



STATE TAX COMMISSION OF MISSOURI

RIVER NORTH HOLDING) Appeal Nos. 19-79091 and 19-79093
COMPANY LLC BY MCKEEVER) through 19-79096
ENTERPRISES AS TAXPAYER, ET)
AL.,)
)
Complainant(s),)
)
v.)
)
DAVID COX, ASSESSOR,)
PLATTE COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

River North Holding Company LLC, and a number of other property owners (Complainants) appeal the Platte County Board of Equalization's (BOE) decisions determining the true value in money (TVM) of the subject commercial properties as of January 1, 2019. Complainants did not produce substantial and persuasive evidence of overvaluation. The BOE's decisions are affirmed as to all appeals referenced above as of January 1, 2019, and set aside as to Appeal Nos. 19-79093 through 19-79095 as of January 1, 2020.¹

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.

Complainants were represented by counsel, Michael LeVota. Respondent was represented by counsels Bob Shaw and Stephen Magers. The evidentiary hearing was conducted on April 14 and 15, 2022, via WebEx.

FINDINGS OF FACT

1. Subject Property. The subject properties are listed below:

Appeal No.	Taxpayer Name	Parcel Locator Number
19-79091	River North Holding Company LLC By McKeever Enterprises as Taxpayer	20-7.0-26-100-006-005.000
19-79093	Hy-Vee Food Stores	19-4.0-19-400-008-038.004
19-79094	American National Ins Co. C/O Hy-Vee	19-4.0-19-400-008-038.000
19-79095	Hy-Vee Food Stores Inc	19-3.0-07-400-006-020.001
19-79096	1900 Associates LLC By Cosentino Food Stores as Taxpayer	17-3.0-06-200-007-001.010

2. Property Descriptions. The subject properties are owner occupied, built-to-suit grocery stores which are operated as either Price Chopper (19-79091 and 19-79096) or Hy-Vee (19-79093 through 19-79095). For ease of analysis and administrative efficiency, Appeal Nos. 19-79093 and 19-79094 are reviewed together.

19-79091 The subject represents a single-tenant retail/grocery store building containing 73,147 square-feet of gross building area and net rentable area located on a tract of land containing 7.15 acres, more or less, or approximately 311,454 square-feet. The

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

improvements were constructed 2004. As of January 1, 2019, the subject was 100% occupied by Price Chopper Grocery.

19-79093 and 19-79094 The subject represents a single-tenant retail/grocery store building containing 88,200 square-feet of gross building area and net rentable area located on a tract of land containing 7.59 acres, more or less, or approximately 330,736 square-feet. The improvements were constructed 2010. As of January 1, 2019, the subject was 100% occupied by Hy-Vee Grocery.

19-79095 The subject represents a single-tenant retail/grocery store building containing 75,360 square-feet of gross building area and net rentable area located on a tract of land containing 8.19 acres, more or less, or approximately 356,756 square-feet. The improvements were constructed 1996. As of January 1, 2019, the subject was 100% owner-occupied by Hy-Vee Grocery.

19-79096 The subject represents a single-tenant retail/grocery store building containing 53,291 square-feet of gross building area and net rentable area located on a tract of land containing 6.93 acres, more or less, or approximately 301,871 square-feet. The improvements were constructed 2008. As of January 1, 2019, the subject was 100% occupied by Price Chopper Grocery.

3. BOE. The BOE classified the subject properties as commercial and independently determined the TVM on January 1, 2019, of each parcel was:

Appeal No.	BOE VALUE
19-79091	\$8,741,622
19-79093	\$8,159,506
19-79094	\$3,970,203
19-79095	\$8,563,331

19-79096	\$6,974,962
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4. Official Notice Request by Complainant. Complainants request the State Tax Commission take official notice of the Uniform Standard of Professional Appraisal Practice, 2020-2021(USPAP) and The Appraisal of Real Estate, 15th Edition, Appraisal Institute (2020), according to Section 536.070. Agencies shall take official notice of all matters of which the courts take judicial notice. Section 536.070(6).

5. Complainants' Evidence. Complainant submitted the TVMs of the subject properties on January 1, 2019, as follows:

Appeal No.	OPINION OF VALUE
19-79091	\$4,700,000
19-79093 and 19-79094	\$6,570,000
19-79095	\$4,930,000
19-79096	\$3,440,000

Complainants presented Written Direct testimony (WDT) and the following exhibits:

Appeal No.	Exhibits	Description	Ruling
19-79091	A	Appraisal Report Scaletty	Admitted
	WDT	Thomas Scaletty	
19-79093 and 19-79094	A	Appraisal Report Scaletty	Admitted
	B	Appraisal Report Olson	
	C	Appraisal Report Maier	
	WDT	Thomas Scaletty	
	WDT	John Olson	
	WDT	Gerald Maier	
19-79095	A	Appraisal Report Scaletty	Admitted
	B	Appraisal Report Olson	
	C	Appraisal Report Maier	
	WDT	Thomas Scaletty	
	WDT	John Olson	
	WDT	Gerald Maier	
19-79096	A	Appraisal Report Scaletty	Admitted
	WDT	Thomas Scaletty	

At the hearing, Respondent made a continuing objection to any testimony from Complainant's appraiser John Olson because he was not licensed in Missouri under Section 339.501 as of the hearing date. Respondent argued that by testifying Mr. Olson is "engaging in the business" of appraisal and engaged a license for the purposes of litigation. Complainant argued that the appraiser was licensed in Missouri when he conducted the appraisal in August 2020, the license had lapsed December 2020, and he was merely testifying to his prior work while licensed. Under Section 490.065, an expert witness' opinion testimony is admissible regarding work he did while licensed. Respondent's objections are overruled and the testimony and exhibits are admitted and given the weight appropriate. Although Mr. Olson's appraisal and testimony were admitted, his appraisal and testimony are found not credible. Although entered into evidence, his testimony was given little weight.

Complainant presented testimony from witness Thomas Scaletty, an MAI designated commercial real estate appraiser with approximately 30 years of appraisal experience. Mr. Scaletty composed an appraisal report for Complainant in which he developed the cost approach, sales comparison approach, and income approaches to value and to estimate the TVM in fee simple of the subject properties on January 1, 2019. Mr. Scaletty testified that he relied most heavily on the sales comparison approach, not income, which was a typo within his appraisal.

Regarding the sales comparison approach, he considered six verified sales of properties in Nebraska, Iowa, Kansas, and Missouri and utilized the same comparables within all reports submitted for the subject parcels. (WDT) Mr. Scaletty testified the

category of sales for comparison in an analysis of this type includes Built-to-Suit/Leasebacks, Second Generation Leased Fee Sales, and Fee Simple Sales. He excluded any Built-to-Suit and Leasebacks because the nature of these sales “reflect decreasing sale prices and increasing capitalization rates as the remaining lease term declines.” (WDT). He testified that “clearly, these sales are not indicative of an investment in a fee simple estate in the subject.” (WDT and Exhibits A) Regarding Second Generation Leased Fee Sales, Mr. Scaletty testified “if the tenant leases the space “as is” and makes no upgrades or alterations, a sale in this category may provide a good indication of the market value for the real estate.” (WDT and Exhibits A) And he utilized some of these sales in the Income Approach. Regarding Fee Simple Sales, Mr. Scaletty testified that these represent “transactions involving properties that were vacant at the time of their sale or were vacated by the seller for occupancy by the buyer.” (WDT and Exhibits A) Mr. Scaletty testified he made adjustments based on time/market condition, age/condition, location, and building size.

Regarding the income approach, Mr. Scaletty utilized the same five rent comparables within all appraisals submitted for these parcels. The comparables are all located in and around the greater Kansas City area. Following adjustments for differences in lease terms, age/condition, location, etc., he calculated a lease rate range for each property and calculated an NOI to arrive at a capitalization rate. His reliance on this approach was used to support his sales comparison valuation. (WDT and Exhibits A)

Mr. Scaletty developed the cost approach but did not give this approach more than moderate consideration due to the small amount of depreciation on the subject properties.

Mr. Scaletty testified he did not conclude a January 1, 2020 value, and was not aware of permits, but was aware of renovations (Tr. 2:00) made on the subject properties and his analysis overall concluded the same TVMs for 2019 and 2020. He testified at hearing, that upon inspection of the properties, which was conducted after the renovations, he did not ask if recent improvements had occurred and was not told specifics of any recent improvements that could translate to a market value.

Gerald Maier a licensed Missouri General Real Property Appraiser, prepared a review report on Respondent's appraisal in appeals 19-79093 through 19-79095 only. Mr. Maier concluded that Respondent's appraisal was not to be relied upon for market value of the properties for the fee simple estate because Respondent failed to include independent definitions of "fee simple" and "leased fee," which are in the appraisal profession. (WDT and Exhibits C) He relied on information from the Appraisal of Real Estate 14th Edition, "when the fee simple interest is valued, the presumption is that the property is available to be leased at market rates" and determined that Respondent's appraisal is "outside the definition" of fee simple estate and cannot be relied upon. (WDT and Exhibits C)

19-79091: Price Chopper

Mr. Scaletty relied most heavily on the sales comparison approach and found an average \$65.00 per square-foot market rent. Multiplied by 73,147 square-foot building of the subject property, the TVM he developed for the sales comparison approach is \$4,750,000. (WDT and Exhibit A)

Regarding the income approach, Mr. Scaletty calculated a lease rate range between \$6.52 and \$7.29 per net rentable square was indicated. (Exhibit A) Relying on the data, a

concluded typical market lease rate of \$7.00 per square-foot was estimated. (Exhibit A) After expenses, Mr. Scaletty found an NOI of \$5.29 per square-foot. (Exhibit A) Mr. Scaletty estimated an adjusted capitalization rate of 8.72%. (Exhibit A) Mr. Scaletty's overall conclusion of TVM for the subject under both approaches to value was \$4,700,000.

19-79093 through 19-79094: Hy-Vee

Mr. Scaletty relied most heavily on the sales comparison approach and found an average \$75.00 per square-foot market rent. (Exhibit A) Applied to the 88,200 square-foot building of the subject property, the TVM he developed for the sales comparison approach is \$6,620,000. (Exhibit A)

Regarding the income approach, Mr. Scaletty calculated a lease rate range between \$6.52 and \$7.81 per net rentable square foot was indicated. Relying on the data, a concluded typical market lease rate of \$7.50 per square foot was estimated. After expenses, Mr. Scaletty found a NOI of \$6.20 per square foot. (Exhibit A) Mr. Scaletty estimated an adjusted capitalization rate of 8.59%. (Exhibit A) Mr. Scaletty's overall conclusion of TVM for the subject property under both approaches to value was \$6,570,000.

19-79095: Hy-Vee

Mr. Scaletty relied most heavily on the sales comparison approach and found an average \$65.00 per square-foot market rent. (Exhibit A) Applied to the 75,360 square-foot building of the subject property, the TVM he developed for the sales comparison approach is \$4,900,000.

Regarding the income approach, Mr. Scaletty calculated a lease rate range between \$6.21 and \$7.47 per net rentable square was indicated. (Exhibit A) Relying on the data, a

concluded typical market lease rate of \$6.75 per square foot was estimated. After expenses, Mr. Scaletty found a NOI of \$5.65 per square foot. (Exhibit A) Mr. Scaletty estimated an adjusted capitalization rate of 8.59%. (Exhibit A) Mr. Scaletty's overall conclusion of TVM for the subject under both approaches to value was \$4,930,000.

19-79096: Price Chopper

Mr. Scaletty's sales comparison approach to value found an average \$65.00 per square foot. Multiplied by 53,291 square-foot building of the subject property, the TVM he developed for the sales comparison approach is \$3,440,000. (Exhibit A) He relied most heavily on this approach, although his income approach used an adjusted capitalization rate of 8.83% to find a TVM of \$3,460,000, which serves to support his sales comparison valuation. (Exhibit A)

6. Respondent's Evidence. Respondent submitted the TVMs of the subject properties on January 1, 2019, as follows:

Appeal No.	OPINION OF VALUE 2019	OPINION OF VALUE 2020
19-79091	\$7,900,000	No change
19-79093 and 19-79094	\$12,000,000	\$12,200,000
19-79095	\$8,300,000	\$10,300,000
19-79096	\$7,000,000	No change

Respondent submitted WDT of Robin Marx and the following Exhibits:

Appeal No.	Exhibit	Description	Ruling
19-79091	1	WDT of Robin Marx	Admitted
	2	Appraisal Of Robin Marx	
	3	Discovery Responses	
	4	Deed	
	13	Omaha NE Building Permit	
	15	Clive IA Building Permit	

19-79093 and 19-79094	1	WDT of Robin Marx	Admitted
	2	Appraisal of Robin Marx	
	3	Discovery Responses	
	4	Second Set of Discovery Responses	
	5	2019-2020 Costs	
	6	Additional 2019 to 2020 Costs	
	7	Deed	
	13	Omaha NE Building Permit	
	14	STC Decision in appeal 17-79042	
	15	Clive IA Building Permit	
19-79095	1	WDT of Robin Marx	Admitted
	2	Appraisal of Robin Marx	
	3	Complainant's Discovery Responses	
	4	Second Set of Discovery Responses	
	5	Deed	
	13	Omaha NE Building Permit	
	15	Clive IA Building Permit	
19-79096	1	WDT of Robin Marx	Admitted
	2	Appraisal of Robin Marx	
	3	Complainant's Discovery Responses	
	4	Deed	
	13	Omaha NE Building Permit	
	15	Clive IA Building Permit	

Mr. Marx testified he has specialized appraisal experience in valuing big box retail properties. Mr. Marx testified he and his firm have compiled a “very significant database to measure the effects of credit tenants, lease duration, and functional attributes that differ between the subclasses: retail, discount, and department store.” (WDT) Exhibit 2 for each appeal is the appraisal report, which utilizes the income, cost, and sales comparison approaches to estimate the market value of the subject properties. He used the same six sales comparables in the sales comparison approach and 10 rent comparables in the income approach for each parcel’s appraisal. Mr. Marx testified he chose economically similar comparables to the subject property in that they had “similar amenities and compete for

tenants at similar income levels.” (WDT and Exhibits 2) He concluded the comparables used suffer the same “market forces” that would affect market value of the subject properties. He testified he considered he had “good and reliable” comparable sales data in the Kansas City market area for comparison and did not look to outside areas. (WDT and Exhibits 2) He testified he chose large free standing retail stores: grocery, discount, and retail as sales comparables, making adjustments for the transaction, market conditions, and property characteristics. (Exhibits 2) Mr. Marx 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)

In the income approach, Mr. Marx used ten rent comparables within Kansas City and nearby cities for comparison, all free standing retail buildings with similar location, age and size. Mr. Marx used locations that are “economically similar and attract similar buyers,” but he made adjustments for expenses and property characteristics. Mr. Marx testified his income approach “converts future net income into a present value (fair market value) by dividing the stabilized income by a capitalization rate plus a factor for real estate taxes. (Exhibits 2) He testified he used national surveys, local brokers’ survey, and a capitalization rate survey applicable to the Kansas City market area to develop the capitalization rate for each parcel. (WDT and Exhibits 2)

Mr. Marx’s cost approach was developed and he testified since the subjects’ improvements are not unduly affected by depreciation (being newer built), the cost approach is considered a credible indicator of value and would be considered by market participants. Furthermore, it is a good indicator of the fee simple interest. Mr. Marx used

land comparables to find a land value and Marshall Valuation Service (MVS), which is a proven national cost service, to value the improvements. (WDT and Exhibits 2) He testified he deducted depreciation that he itemized by all causes. Mr. Marx testified he estimated the contributory value of the site improvements, which components constitute the contributory value of the improvements, then the land value was added for a value indication via the cost (or summation) approach. Mr. Marx found land sales in the Platte County market area for comparison purposes, land purchased for similar retail use, and which were similar in size and proximate in time to the effective date.

19-79091: Price Chopper

Mr. Marx testified he relied most heavily on the income approach to value the subject property with strong support from the sales comparison and cost approaches. The capitalization rate he found was 7.75%, loaded 0.14% for real estate taxes, or 7.89%, used to arrive at a final value conclusion of \$7,900,000. (WDT and Exhibits 2)

19-79093 through 19-79094: Hy-Vee

Mr. Marx testified he relied most heavily on the income approach to derive an indicated value of the property, with strong support from the sales comparison and cost approaches. The capitalization rate he found was 7.50%, loaded 0.13% for real estate taxes, or 7.63%, used to arrive at a final value conclusion as of January 1st, 2019, at \$12,000,000. (WDT and Exhibits 2) There was evidence the property was upgraded in late 2019, and therefore he found a value of the property as of January 1, 2020, of \$12,200,000. Mr. Marx used Exhibits 5 and 6 in deriving such improvement value. (WDT and Exhibits 2) Mr. Marx testified he estimated the cost of those improvements that would have been spent

under market conditions in 2019 and then valued the property with the advantage of those improvements hypothetically completed on January 1, 2019, for the 2020 valuation. (WDT and Exhibits 2) He testified for the improved value, the income approach is the “best measure for the value change” due to the fact that market rent, vacancy and collection loss, and expenses do not change significantly. (WDT and Exhibits 2) Accordingly, Mr. Marx conducted a reduction in the capitalization rate to adjust the value for January 2020 because as he explains, “a lower capitalization rate reflects a reduction in the risk and extended economic life of the improvements.” (WDT and Exhibits 2) The base capitalization rate applied before the improvements was 7.5% and that rate is reduced 10 to 20 basis points or 15 basis points (rounded) to 7.35%. (WDT and Exhibits 2) Mr. Marx testified he added the effective tax rate of 0.13%, which produced a tax-loaded cap rate of 7.48% and, as such, the improvement value increased by \$200,000 from \$9,350,000 to \$9,550,000. As applied by Mr. Marx to the estimated net operating income: $\$914,006 \div 7.48\% = \$12,219,338$, or \$12,200,000 rounded. (WDT and Exhibits 2)

19-79095: Hy-Vee

Mr. Marx testified he relied most heavily on the income approach to derive an indicated value of this property, with strong support from the sales comparison and cost approaches. The capitalization rate he found was 7.75%, loaded 0.13% for real estate taxes, or 7.88%, used to arrive at a final value conclusion as of January 1, 2019, at \$8,300,000. Exhibits 5-7 include the 2019-2020 Costs, Additional 2019 to 2020 Costs and Deed. Rebuttal includes building permits from other Hy-Vee properties. (WDT and Exhibits 2, 5, 6, 7)

He testified he used the information contained within Respondent's Exhibits 3 and 5, in deriving a value, as of January 1, 2020, at \$10,300,000. (WDT and Exhibits 3, 5) He testified the property was upgraded in late 2019 and the reported remodel cost was \$4,477,158. Mr. Marx testified specific to the estimated cost of those improvements that would have been spent under market conditions in 2019. He then valued the property with the advantage of those improvements hypothetically completed on January 1, 2019, for the 2020 valuation. He utilized the Marshall & Swift Valuation Service and appraised the building and improvements by estimated replacement cost of the improvements and then deducted depreciation by its different types. (WDT and Exhibits 2)

19-79096: Price Chopper

Mr. Marx testified he relied most heavily on the income approach to value the subject property with strong support from the sales comparison and cost approaches. The capitalization rate he found was 7.50%, loaded 0.13% for real estate taxes, or 7.63%, used to arrive at a final value conclusion of \$7,000,000. (WDT and Exhibits 2)

7. Evidence of New Construction & Improvement. There was evidence of new construction and improvement from January 1, 2019, to January 1, 2020. Section 137.115.1. Based on the evidence in the record, improvements included renovations outlined in kitchen, plumbing, fire safety, and electrical as well as cosmetic changes to the properties in the form of interior carpeting, tile, and paint. (Respondent's Exhibits 2, 5, and 6) Respondent's analysis of the construction completed in 2019 demonstrates substantial and persuasive evidence of the increase in TVM for appeal numbers 19-79093 through 19-79095.

8. Value. The TVM of the subject properties was:

Appeal No.	2019 BOE VALUE	2020 VALUE
19-79091	\$8,741,622	No change
19-79093	\$8,159,506	\$12,200,000
19-79094	\$3,970,203	(combined with 19-79093)
19-79095	\$8,563,331	\$10,300,000
19-79096	\$6,974,962	No change

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).

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 did not produce substantial and persuasive evidence of the alleged TVMs for the subject properties. Although not required given the burden of proof, Respondent presented exhibits and testimony that supported the BOE's valuation of the subject property. Respondent's evidence persuasively supports the BOE's values.

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. "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. Complainant argues the comparables should consist of primarily of vacant properties and exclude built-to-suit or sale leaseback. However, if the appraiser determines dollar adjustments are warranted for property rights, financing terms, conditions of sale, or market conditions, those adjustments are to be made. However, Mr. Scaletty rejected the use of sale leasebacks or built-to-suit properties to

compare with the subject properties and, in so doing, did not develop an accurate measure for the market value. Complainant presented no substantial and persuasive evidence indicating the property rights cannot be adjusted properly under USPAP standards or appraisal practice to each of the subject properties. The theory that a leased property is encumbered, and therefore not a preferable comparable is unpersuasive, is speculative, and not a methodology utilized in Missouri Courts to value property. 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 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).

"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). To assume that a vacant property is the best or most accurate measure for a value of the subject properties doesn’t equate to evidence. The present record contains no evidence to support the theory. 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). Respondent’s appraisal summary included more similar sales in Kansas City area. The record indicates a lack of sufficient comparable sales for Complainant. Complainant’s comparables are too dissimilar to the subject property to draw any real comparison. There was no substantial or persuasive evidence to support Complainant’s TVM under the sales comparison approach.

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.*

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. *Aspenhof Corp. v. State Tax Commission*, 789 S.W. 2d 867, 869 (Mo. App. 1990). It is true that property can only be valued according to a use to which the property is readily available. But this does not mean that in order for a specific use to be the highest and best use for calculating the property's true value in money that particular use must be available to anyone deciding to purchase the property. A determination of the true value in money cannot reject the property's highest and best use and value the property at a lesser economic use of the property. *Snider* at 341, 348-349 (Mo. 2005).

Mr. Marx and Mr. Scaletty each determined there is sufficient market-based income data for retail properties to estimate the potential NOI of the subject property and utilize the income approach. "Any property that has the potential to generate income can be valued under the income capitalization approach." Appraisal Institute, *The Appraisal of Real Estate* 441 (14th ed. 2013). Like the sales comparison and cost approach, the income approach is market-based and is aimed at estimating "the property's true value in money." *Snider*, 156 S.W.3d at 347; see also *The Appraisal of Real Estate* at 36 n.1 (noting "all three approaches to value are 'market' approaches in that they rely on market data").

The concept of “fair market value is a hypothetical metric that asks what price an informed buyer and an informed seller would agree on when neither must act, but both are willing.” *Robinson v. Langenbach*, 599 S.W.3d 167, 183 (Mo. banc 2020). One way to estimate fair market value is with an income approach capitalizing the income the real property could generate. *Snider*, 156 S.W.3d at 347. Mr. Scaletty and Mr. Marx’s income approach did develop a value by superimposing a market-based NOI and capitalization rate on the subject’s real estate to estimate the TVM. Additionally, no evidence was presented that Complainant did supply its appraisers with income and expenses from which the subject property’s actual NOI could be calculated. This preference to use hypothetical information over actual information for the subject properties to establish a TVM diminishes the credibility of Mr. Scaletty’s income approach. Mr. Scaletty’s finding of value is ultimately not persuasive due to the lack of comparables that truly parallel the subject property’s potential income. The comparables’ distance from the subject and grade are too distinct from the subject properties attributes and too many adjustments were made in order to find value. There was no substantial or persuasive evidence to support Complainant’s appraisers’ opinions of TVM under the income approach.

Although the cost approach was developed by Complainant, Mr. Scaletty testified he did not rely on this methodology. Complainant failed to rely on their own cost approach to provide support for their arguments. Thus, there was no substantial or persuasive evidence to support a TVM from Complainant under the cost approach.

CONCLUSION AND ORDER

The BOE decision is AFFIRMED regarding tax year 2019. The BOE decision regarding the 2020 valuations for 19-79093 through 19-79095 is SET ASIDE due to the substantial and persuasive evidence in the record of new construction and improvements pursuant to Section 137.115.1. The TVM of the subject properties was:

Appeal No.	2019 BOE VALUE	2020 VALUE
19-79091	\$8,741,622	No change
19-79093	\$8,159,506	\$12,200,000
19-79094	\$3,970,203	(combined with 19-79093)
19-79095	\$8,563,331	\$10,300,000
19-79096	\$6,974,962	No change

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