



STATE TAX COMMISSION OF MISSOURI

DEBORAH RIMMEY,)
Complainant,) Appeal No. 19-20135
) Parcel Locator No. 5986-00-0240-0
v.)
)
MICHAEL DAUPHIN, ASSESSOR,)
CITY OF ST. LOUIS, MISSOURI,)
Respondent.)

ORDER MODIFYING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On September 24, 2021, a State Tax Commission (STC) Senior Hearing Officer (hearing officer) entered a Decision and Order (Decision) affirming the decision of the City of St. Louis Board of Equalization (BOE) classifying the subject property as commercial real property as of January 1, 2019. Deborah Rimmey (Complainant) subsequently filed an Application for Review of the Decision of the hearing officer. Michael Dauphin, Assessor, City of St. Louis, Missouri, (Respondent) filed a Response to Complainant's Application for Review.

We MODIFY the Decision of the hearing officer. Segments of the hearing officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The subject property is identified by Parcel Locator No. 5986-00-0240-0. The subject property is located at 6541 Winona Avenue in the City of St. Louis, Missouri. The subject property consists of approximately 4,375 square feet of real property improved by a 1,200 to 1,600¹ square-foot single-family home with four bedrooms, two bathrooms, and a swimming pool. The subject property is located in a residential neighborhood and surrounded by other single-family homes.

Respondent classified the subject property as commercial and determined the true value in money (TVM) on January 1, 2019, was \$197,800. The BOE classified the subject property as commercial and determined the TVM on January 1, 2019, was \$197,800.

Complainant timely appealed to the STC alleging that the BOE had misclassified the subject property as commercial real property. Complainant did not challenge the BOE's determination of the subject property's value. The case proceeded to an evidentiary hearing in which both Complainant and Respondent were represented by counsel.

The parties presented evidence that established the following facts:

Complainant owned the subject property for approximately 30 years. The subject property had been classified by Respondent's Office as residential property until May 2019. In May 2019, Respondent reassessed the subject property, changing the assessed real property classification from residential real property to commercial real property.

¹ Exhibit C, the Pre-filed Direct Testimony of Complainant, indicated that the structure is "approximately 1,200 – 1,600 sq./ft. depending on whether the upper half story is included in the calculation."

Complainant had used the property as her primary residence for approximately 24 years. As of January 1, 2019, Complainant no longer used the subject property as her primary residence, but Complainant's children used the subject property for lodging and for studying while they were in school at Washington University and Saint Louis University. The property was zoned for single-family residential use.

Although Respondent's Office had developed criteria for determining whether to assess properties sometimes used for short-term rental property as commercial rather than residential, Respondent's Office acknowledged that Missouri statutes do not specifically define short-term rental property, particularly for *ad valorem* taxation purposes. Respondent's Office did not know whether short-term rentals were to be considered "transient housing" and relied in part on the Missouri Supreme Court's decision in *Shipman v. Dominion*, 148 S.W.3d 821 (Mo. banc 2004), to guide the office's classification of short-term rentals.

As of January 1, 2019, Complainant advertised and regularly offered the subject property for short-term rental on Internet sites such as Airbnb and VRBO. As of January 1, 2019, the subject property's availability for short-term rental sometimes was removed from Internet rental platforms for Complainant's and Complainant's family's personal use and for maintenance and repairs. In 2019, Complainant's college-age children stayed at the subject property approximately 75 days, and families with children in St. Louis Children's Hospital patients used the property, free of charge, for approximately 14 days.

In 2018, the subject property was actually rented a total of 148 nights, which included seven nights on Airbnb and 141 nights on VRBO, which was approximately 41%

of the year. In 2019, the subject property was actually rented a total of 116 nights, which included 23 nights on Airbnb and 93 nights on VRBO, which was approximately 32% of the year. Complainant did not dispute Respondent's evidence establishing that the subject properties were rented through short-term rental websites for part of the year in order to generate income. For 2019, Complainant did not appeal the assessment of business personal property taxes she paid for the equipment, furniture, and fixtures located at the subject property.

Following the evidentiary hearing, the parties submitted post-evidentiary hearing briefs. The Hearing Officer later issued the Decision and Order affirming the BOE's decision.

Complainant filed an Application for Review. The STC thereafter issued its Order allowing the Application for Review and granting Respondent time to file a Response. Respondent filed his Response.

CONCLUSIONS OF LAW

Complainant's Points on Review

Complainant asserts the hearing officer's Decision is erroneous because:

- (1) The subject property should have been classified as residential property pursuant to Section 137.016.1(1); and
- (2) The subject property should have been classified as residential property pursuant to Section 137.016.5.

Standard of Review

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 STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the hearing officer the decision and order of the hearing officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). "The extent of that review extends to credibility as well as questions of fact." *Lebanon Properties I*, 66 S.W.3d at 770. The Commission "is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to." *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE's assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” See, *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

Commission’s Ruling

For the reasons that follow, the Commission finds Complainant’s arguments to be persuasive to the extent that, based on the credible evidence in the record before us, the subject property should have been assessed with a mixed classification as of January 1, 2019.

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 was January 1, 2019.

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.

The relevant language from Section 144.020.1(6), which governs sales and use taxes, not *ad valorem* property taxes, provides:

A tax equivalent to four percent on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public.

The evidence established that Respondent's Office had developed guidelines to assist in determining how to classify short-term rental properties as either residential or commercial. Respondent relied on the Supreme Court's decision in *Dominion* to help develop the guidelines. However, the facts of the *Dominion* 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 facility* with suites containing full kitchens, access to a laundry, and housekeeping services. The *hotel facility* also accepted guests in the suites for short-term stays of less than 30 days for primarily transient housing, like a traditional *hotel facility*. The local assessor classified the *hotel facility* as commercial property for purposes of *ad valorem* taxation. 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 of the *hotel facility* 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 *hotel*

facility was “primarily used for transient housing” and that Section 137.016.1(1), which defines 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 facility* and all of the rooms within the *hotel facility* were available for short-term occupancy and not only extended stays, no portion of the *hotel facility’s* use could be classified as residential. The decision repeatedly referred to the property in that case as a “facility.” The Supreme Court further stated:

In its definition of “residential property,” the legislature has made plain that the benefits of this designation shall not flow to ‘facilities used primarily for transient housing.’ And ‘transient housing’ is defined as ‘all rooms available’ for short-term occupancy. *Id.* Although property is generally classified by its use, that rule has no application here where it is not use, but rather its availability for use, that the legislature has specified must determine a property’s classification. Thus, because here all the hotel rooms were available for short-term occupancy, the clear language of the statute compels the denial of the hotel’s quest for residential classification.

Furthermore, the statute forbids a mixed-use classification under these circumstances. Although mixed-use classifications of property are generally permitted under section 137.016.4, the legislature has made an exception as to facilities used primarily for transient housing in its definition of residential property. . . . Therefore, if, as here a facility makes more than half its rooms available for short-term occupancy, the property is entirely disqualified from a residential classification. Thus, the property’s classification is dependent on whether its facilities are primarily available for short-term occupancy, not on what percentages of use might be ascribed to short-term and extended stay occupants.

The common sense of the Supreme Court’s ruling based upon the plain language of the relevant statutes in *Dominion* cannot be overlooked. The plain language of Section 137.016.1(1) carves out from the definition of residential property “other similar facilities

used primarily for transient housing.”² “The primary rule of statutory interpretation is to give effect to legislative intent, as set forth by the plain language of the statute.” *Tinnin v. Modot and Patrol Employees’ Retirement System*, 647 S.W.3d 26, 34 (Mo. App. W.D. 2022). The Supreme Court’s decision in *Dominion* repeatedly recognized that the case involved the classification of a *hotel facility*. By ordinary perception, a *hotel facility* is not the equivalent of a single-family home even though a hotel facility can be used for residential living by human occupants and a single-family home can be used for short-term rental to someone other than the owner. Accordingly, we find that *Dominion* did not prohibit the application of Section 137.061.4 allowing the mixed classification of single-family homes like the subject property as both residential and commercial under facts and circumstances such as those present in this case.³

² Merriam-Webster Online Dictionary defines the following terms:

Residential: used as a residence or by residents.

Residence: the place where one actually lives as distinguished from one’s domicile or a place of temporary sojourn; a building used as a home.

Resident: living in a place for some length of time; not migratory.

Facility: something (such as a hospital) that is built, installed, or established to serve a particular purpose.

Primarily: for the most part.

Transient: passing especially quickly into and out of existence; passing through or by a place with only a brief stay or sojourn.

See <https://www.merriam-webster.com/dictionary/residential>; <https://www.merriam-webster.com/dictionary/residence>; <https://www.merriam-webster.com/dictionary/residents>; <https://www.merriam-webster.com/dictionary/primarily>; <https://www.merriam-webster.com/dictionary/facility>; <https://www.merriam-webster.com/dictionary/transient>, last retrieved March 3, 2023.

³ A mixed-classification might also properly occur where a single-family home is used to for both the owner’s residence and the owner’s business, such as a hair salon, a car repair shop, or a merchandise warehouse.

With regard to Complainant’s second point on application for review, we find that an analysis of the eight factors in Section 137.016.5 weighs in favor of a residential classification for the subject property, but the eight factors are not conclusive given that the subject property was also used to generate income when rented on a short-term basis. Although Respondent counter argues that Section 137.016.5 cannot apply because the subject property is not “vacant, unused, or held for future use,” this argument belies the fact that the Respondent also claimed the subject property was a “business.” Section 137.016.5 specifically names numerous types of property in the disjunctive as shown by the use of a semi-colon and the word “or”⁴:

All real property which is vacant, unused, or held for future use; which is used for a private club, a not-for-profit or other nonexempt lodge, club, *business*, trade, service organization, or similar entity; or for which a determination as to its classification cannot be made under the definitions set out in subsection 1 of this section, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

- (1) Immediate prior use, if any, of such property;
- (2) Location of such property;
- (3) Zoning classification of such property; except that, such zoning classification shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property;
- (4) Other legal restrictions on the use of such property;
- (5) Availability of water, electricity, gas, sewers, street lighting, and other public services for such property;
- (6) Size of such property;
- (7) Access of such property to public thoroughfares; and
- (8) Any other factors relevant to a determination of the immediate most suitable economic use of such property.

⁴ See *State v. Dunn*, 147 S.W.3d 75, 77-78 (Mo. banc 2004) (semicolon separated parts of statute); see also *Thiemann v. Columbia Public School Dist.*, 338 S.W.3d 835, 840 (Mo. App. W.D. 2011).

There was no dispute as to the subject property's zoning as residential. The immediate prior use of the subject property was as residential and commercial. The location of the subject property was in a residential neighborhood surrounded by similar properties. No evidence established legal restrictions on the subject property. The subject property clearly had utility services available. The size of the property was 4,375 square feet of real property improved by a 1,200 to 1,600 square-foot single-family home. The subject property was accessed on public streets. The subject property was immediately suitable for residential living by human occupants, either temporarily or permanently.

Complainant presented substantial and persuasive evidence establishing that the subject property was used as residential property by Complainant, Complainant's family, and families with children being treated at St. Louis Children's Hospital and used as commercial property in the form of a short-term rental/income-generating business as of January 1, 2019. The evidence also established that the subject property did not transform into a *hotel facility* when it was rented; rather, it remained a single-family home, even when it was rented on a short-term basis. Consequently, under the specific facts and circumstances of this case, the subject property should have been classified as both residential and commercial under Section 137.061.4.

ORDER

The Decision of the Hearing Officer is MODIFIED. The subject property is classified as 32% commercial and 68% residential, as of January 1, 2019.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the

Certificate of Service for this Order.

If judicial review of this Order is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this Order is deemed final and the Collector of the City of St. Louis, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED March 10, 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 March 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



STATE TAX COMMISSION OF MISSOURI

DEBORAH RIMMEY,)
Complainant,) Appeal No. 19-20135
)
v.) Parcel No. 5986-00-0240-0
)
MICHAEL DAUPHIN, ASSESSOR,)
CITY OF ST. LOUIS, MISSOURI)
Respondent.)

DECISION AND ORDER

Deborah Rimmey (Complainant) appeals the City of St. Louis Board of Equalization's (BOE) decision finding the classification of the subject property on January 1, 2019, was commercial. Complainant claims the property is misclassified and proposes a classification of residential. An evidentiary hearing was held on March 6, 2020, and both parties were allowed time to and did submit post-hearing briefs. Complainant did not produce substantial and persuasive evidence establishing misclassification. The BOE's decision is affirmed.⁵

⁵ 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.

Complainant is represented by counsel Drew Bolinger. Respondent is represented by counsel Deborah Deuster.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 6541 Winona Avenue in St. Louis, Missouri. The parcel/locator number is 5986-00-0240-0. Complainant is the owner of the subject property. (WDT Complainant No. 2.)

The subject property consists of an approximate 4,375 square foot lot and an approximate 1,200 – 1,600⁶ square foot home that is located in a residential neighborhood and surrounded by single-family residential homes. (WDT Complainant Nos. 11-12.) The home has four bedrooms, two bathrooms, and a swimming “pool for private use by the tenants.” (Ex. 3 VRBO at 1; Ex. 3 HomeAway at 1; WDT Complainant No. 13.)

2. Assessment and Valuation. Respondent classified the subject property as commercial and determined the true value in money (TVM) on January 1, 2019, was \$197,800. The BOE also classified the subject property as commercial and determined the TVM on January 1, 2019, was \$197,800.

3. Complainant's Evidence. Complainant asserts that the proper classification of the subject property as of January 1, 2019, is residential pursuant to sections 137.016.1(1) and 137.016.5 and does not challenge the BOE’s determination of the TVM of the subject property. Complainant testified and submitted the following exhibits:

Exhibit	Description	Ruling
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⁶ Exhibit C, the Prefiled Direct Testimony of Complainant, indicates that the structure is “approximately 1,200 – 1,600 sq./ft. depending on whether the upper half story is included in the calculation.”

A	Assessor Change of Assessment Notice dated May 2019	Admitted
B	Zoning map of properties on Winona Ave.	Admitted
C (WDT Complainant)	Prefiled Direct Testimony of Deborah D. Rimmey	Admitted

Respondent did not object to Complainant's exhibits, and Exhibits A through C were received into evidence.

4. Respondent's Evidence. Respondent asserts that the BOE properly classified the subject property as commercial as of January 1, 2019. Respondent presented the testimony of Deputy Assessor Shawn Ordway and submitted the following exhibits:

Exhibit	Description	Ruling
1	Shawn T. Ordway Curriculum Vitae	Admitted
2	Guidelines on Classification of Short-term Rentals for the City of Saint Louis, Office of the Assessor	Admitted
3 HomeAway	Snapshots from the internet from 2019 regarding subject property on HomeAway website	Admitted
3 VRBO	Snapshots from the internet from 2019 regarding subject property on VRBO website	Admitted
8 (WDT Ordway)	Prefiled direct testimony of Shawn T. Ordway ⁷	Admitted

⁷ Although Mr. Ordway also referenced Exhibits 4, 5, 6, and 7, these four exhibits were not offered and received into evidence at the March 6, 2020, evidentiary hearing. Exhibits 4, 5, 6, and 7 were referenced in Exhibit 8, the written direct testimony of Mr. Ordway, to show that Complainant did not reside at the subject property and resided at a different property. These facts were not disputed at the evidentiary hearing.

8(a)	Prefiled rebuttal testimony of Shawn T. Ordway ⁸	Admitted
9	Voluntary Agreement for City of St. Louis Transient Occupancy Tax between Airbnb and the License Collector of the City of St. Louis, dated Oct. 23, 2018 (with affidavit)	Admitted
10	March 2, 2020, print out of the Office of the License Collector web page Hotel/Motel Room Tax (with affidavit)	Admitted
11	Print out from Airbnb website of occupancy tax collection and remittance by Airbnb in Missouri	Admitted
12	VRBO Rental Rules	Admitted
13	Airbnb Rental Rules	Admitted
14	Airbnb and VRBO completed reservations for 2018 and 2019	Admitted
15	Terms of Service for Airbnb	Admitted
16	Terms and Conditions for HomeAway	Admitted

Complainant did not object to Respondent's exhibits, and Exhibits 1, 2, 3 HomeAway, 3 VRBO, 8, 8(a), 9, 10, 11, 12, 13, 14, 15, and 16 were received into evidence.

5. Evidence at Hearing. The evidence shows the following: About six years prior to the evidentiary hearing, Complainant began to rent the subject property on rental platforms such as Airbnb and VRBO. (Tr. 16:14.) As of January 1, 2019, Complainant regularly offered the subject property for short-term rental. (Tr. 16:24.) As of January 1, 2019, the subject property was not the primary residence of Complainant, her 19-year-old daughter, nor her 21-year-old son. (Tr. 15:38; Tr. 18:00.) In 2018, the subject property was actually rented a total of 148 nights, which included seven nights on Airbnb and 141 nights

⁸ Mr. Ordway's references to Exhibit 8, an agreement between Airbnb and the License Collector of the City of St. Louis, and Exhibit 9 appear to mean Exhibits 9 and 10, respectively.

on VRBO. (Tr. 20:08; Ex. 14 at 1, 2.) In 2019, the subject property was actually rented a total of 116 nights, which included 23 nights on Airbnb and 93 nights on VRBO. (Tr. 22:44-23:15; Ex. 14 at 3, 4; WDT Complainant No. 15.) During 2018 and 2019, the subject property was removed from rental platforms sometimes for Complainant's children's use, birthday parties, maintenance, repairs, and personal family use. (Tr. 16:36-17:06.) In 2019, Complainant's college-age children stayed at the subject property approximately 75 days, and families of St. Louis Children's Hospital patients used the property, free of charge, for approximately 14 days. (WDT Complainant Nos. 19-20.) Complainant testified that insurance is provided through Airbnb and VRBO, and she does not believe that she has homeowner's insurance for the subject property. (Tr. 18:43-19:02.) Rental rules for the subject property were posted for VRBO and Airbnb. (Tr. 22:19-42; Ex.12; Ex. 13.) For 2019, Complainant did not appeal the assessment of business personal property taxes for the equipment, furniture, and fixtures located at the subject property. (Tr. 50:53-52:17; WDT Ordway No. 27.)

6. Classification. Complainant did not prove by substantial and persuasive evidence that the subject property was misclassified. Therefore, the BOE's classification of the subject property as commercial as of January 1, 2019, is affirmed.

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. Section 137.115.5(1)(a). Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year 137.115.5(1)(c). "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).

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). 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. "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 v. Bateman*, 363 S.W.3d 357, 366 (Mo. App. W.D. 2012).

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 or misclassified. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's classification is presumptively correct. *Rinehart*, 363 S.W.3d at 367. "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 the "party's duty to convince the fact-finder to view the facts in a way that favors that party").

4. Complainant Did Not Prove Misclassification. Complainant did not present substantial and persuasive evidence to rebut the presumption of correct classification by the BOE.⁹ Section 137.016.1(3) defines "[u]tility, industrial, commercial, railroad and other real property," in part, as "all real property used directly or indirectly for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose." While Complainant produced evidence that the subject property was sometimes used by her and her family for personal purposes and by families of St. Louis Children's Hospital patients, Complainant's evidence was not sufficient to rebut the presumption of correct classification by the BOE. The evidence showed that the subject property was neither the primary residence of Complainant nor her children and was regularly offered for short-term rental through vacation rental platforms in 2018 and 2019. Further, the assessment of the personal property located at the subject property as business personal property was not challenged by Complainant; the insurance for the subject property is

⁹ The determination that Complainant did not rebut the presumption of correct classification by the BOE is limited to the specific facts of this appeal. Decisions of administrative agencies are not precedent. *Spire Missouri, Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 235 (Mo. banc 2021).

provided through VRBO and Airbnb; and there is no evidence that Complainant has homeowner's insurance on the subject property.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The proper classification of the subject property is commercial with an appraised value of \$197,800 as of January 1, 2019.¹⁰

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.

¹⁰ 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 assessed value as of January 1 of the odd year remains the assessed value as of January 1 of the following even year. *Id.*

Disputed Taxes

The Collector of the City of St. Louis, 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 September 24, 2021.

Laura A. Storck-Elam
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 September 24, 2021, to:

Counsel for Complainant, Drew Bolinger, dbolinger@bolingerlawstl.com

Counsel for Respondent, Deborah Deuster, deusterd@stlouis-mo.gov

Collector, Gregory Daly, showerst@stlouiscity.com

Elaina Mejia
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