



STATE TAX COMMISSION OF MISSOURI

WILLIAM P. GRAHAM,) Appeal No. 21-18245
) Parcel No. 21O620526
Complainant,)
)
v.)
)
JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
)
Respondent.)

DECISION AND ORDER

William P. Graham (Complainant)¹ appeals the St. Louis County Board of Equalization's (Respondent) decision valuing the subject residential property at \$170,800 as of January 1, 2021. Complainant alleges overvaluation and asserts the true value in money (TVM) of the subject property as \$100,247 as of January 1, 2021. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, is \$170,800.²

¹ The subject property is owned by The William P & Judith K Graham Revocable Trust Dtd 10/28/2008 (“the Trust” or “Complainant”).

² 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.

The evidentiary hearing was held on September 28, 2022, via Webex. The Trust was represented by counsel Kristin Whittle Parke. Respondent Jake Zimmerman, Assessor, St. Louis County, Missouri, was represented by counsel, Tim Bowe. The case was heard and decided by Senior Hearing Officer Benjamin C. Slawson.

FINDINGS OF FACT

1. The Subject Property. The subject residential property consists of a small lot located at 12345 Trearcy Ln. in Des Peres, Missouri improved with a single-family slab home built in 1933. The house has 1,144 square feet of living space in five total rooms, a kitchen, two bedrooms, a bathroom, and a living/dining room combo. The house also has a detached garage. The house has the original shingle siding and linoleum flooring, and its water source is a well on the property. The water from the well at times gets muddy after hard rains. Complainant has not made any significant improvements to the property in the last three years other than painting, adding a vanity in the bathroom, and carpeting two rooms.

2. Assessment and Valuation. Respondent determined the subject property's TVM was \$384,400 as of January 1, 2021. The BOE independently determined that the subject's TVM as of January 1, 2021 was \$170,800.

3. Complainant's Evidence. Complainant introduced the following Exhibits which were admitted without objection:

Exhibit	Description
A	Pictures of subject property and descriptions of condition issues, pictures and descriptions of

	neighboring dog kennel, and analysis of land assessment change for 2021 versus 2019/2020
B	Description of subject property and summary of Complainant's overvaluation arguments

Ms. Judith Graham, a trustee of Complainant, testified on behalf of Complainant. Ms. Graham is not a licensed appraiser. Ms. Graham testified that Complainant believes the subject property is primarily overvalued due to its close proximity (25 feet) to the neighboring Silver Maple Dog Kennel. The kennel has outdoor dog runs and a canine day care, housing up to 170 dogs year round. The constant barking is a great source of noise disturbance. Also, water containing the dogs' waste runs off into the subject property's yard. Complainant has tried numerous times to sell the property to no avail. Complainant also tried to rent the property from October 2013 through February 2020 to no avail. Complainant does have a tenant currently renting the subject property for \$500 a month. Ms. Graham testified that this tenant wears headphones all day to try to block out the constant barking noise next door.

Ms. Graham testified that Complainant's proposed value for the subject property as of January 1, 2021, is \$50,000. This figure is based on Complainant valuing the property using the "real estate maximum purchase price based on monthly rent" calculation which Complainant was informed about from three realtors. Complainant calculated \$50,000 by taking saleable value at 1% of \$500 rent (or 500 divided by 0.01). Complainant's argument is that because of the neighboring dog kennel, the property has little to no improvement value. Despite this, Complainant testified that Respondent arbitrarily increased the improvement value from \$200 to \$13,200, a 6500% increase. Complainant testified that

Respondent also arbitrarily increased the land value from 2019 to 2021 from \$72,000 to \$371,200, a 416% increase. Complainant presented these arguments and Exhibit A at the BOE hearing.

4. Respondent's Evidence. Respondent introduced Exhibit 2³ consisting of the October 29, 2021, BOE decision letter for the subject property. Exhibit 1 shows the BOE determined a TVM for the subject property at \$170,800.

5. Value. The TVM of the subject property as of January 1, 2021, was \$170,800.

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. Sections 137.115.1; 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). The TVM "is a function of [the property's] highest and best use[.]"

³ Prior to hearing, Respondent had submitted Exhibit 1. Exhibit 1 was not offered at hearing because it constituted a BOE Decision letter for another property owned by Complainant, not for the subject property.

Snider, 156 S.W.3d at 346. "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. 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). "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).

3. Complainant's Burden of Proof. The taxpayer bears the burden of proof and must show by a preponderance of the evidence the property is 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").

Property owners are competent to testify to the reasonable fair market value of their property. *Cohen*, 251 S.W.3d at 348. However, if owner's testimony is based on "improper elements or an improper foundation[.]" it is not substantial and persuasive evidence rebutting the presumptively correct BOE value. *Id.* at 349.

4. Complainant Did Not Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant did not produce substantial and persuasive evidence to support its \$50,000 opinion of value. Complainant did not produce any evidence supporting a

comparable sales approach, income approach, or cost approach. Complainant introduced no evidence pertaining to a recognized valuation method for residential real property.

“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. “Each valuation approach is applied with reference to a specific use of the property—its highest and best use.” *Id.* at 346.

Ms. Graham testified that Complainant’s proposed value for the subject property as of January 1, 2021, is \$50,000. This figure is based on Complainant valuing the property using the real estate maximum purchase price based on the “real estate maximum purchase price based on monthly rent” calculation which Complainant was informed about from three realtors. Complainant calculated \$50,000 by taking saleable value at 1% of \$500 rent (or 500 divided by 0.01). This method is not persuasive and substantial evidence of the TVM of the subject as of January 1, 2021.

First, Complainant has not established with substantial and persuasive evidence why the subject should be valued using the income approach as opposed to the sales comparison approach. The comparable sales approach is typically used to value residential properties improved with a single-family home such as the subject. “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*, 156 S.W.3d at 347-48 (internal quotation omitted). The comparable sales approach requires sales. *Snider*, 156 S.W.3d at

347-48. Complainant did not offer or analyze any comparable sales in support of its overvaluation claim. Therefore, Complainant did not produce substantial and persuasive evidence showing that the subject property was overvalued based on comparable sales data.

Second, Complainant's method of using the real estate maximum purchase price based on monthly rent is not an acceptable methodology in the income approach to value. Complainant simply took the monthly rate (\$500) and divided it by 1%. "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." *Snider*, 156 S.W.3d at 347; *see also Equitable Life Assur. Soc. of U.S./Marriott Hotels, Inc. v. State Tax Comm'n*, 852 S.W.2d 376, 380 (Mo. App. E.D. 1993) (noting the income approach discounts "future dollars to present levels in order to compensate for risk and the elapsed time required to recapture the initial investment"). "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." *Snider*, 156 S.W.3d at 347. To estimate the present worth of future income, the income approach employs "a capitalization method of valuation ... derived from the market, which reduces the need for unsubstantiated, subjective judgments." *Drury Chesterfield, Inc. v. Muehlheausler*, 347 S.W.3d 107, 113 (Mo. App. E.D. 2011). The income approach "is applied in three steps: (1) net income is forecasted for a specified number of years; (2) an appropriate discount factor or capitalization rate is selected; and (3) the proper discounting and/or capitalization procedure is applied." *Id.* Complainant's method does not account for these factors and therefore is not a proper income approach.

Last, Complainant did not introduce any substantial and persuasive evidence to rebut the BOE's presumptively correct value. Complainant did not introduce evidence proving that the BOE failed to take into account the kennel or other condition issues of the home itself when lowering the appraised value of the subject by over \$200,000. The BOE here valued the property at \$170,800 as of January 1, 2021, a significant decrease from Respondent's original \$384,400 valuation. Neither Complainant's Exhibits nor Ms. Graham's testimony provide the necessary foundation and elements to support Complainant's overvaluation claim. Ms. Graham admitted she is not a certified appraiser. Therefore, she is not competent to appraise properties and determine the TVM of a subject property, and her testimony in this subject cannot be given weight. Because the STC "cannot base its decision on opinion evidence that fails to consider information that should have been considered" under a recognized approach to value, *Snider*, 156 S.W.3d at 348, the BOE decision is affirmed.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021 is \$170,800, with an assessed value of \$32,452.

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, 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