



STATE TAX COMMISSION OF MISSOURI

KRISTA MARIE MILLER,)
)
 Complainant(s),)
) Appeal No. 21-15872
 v.) Parcel No. 31H510721
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
)
 Respondent.)

DECISION AND ORDER

Krista Marie Miller (Complainant) appealed the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$172,800. Complainant alleges overvaluation and proposes that the TVM of the subject as of that date was \$150,000.¹ The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$172,800.

The evidentiary hearing was held on July 27, 2022, via Webex. Complainant,

¹ Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

appeared *pro se*. Respondent was represented by counsel Tim Bowe. The appeal was heard and decided by Senior Hearing Officer Benjamin Slawson.

FINDINGS OF FACT

1. **The Subject Property.** The subject residential real property is located at 259 E. Pottle Ave, St. Louis, MO. The parcel/locator number is 31H510721.

The subject property consists of a single-family ranch-style home with about 1,000 square feet of living space with two bedrooms, one bathroom, dining room, living room with combined kitchen, basement, and one car garage. Complainant purchased the property about 15 years ago and has not made any significant improvements in the last three years. Eight years ago, Complainant replaced the heating and cooling system in the house. Complainant has not attempted to sell the property recently.

2. **Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$172,800. The BOE independently determined the TVM of the subject property as of January 1, 2021, was \$172,800.

3. **Complainant's Evidence.** Complainant submitted the following Exhibits:

Exhibit	Description	Status
A	Photograph of subject property – Foundation crack	Admitted
B	Photograph of subject property – Foundation crack	Admitted
C	Photograph of subject property – Temporary foundation repair on corner	Admitted
D	Photograph of subject property – Retaining Wall separating	Admitted
E	Photograph of subject property – Retaining Wall separating	Admitted
F	July 19, 2022 Helitech estimate for foundation repair	Admitted
G	Home Depot material cost from carpet replacement	Admitted
H	Home Depot material cost from flooring replacement	Admitted

I	September 27, 2019 Mirelli Tuckpointing, LLC Masonry Estimate	Admitted
J	Estate.com listing for 143 E. Pottle Ave.	Admitted
K	Estate.com listing for 194 Tapestry Dr.	Admitted
L	Estate.com listing for 216 Rouen Dr.	Admitted
M	Estate.com listing for 324 Malone Dr.	Admitted
N	Realtor.com listing for 333 Burncoate Dr.	Admitted
O	Realtor.com listing for 510 Golden Valley Dr.	Admitted
P	Xome.com listing for 2359 Whitshire Dr.	Admitted
Q	Estate.com listing for 2377 Crestline	Admitted
R	Estate.com listing for 2549 Rolens	Admitted
S	Estate.com listing for 4119 Sunrise Heights	Admitted
T	Estate.com listing for 4152 Robert Koch Hospital Road	Admitted
U	Xome.com listing for 4508 Thicket Dr.	Admitted
V	Appraisal Techniques (Section 137.115, RSMo)	Admitted
W	Video of water backup in basement	Admitted

Complainant testified that \$150,000 is her opinion of value for the property as of January 1, 2021. Complainant testified that the appraised value set by Respondent in 2019 was \$142,600 and that a 21% increase in value in 2021 is unreasonable. Complainant testified at length regarding the foundation issues the house is plagued with which cause water to protrude into the basement. While Complainant has installed a sump pump and other remedial measures, the problem continues to exist. Complainant submitted as evidence bids to repair the foundation. Complainant also submitted Home Depot material costs to replace carpet and flooring which would have to be torn up to access the crawlspace for the foundation repair. Complainant stated that to fix the foundation would cost upwards of \$16,000.

Complainant found comparable sales from online resources that she believes show her property is overvalued by Respondent (Exhibits J-U). Complainant testified that all

these properties are close in distance to the subject and are similar in characteristics and condition. Complainant testified that a nearby quarry causes the house to shake when blasting operations are occurring which also devalues her property.

Complainant also argued that Respondent failed to abide by Section 137.115 by failing to perform a physical inspection of the subject property before increasing the value by over 15%. Complainant presented all these issues to the BOE. Complainant is not a licensed appraiser in the State of Missouri.

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

Respondent also introduced Exhibit 2 as rebuttal. Exhibit 2 is Respondent's Notice of Physical Inspection for the subject property dated July 2, 2020. The Exhibit was admitted without any legal objection.

5. Value. The TVM of the subject property as of January 1, 2021, was \$172,800.

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). The TVM is "the fair market value of the property on the valuation date[.]" *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). "True value in money is defined in terms

of value in exchange not value in use." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). "Determining the true value in money is an issue of fact for the STC." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008).

"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. The STC has wide discretion in selecting the appropriate valuation method but "cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation approach." *Id.*, at 348.

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id.* at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id.* at 348.

2. Evidence. "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax Comm'n*, 560 S.W.2d 837, 839 (Mo. banc 1977). 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). "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 taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's valuation is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *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 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 Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant did not produce substantial and persuasive evidence to support Complainant's \$150,000 opinion of value and claim of overvaluation. Complainant did not produce evidence supporting a comparable sales approach, income approach, or cost approach to value, nor did Complainant offer a recent appraisal of the subject property as evidence of the TVM of the property as of January 1, 2021.

Complainant testified concerning the foundation issues of the subject property, which are evidenced with the pictures in Complainant's Exhibits. Complainant also submitted estimates to remediate these problems. However, while Complainant estimated repairs to cost a total of around \$16,000, Complainant did not provide evidence of the specific monetary impact that these issues or surrounding neighborhood conditions (such as noise disturbances caused by the proximity to the quarry) have on the TVM of the subject property *as of January 1, 2021*. In other words, there is no documentation or testimony rebutting the presumption that the BOE examined this issue and figured it into its valuation at \$172,800.

The comparable sales approach is the usual method used to determine the TVM of residential real 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.” *Snider* at 347-48. Complainant submitted several comparable sales that she found using various online resources (Exhibits J through U). However, Complainant’s comparable sales were not analyzed using accepted appraisal methods, for example making appropriate market adjustments to determine value of the subject. Finally, Complainant did not offer testimony of an appraiser, nor an appraisal of the property as evidence of the TVM of the property as of January 1, 2021. Therefore, Complainant’s valuation is based on improper elements and therefore is speculative.

Even if Complainant had rebutted the presumption of correct valuation by the BOE, Complainant has not proven that the TVM of the subject property is \$150,000 as of January 1, 2021. While a property owner’s opinion of value is generally admissible, the opinion “is without probative value where it is shown to have been based upon improper elements or an improper foundation.” *Shelby Cty. R-IV Sch. Dist. v. Herman*, 392 S.W.2d 609, 613 (Mo. 1965); see also *Cohen v. Bushmeyer*, 251 S.W.3d 345, 349 (Mo. App. W.D. 2008) (noting a property owner’s opinion of value loses probative value when it rests on an improper foundation).

5. Section 137.115.10. Complainant argues that Respondent did not make a proper physical inspection of her property under Section 137.115.10 before increasing the appraised value of her home by over 15% in his 2021 assessment.

In pertinent part, Section 137.115.10 provides “[b]efore the assessor may increase the assessed valuation ... by more than fifteen percent ... the assessor shall conduct a physical inspection of such property.” In other words, the statute expressly conditions a valuation increase of more than 15 percent (“[b]efore the assessor may increase the

assessed valuation ... by more than 15 percent”) on a mandatory physical inspection (“shall conduct a physical inspection”). Because a physical inspection is a condition precedent to a valuation increase in excess of 15 percent, an assessor is precluded from increasing an assessment by more than 15 percent without conducting the statutorily required physical inspection. It follows that the failure to conduct a sufficient physical inspection negates any increased valuation to the extent it exceeds 15 percent.²

The necessary elements of a Section 137.115.10 physical inspection are set forth in Section 137.115.11 and Section 137.115.12. In pertinent part, Section 137.115.11 requires the assessor to provide the property owner with “clear written notice” of the right to an inspection. The inspection “shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land.” Section 137.115.12. “Mere observation of the property via a drive-by inspection or the like shall not be considered sufficient to constitute a physical inspection as required by this section.” *Id.*

There is no documentary evidence in the record as to Respondent’s appraised value of the subject in 2019. However, if the previous value set by Respondent was \$142,600 for the subject as Complainant testified that it was, then the 2021 assessment of the subject property was increased by approximately 21% by Respondent.

² This conclusion is confirmed by considering the converse: if the failure to conduct a physical inspection does not negate a valuation increase in excess of fifteen percent, then the condition precedent to increasing the assessment by more than 15 percent – “[b]efore the assessor may increase the assessed valuation” – is rendered superfluous. *See Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013) (courts “must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language.”)

Even so, the evidence submitted in this case does not show that Respondent violated Section 137.115.10 before increasing the assessment. Respondent submitted Exhibit 2, a business record and Notice of Inspection for the subject property. It states that at 8:29 A.M. on July 2, 2020, Melissa F. from the St. Louis County Assessor's Office performed a physical inspection of the subject property. Due to the COVID-19 pandemic, the inspection was a "no-contact" inspection. The notice also provides Complainant an option to request a more detailed inspection. Respondent has proven that the requirements of Section 137.115 have been met, and that an adequate inspection was performed before the over 15% increase in assessment.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$172,800, with an assessed value of \$32,832.

Application for Review

A party may file 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 of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. *Failure to state specific facts or law upon which the application for review is based will result in summary denial.* Section 138.432.

Disputed Taxes

The Collector of St. Louis County, and 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 the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED March 10, 2023.

Benjamin C. Slawson
Senior Hearing Officer
State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on March 10, 2022, 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