



# STATE TAX COMMISSION OF MISSOURI

J.C. PENNEY PROPERTIES, INC.     ) Appeal No. 19-79059  
  ) Parcel/locator No(s): 19-3.0-06-300-001-  
  ) 005.000  
  )  
  )  
  ) Complainant(s),  
  )  
  ) v.  
  )  
  ) DAVID COX, ASSESSOR,  
  ) PLATTE COUNTY, MISSOURI,  
  ) Respondent.  
  )

## DECISION AND ORDER

J.C. Penney Properties, Inc. (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, 2019, was \$7,402,500, with an assessed value of \$2,368,800. Complainant claims the property is overvalued and proposes a value of \$4,410,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.<sup>1</sup>

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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.

Complainant was represented by counsel, Jerome Wallach. Respondent was represented by counsel, Stephen Magers. The evidentiary hearing was conducted on September 24, 2020, via WebEx.<sup>2</sup> The parties submitted post hearing briefs which are incorporated into the record.

### FINDINGS OF FACT

**1. Subject Property.** The subject property is located at 9100 NW Skyview Ave., in Kansas City, Missouri. The parcel/locator number is 19-3.0-06-300-001-005.000.

The subject property consists of a 105,750 square-foot retail building on an approximately eight acre lot. It was built in 2008, intended for a single tenant/user. The subject property was occupied on January 1, 2019, by a J.C. Penney Store.

**2. Respondent and BOE.** Respondent classified the subject property as commercial and determined the TVM on January 1, 2019, was \$8,354,250. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2019, was \$7,402,500.

**3. Complainant's Evidence.** Complainant presented Written Direct Testimony (WDT) of appraiser Laurence Allen and the following exhibits:

Exhibit	Description	Ruling
A	Appraisal Allen	Admitted
B	WDT Allen	Admitted

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<sup>2</sup>The appeal was initially assigned to a former hearing officer, who conducted an evidentiary hearing on the record but did not issue a decision and order. Pursuant to Section 138.431.5, "The commission may, prior to the decision being rendered, transfer to another hearing officer the proceedings on an appeal determination before a hearing officer." Accordingly, this appeal is transferred to Senior Hearing Officer Erica M. Gage for determination.

Mr. Allen is a MAI certified appraiser licensed in Missouri and other states. Mr. Allen testified his TVM of the subject property as January 1, 2019, was \$4,440,000. Mr. Allen developed his TVM from the sales comparison and income approaches, the cost approach was not developed. Mr. Allen testified the subject property was in an active and stable market, with a population in the growth stage. (Exhibit B at 14, 22, and 26) Mr. Allen's appraisal indicates that there have been numerous store closings and bankruptcies as a trend in the U.S., but did not in his report indicate any effect on the Kansas City area or Platte County, specifically. (Exhibit B at 53-58) Mr. Allen testified he developed a "fee simple" market value. Mr. Allen's report considered the highest and best use applies to use of the site "as though vacant" and when the site contains improvements, "the highest and best use may be different from the existing use." (Exhibit B at 59) Mr. Allen testified that a "sale leaseback" sale would not have been considered as a comparable under his methodology because "it is not an arm's length transaction" nor a "fee simple sale;" it would constitute a credit sale. (Tr. at 1:12) Mr. Allen's appraisal report indicates he considered the highest and best use of the subject property would be general retail for either single or multi-tenant retail. (Exhibit B at 60)

Under the sales comparison approach, Mr. Allen used five comparables sales of retail properties in major metropolitan areas in Illinois, Kansas, Tennessee, Missouri, and Oklahoma. (Exhibit B at 63) The five properties are similar in size and type of community and they differ from the subject in age (years built ranging from 1969 – 2005) and location. (Exhibit B at 63) The range of sales price per square-foot were \$18.71 - \$48.10. (Exhibit B at 63) Mr. Allen utilized adjustments to the comparables, including age/condition,

expenditures after sale, property rights, financing terms, conditions of sale and market conditions. The market conditions adjustment is a factor he established based on his examination of market sales, reviewed market publications, changing market factors, and broker interviews. (Exhibit B at 70 – 74) His final adjusted square-foot was \$42.00, which resulted in a value of \$4,400,000 (rounded). (Exhibit B at 79)

Under the income approach, Mr. Allen utilized four rent comparables in Missouri. Mr. Allen made adjustments for market conditions, size and retail submarkets, to find an average lease per square-foot of \$5.25. (Exhibit B at 84) Mr. Allen utilized various surveys to conclude a capitalization rate of 9.00%, overall 9.14% loaded with a .14% tax load. (Exhibit B at 92) Mr. Allen calculated an NOI of \$470,640, which resulted in his value conclusion of \$4,340,000 under the income approach. (Exhibit B at 94 - 96)

Mr. Allen relied on the sales comparison approach as the primary indicator of value, but also income approach as a supportive, equally-reliable indicator of value.

**4. Respondent's Evidence.** Respondent submitted WDT of Timothy Keller and exhibits concluding the TVM of the subject property on January 1, 2019, was \$8,000,000. Respondent submitted the following exhibits:

Exhibit	Description	Ruling
1	WDT Keller	Admitted
2	Appraisal Keller	Admitted
3	Business Income and Expense of Complainant	Admitted
4	Historical Construction Costs	Admitted
5	Deed	Admitted
6	Complainant's Responses to Requests for Admissions	Admitted
7	Sales Records Olathe Kansas	Admitted
8	Building Permit Olathe Kansas	Admitted

9	Certified Statement from Oklahoma County, Oklahoma Assessor's Office	Admitted
10	Article	Admitted
11	Article	Admitted
12	Building Permit Memphis Tennessee	Admitted
13	Deed	Admitted
14	Deed	Admitted

Mr. Keller is a Missouri licensed appraiser. Mr. Keller developed the cost, sales comparison, and income approaches to value to conclude a reconciled TVM of the subject property, as of January 1, 2019, of \$8,000,000. (WDT, Exhibit 2) Mr. Keller's WDT indicated he developed the "as is" valuation, reflecting the current market conditions in Kansas City and highlighting the realities of the subject property on January 1, 2019, to find market value.

**5. Value.** The TVM of the subject property on January 1, 2019, was \$7,402,500, with an assessed value of \$2,368,800.

**6. No Evidence of New Construction and Improvement.** There was no evidence of new construction and improvement from January 1, 2019, to January 1, 2020, therefore the assessed value for 2019 remains the assessed value for 2020. Section 137.115.1.

## 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. Commercial real property is assessed at 32% of its TVM as of January 1

of each odd-numbered year. Section 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). 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). "When applying the income approach to valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered." *Id.*

## **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.**

Complainant's testimony and exhibits are not substantial and persuasive evidence to rebut the BOE. Complainant developed the income and sales comparison approaches and did not develop the cost approach.



## Comparable Sales Approach

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. Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character. This approach is most appropriate when there is an active market for the type of property at issue such that sufficient data is available to make a comparative analysis. *Snider at 341, 347*. Complainant's comparable sales review only vacant properties, and Complainant's appraiser testified his preference for this was because these were truly "fee simple" sales.

The meaning of fee simple is a legal definition regarding the bundle of rights attached to a property. Respondent's Post Hearing Brief submitted on November 3, 2020, highlights several concepts from Missouri law regarding fee simple. "Missouri has precisely defined what comprises a 'fee simple' title in property, stating, "A fee simple absolute includes the entire title; it is the most extensive interest one may have in property, comprehends an absolute estate in perpetuity, and is potentially infinite. In modern concepts these several terms, 'fee', 'fee simple', and 'fee simple absolute' are substantially synonymous." *Vaughan v. Compton*, 361 Mo. 467, 235 S. W.2d 328, 331 (Mo. 1950). This definition also matches a common understanding of the term: "An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs; esp., a fee simple absolute. Often shortened to fee." *FEE SIMPLE, Black's Law Dictionary* (11<sup>th</sup> ed. 2019)." (Respondent's Post-Hearing Brief at 10-11).

Therefore, Missouri law defines fee simple as a land interest with possible indefinite duration of an entire title. Respondent argues that “a review of Respondent's Exhibit 5, acknowledged to be the deed to Complainant's interest in the subject property, matches this definition with its broad allowance of what Complainant was granted by the predecessor in interest of the estate in question.” (Respondent’s Post-Hearing Brief at 11, *See also* Exhibit 5). As such, Complainant's definition of “fee simple,” which requires conditions of no other interest being attached to the same property and vacancy at the time of sale, by definition, is in contrast with Missouri's definition of fee simple. (Respondent’s Post-Hearing Brief at 11).

Courts have addressed a leasehold’s non-impact on the transferability of a fee simple estate, stating, “Cases and treatises frequently describe a conveyance of real estate subject to a leasehold estate as a conveyance of a 'remainder' interest, *notwithstanding that fee simple title is what is conveyed.*” *Cooper v. Ratley*, 916 S. W.2d 868, 870 n. 3 (Mo. App. 1996) (emphasis added). The STC has recently decided *St. Louis BOA Plaza, LLC, et al. v. Stephen Conway, Assessor, City of St. Louis*, 17-20066, 17-20067, and 17-20068 (2019) and the Commission, in affirming the decision of the senior hearing officer, stated:

“The assessor values property in fee simple interest. An estate in fee simple is ownership of all the rights in a property. A lease conveys property rights to another. The tenant receives a leasehold interest that allows the tenant the right to use and occupy the property under conditions. *The fee ownership remains with the owner of the property.* For ad valorem purposes, the property to be assessed consists of the land and improvements and the possessory interests in the property. Section 137.115.1 RSMo. In most cases, the value of the leased fee and the value of the leasehold should approximate the value of the fee simple unencumbered by a lease.” (emphasis added).

In sum, a lease is one aspect of a comparable property, for which adjustments can be made within any appraisal method. The disregard of relevant “sale leaseback” sales for comparison, in this case, caused Mr. Allen to disregard a sale on his own comparable (Memphis, Tennessee), which sold subsequent to the comparable used in his appraisal and at an increase of millions of dollars. (Tr. 1:44, Exhibits 10-14) Due to Mr. Allen’s disregard of “sale leasebacks,” “by definition,” this sale was not considered by him and therefore, not applied to the valuation of the subject property. (Tr. 1:14) Aside from the failure to utilize all possible sales for comparison, the existence of such a sale gives weight to the point that Complainant could feasibly conduct a similar transaction in the current market (to sell the property and remain in the property as a leaseholder), to which Mr. Allen admitted. (Tr. 3:15, *See also* Exhibits 5-6, Respondent’s Post-Hearing Brief at 6)

“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). An assumption that a vacant property is the best or most accurate measure for a value of the subject property doesn’t equate to evidence. The present record contains no evidence to support the theory. In sum, failure to examine entire categories of sales in preference of another type, although a matter of professional preference, is speculative and is not substantial and persuasive evidence of value. Failure to make proper adjustments to the comparables sales leads to the speculative nature and unpersuasive effect of the appraisal.

## **Income Approach**

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.

When applying the income approach to valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered. This 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. The initial step in applying the income approach is to find comparable rentals and make adjustments for any differences. *Snider*, at 341, 347 (citations omitted). Mr. Allen's approach here fails due to the nature of the four chosen rent comparables being generally "inferior" in quality, smaller in size, older in age, and with less traffic counts than the subject property. (Exhibit B at 83) Mr. Allen's income approach adjusts for market conditions, but this adjustment, as defined by him, was based on his examination of market sales, national market publications, changing market factors (including vacancy) over time, and broker interviews. Usage of national data should be adjusted for the submarket, but throughout his report, Mr. Allen dismisses the Kansas City area data in preference for national data. For example regarding vacancy, he states, in relation to the Kansas City CBRE and COSTAR data, "because of the subject size, design, and location, it is subject to more vacancy risk than the typical and average retail property in the market". (Exhibit

A at 82) This conclusion is speculative, especially when the data for Kansas City (including COSTAR, CBRE, Block and Company) was generally better than national. This was admitted by Mr. Allen on cross examination and even his appraisal indicates that there have been numerous store closings and bankruptcies as a trend in the U.S., but no data to support that this had any effect on the Kansas City area or Platte County, specifically. (Exhibit B at 53-58) The income approach “is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions”. *Id.* at 347. Overall, Complainant’s failure to utilize local data when establishing market adjustments and usage of dissimilar rent comparables led to an income approach that is not reliable under *Snider*. Market rents for the subject cannot be reasonably be estimated from existing market conditions based on Complainant’s analysis. Complainant’s income approach does not produce substantial and persuasive evidence to rebut the BOE’s determination of value and to indicate what should have been the TVM of the property as of January 1, 2019.

Respondent, although not required to, presented evidence that supported the BOE’s valuation and serves to reinforce the BOE’s presumption of correctness. Respondent’s appraiser found a valuation under each approach to value. Respondent’s income approach was most persuasive. Respondent selected rent comparables of big-box properties to determine the market rental rate, including a Missouri big-box survey, and the leases used were of similar square footage, quality, within Kansas City area, and had market typical lease terms. Mr. Keller made adjustments for location/access, quality, condition/age, size, and market conditions and utilized a final loaded capitalization rate of 7.96%, to arrive at

a value conclusion of \$7,850,000 under this approach (Exhibit 2 at 106). His localized approach with similar rent comparables in the Kansas City area establish a market based and reliable approach to value. Therefore, Respondent's evidence serves to reinforce the BOE's decision on TVM.

### **CONCLUSION AND ORDER**

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2019, was \$7,402,500, with an assessed value of \$2,368,800.

#### **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 March 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 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