Respondent and BOE.** Respondent classified the subject property as residential and determined the TVM on January 1, 2021, was a combined amount of \$754,869. The

BOE classified the subject property as residential and independently determined the TVM on January 1, 2021, was \$1,170,000 (\$195,000 per parcel).

**3. Complainant's Evidence.** Complainant presented Exhibits A-J. The written direct testimony (WDT) of three witnesses, Robert Stone, Sandi Schmude, and James Summers comprise Exhibits A through C. Complainant submitted the following exhibits:

Exhibit	Description	Ruling
A	WDT of Robert Stone	Admitted
B	WDT of Sandi Schmude	Admitted
C	WDT of James Summers	Admitted
D	Appraisal Report for Appeal 21-79023	Admitted
E	Appraisal Report for Appeal 21-79024	Admitted
F	Appraisal Report for Appeal 21-79025	Admitted
G	Appraisal Report for Appeal 21-79026	Admitted
H	Appraisal Report for Appeal 21-79027	Admitted
I	Appraisal Report for Appeal 21-79028	Admitted
J	Page 30 of each Appraisal Report	Not Admitted

Respondent objected to Exhibit J as a rebuttal exhibit due to hearsay, lack of foundation and timeliness. Complainant argued Exhibit J is simply page 30 of each appraisal within Exhibits D through I. Exhibit J was not admitted into evidence. Exhibits A through I were received and admitted into evidence to be given the weight deemed appropriate. Respondent objected to a rebuttal question and answer in Mr. Stone's testimony, the objection was due to timeliness, the objection is overruled as Respondent had the opportunity at the hearing to cross examine regarding the rebuttal question and answer, and they are admitted into evidence to be given the weight deemed appropriate.

Mr. Stone testified he has owned five of the duplexes since 1976 and acquired the last duplex in 1996. Mr. Stone testified all six are on the same side of the street and there is a hillside and 40 foot drop in the back yard of each duplex. Mr. Stone testified in order to stop the “problem with the movement” of the hillside, piers were added in 1977 shortly after purchase. (WDT) Mr. Stone testified there have been continued repairs made to the hillside. Mr. Stone testified a trench was built to stabilize the area in 2009, but in 2019, lots 7 and 8 sunk and more repair work was completed to stabilize the hillside.

Mr. Stone testified he does continuously rent the subject property and none of the duplexes remain vacant more than one to three months at a time, although he testified he does have to charge below market rent for several of the parcels, at \$850 per month. (WDT) Mr. Stone testified he listed some of the parcels on MLS in August 2021. Mr. Stone testified that two offers of \$1,200,000 for all six parcels were received, but withdrawn after concerns from buyers regarding condition issues, and after two days, he removed the listing. (WDT) Mr. Stone testified he has been told by potential buyers that the “risk was not worth the investment” and he believes this is regarding the repair costs from the 40 foot drop in the back yards. (WDT) Mr. Stone testified he believes he cannot get a contract for more than \$45,000 to \$50,000 per parcel for the subject property. Mr. Stone testified the failed offers combined with the significant cost to repair the hillside and 40 foot drop were the primary basis for his opinion of value.

Sandi Schmude, a Missouri Real Estate Agent, testified as a witness for Complainant that she listed several of the duplexes and received the offers of sale, which were withdrawn. (WDT)

Mr. Summers is an SRA, MAI Missouri certified appraiser. Mr. Summers testified his opinion of the TVM of the subject property on January 1, 2021, was \$55,000 per parcel. Mr. Summers found two highest and best uses of the subject property because of “ongoing erosion and subsidence issues” (WDT at 2) Mr. Summers concluded “two value analyses are necessary. Hypothetically (absent erosion and subsidence issues) – highest and best use for these properties is as income-producing multi-unit properties for a sustained period of time. In Reality (considering erosion and subsidence issues) – highest and best use for these properties is in harvesting and valuing net operating income over a relatively short period of time, recognizing necessary demolition costs at the end of that period of time.” (WDT at 2)

Mr. Summers utilized two valuation approaches to appraise the subject property for his “hypothetical” analysis: the comparable sales approach and the income approach. Using the comparable sales approach, Mr. Summers utilized four comparable duplex unit sales within the subject property’s market that reflected prices between \$204,500 and \$260,000. (Exhibits D through I) Mr. Summers considered the comparables to make market-based adjustments to account for specific differences between the comparables and the subject property. Mr. Summers concluded an opinion of value as of January 1, 2021, for the subject property of \$225,000 per parcel. (Exhibits D through I)

In the income approach, Mr. Summers utilized a “schedule of market data expense adjustments” and three rent comparables to estimate an anticipated net operating income using a gross rent multiplier of 10 to find a value of \$200,000 per parcel. (Exhibits D through I) Mr. Summers concluded a value of \$225,000 per parcel, as of January 1, 2021,

after reconciling both sales comparison and income approaches in his “hypothetical” appraisal.

Mr. Summers reconciled all appraisal approaches, rejecting income and sales comparison, and preferred the “as-is” analysis of the “discounted cash flow” model to conclude a TVM of \$55,000 per parcel, as of January 1, 2021. (Exhibits D through I) Mr. Summer’s “discounted cash flow” model is based on the assumption of an “as-is” sale of the subject property to a cash only buyer “seeking to reap net rental income over a relatively short remaining life.” (WDT) His five year analysis considers factors like the costs of the eventual demolition of the subject property’s improvements, decreasing rents over five years at “junk bond” rates, and the unavailability of third party financing to buyers. (WDT and Exhibits D through I at 32-33) Thus, Mr. Summers concluded the eventual resulting calculation is the “Reality” at a TVM of \$55,000 per parcel (Exhibits D through I at 32-33).

**4. Respondent's Evidence.** Respondent submitted Exhibits 1 through 7. Exhibit 1 is the WDT of Michael Gorman, Appraiser, with approximately 30 years’ experience in residential appraisal. The Exhibits 2 through 7 consist of the Appraisal Reports for Appeals 21-79023 through 21-79028 (in sequential order) determining the TVM of each parcel within the subject property on January 1, 2021, was \$220,000.

Mr. Gorman testified he relied upon “USPAP Standards Rule 1-3b data and property characteristics” such as “1) legally permissible, 2) physically possible, 3) financially feasible and 4) most profitable” in determining that the properties’ highest and best use were “income-producing multi-units.” (WDT) Mr. Gorman testified he has studied the use

by owners of these types of properties in the Platte County market specifically. He testified the use for a majority of these types are “straight rentals” and utilized two approaches to determining value, sales comparison approach and income approach. (WDT)

Using the sales comparison approach, Mr. Gorman utilized recent sales of four comparable properties sold between June 2019 and December 2020. Mr. Gorman testified he made adjustments “for gross building area and the land topography. On two properties, adjustments were made for bathroom count. On the fourth, additional comparable, an adjustment was made for the bedroom count. Adjustments were also made for such as things like fireplaces and patios”. (Exhibit 1, WDT) Adjustments were made for market conditions, location, and unit size, age, quality, and condition.

Mr. Gorman testified he chose economically similar comparables to the subject property in that they had similar amenities and compete for tenants at similar income levels. He concluded the comparables used suffer the same market forces that would affect market value of the subject property. He also chose comparables similar in location, all in the same school district as the subject; with two sales being located in the subject’s subdivision. (Exhibits 2 through 7) Mr. Gorman testified all of the comparables were chosen as comparables “because they have the same or very similar highest and best use” to the subject property. (Exhibits 2 through 7)

In the income approach, Mr. Gorman used three rent comparables also used in the sales approach. Mr. Gorman used the reported rent for each sale to determine a gross rent multiplier (GRM) by “taking the sales price of a property and dividing by the gross monthly rent.” (WDT, Exhibit 1) Using this GRM of 116, he found valuation of \$226,200 per parcel.

Mr. Gorman reconciled his approaches to conclude an opinion of value as of January 1, 2021, for the subject property of \$220,000 per parcel. (Exhibits 2 through 7)

**5. Value.** The TVM of the subject property on January 1, 2021, was \$1,170,000.

## **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.

The income approach "is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. "The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id.* "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use." *Id.* (internal quotation omitted).

## **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 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 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.**

Here, both Complainant's and Respondent's appraisers considered the subject property in a very similar manner, resulting in very similar TVMs of the subject property as of January 1, 2021. In determining value of the subject property, the income approach is the most appropriate based on the highest and best use under this factual scenario. The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property. The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use. The initial step in applying the income approach is to find comparable rentals and make adjustments for any differences. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W. 3d, 341, 347 (Mo. 2005). (citations omitted). Both appraisers presented an income approach. Complainant's appraisal found a value under the income approach of \$200,000 per parcel, which is similar to the BOE's valuation of \$195,000 and in this way, Complainant's appraisal serves to support the BOE's value.

The discounted cash flow model is unpersuasive. A five year calculation based on possible costs and possible rent losses is speculative and not a methodology utilized in Missouri Courts to value property. "While the Commission has some discretion in deciding which approach best estimates the value of a particular property," the Commission's choice

of valuation approach “must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors.” *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). Mr. Summers rejects the use of his or Respondent’s developed sales or income approaches as an appropriate valuation methodology and did not develop any cost approach. For property tax purposes, real property is generally valued using “one or more of three generally accepted approaches.” *Snider*, 156 S.W.3d at 346. These three approaches include the cost approach, the comparable sales approach, and the income approach (also known as income capitalization). *Id.* at 346-48; *Missouri Baptist Children's Home v. State Tax Comm'n (“MBCH”)*, 867 S.W.2d 510, 511 n.3 (Mo. banc 1993). The mere existence of a 40 foot drop in the back yard and ongoing erosion, of which Complainant was aware of upon purchase of the property, does not render this property as without a TVM, which is evidenced by the fact that both appraisers were able to determine TVM under the comparable sales and the income approaches. The fact that Complainant attempted to sell the property unsuccessfully after January 1, 2021, and received information that no third party financing would be available due to the erosion issues, has no weight aside from factors that go into making adjustments within the income and sales comparison approaches to value. The property in fact does have current actual rental income and is currently habitable. No persuasive or substantial evidence was presented to rebut the BOE’s determination of value.

## **CONCLUSION AND ORDER**

The BOE decision is affirmed. The TVM of the subject properties as of January 1, 2021, was \$1,170,000 (\$195,000 per parcel).

### **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 Platte 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

Erica M. Gage  
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