



STATE TAX COMMISSION OF MISSOURI

ABBY G. POSNER,) Appeal No. 21-18292
) Parcel/Locator: 12H110209
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 Complainant(s),)
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 v.)
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 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
 Respondent.)

ORDER OF THE COMMISSION DENYING APPLICATION FOR REVIEW

HOLDING

On January 27, 2023, Senior Hearing Officer Benjamin Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the Board of Equalization of St. Louis County (BOE). Abby G. Posner (Complainant) subsequently filed an Application for Review of the Decision and Order of the Hearing Officer. Jake Zimmerman, Assessor, St. Louis County, Missouri (Respondent) filed a response to Complainant's application for review.

A party subject to a Decision and Order of a hearing officer of the STC may file an

application requesting the case be reviewed by the Commission. Section 138.432¹. The Commission may summarily allow or deny the request. Section 138.432. If an application for review is denied, the decision and order of the hearing officer shall be deemed to be the final decision of the Commission for the purpose of judicial review. Section 138.432.

Commission's Ruling

The Application for Review is DENIED. The Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, as the final decision of the Commission.

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

The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes associated with this appeal pending the possible filing of a petition for judicial review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031. If no judicial review is made within 30 days, the Decision and Order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes in accord with the Decision and Order.

¹ All statutory citations are to RSMo. 2000, as amended, unless otherwise indicated.

SO ORDERED March 10, 2023.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on March 10, 2023, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel

FINDINGS OF FACT

1. Subject Property. The subject property is located at 833 Elsworth Pl., Ferguson, Missouri. The parcel/locator number is 12H110209.

The subject property consists of a single-family 787 square-foot home that has three bedrooms and one bathroom. The house is a bungalow built in 1960 and features aluminum siding and a garage on the basement level. Complainant grew up since birth in the house. She purchased it around 2012 and is now renting it. When asked by the Senior Hearing Officer the amount of monthly rent she was receiving for the property, Complainant responded that she “did not have that information in front of her” and also did not recall what she was receiving for rent. Complainant has not made any significant improvements to the property in the last three years. Complainant has not had the property appraised in the last three years.

2. Respondent and BOE. Respondent classified the subject property as residential and determined the TVM on January 1, 2021, was \$51,300. The BOE classified the subject property as residential and independently determined the TVM on January 1, 2021, was \$42,400.

3. Complainant's Evidence. Complainant submitted the following exhibits:

Exhibit	Description	Status
A	Pictures of subject property, Respondent’s comparables and pictures and detailed information of those comparables compiled by Complainant	Admitted
B	Executive Summary by Complainant	Admitted
C	True Comps for subject property compiled by Complainant	Admitted
D	Pictures of subject property, Complainant’s comparables and pictures and detailed information of comparables	Admitted
E	Sales Data by Sales Validity Codes	Admitted

F	Appeal to State Tax Commission with attachments including Change of Assessment Notice, St. Louis County Findings and Decision, Screenshots from Redfin.com and tax history of proposed comparables	Admitted
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Complainant’s opinion of value for the subject property as of January 1, 2021, is \$21,080. Complainant arrived at this proposed value by doing her own comparable sales analysis using data obtained from the St. Louis County online real estate database. Complainant found five comparable sales, the earliest occurring June 8, 2018, and the most recent sale on June 16, 2020, which she refers to as her “true comps.” Complainant added the comparable sales prices and divided by five to find the average, \$21,080. Complainant believes these five sales, all within 0.25 miles of the subject, are better comparables than those used by Respondent in his assessment. Complainant noted that she tried to find comparables that are most similar to the subject with three bedrooms and a total of five rooms and in similar condition. She did not use any sale that did not have a Multi Listing Service (MLS) listing. These comparable sales are identified and described in Complainant’s exhibits, including details about these properties from the MLS listing and redfin.com.

Complainant testified that Respondent increased the appraised value of the subject by 71% since the last cycle in 2019. She finds this increase unreasonable, and noted that she has not made any significant upgrades to the property recently. Complainant stated that she only performed routine maintenance such as some interior painting and replacing a couple ceiling fans and toilets.

Complainant also testified at length regarding her opinion that the comparable

properties selected by Respondent for valuation of the subject were inappropriate and led to an overvaluation of her home. She noted that in her research of St. Louis County real estate records Respondent ignored comparables closer in distance to her property in the City of Ferguson, used brick exterior comparables, which have a higher value, used comparables with larger square feet of living space and additional bathrooms, and used comparables with significant upgrades including granite countertops, bathroom remodels, finished basements, etc. Complainant also mentioned that she feels Respondent did not select good comparables based on the sales validity codes in the list of 200 sales she found within 0.25 miles. Complainant asserted that the BOE only lowered the TVM of her property from Respondent's valuation due to a downgrade in condition and not because of Complainant's proposed comparables. She feels that in general Respondent is overvaluing all properties in the City of Ferguson, not just the subject property.

Complainant is not a licensed appraiser in the state of Missouri, nor does she have specialized education, training, and job experience in that specific field of work. Complainant testified that she has general knowledge of real estate valuation from her experience as a landlord.

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.

5. Value. The TVM of the subject property on January 1, 2021, was \$42,400, with an assessed value of \$8,056.

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. 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). "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.

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 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 establish that the BOE valuation was erroneous nor did Complainant produce substantial and persuasive evidence establishing a TVM of \$21,080. Neither Complainant's exhibits nor her testimony utilized the comparable sales approach, income approach, or cost approach to support her proposed value, nor did she offer an appraisal of the property as evidence of the TVM of the property as of January 1, 2021.

Complainant took issue with the comparable sales used by Respondent in his assessment of Complainant's property. While the comparable properties Respondent

selected in his valuation do have some differing characteristics from the subject, Complainant offered no substantial and persuasive evidence showing that Respondent did not make appropriate market-based adjustments for value considering the differing characteristics between these properties and the subject when determining the TVM of the subject as of January 1, 2021.

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 the amount she has proposed, \$21,080. While a property owner's opinion of value is generally admissible, the opinion lacks "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). The calculation of an average sale price of the comparables to determine the fair market value of the subject property is not a generally accepted approach to value property. The comparable sales approach is the method used to determine the TVM of the subject 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*, 156 S.W.3d at 347-48 (internal quotation omitted). Complainant's evidence does not make adjustments to comparable properties to find a proper TVM for the subject. Further, Complainant admitted she was not an appraiser that was qualified to form a professional opinion as to value based on the comparable sale methodology.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$42,400, with an assessed value of \$8,056.

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 St. Louis 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 January 27, 2023.
STATE TAX COMMISSION OF MISSOURI

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 January 27, 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