



STATE TAX COMMISSION OF MISSOURI

AGREE ATLANTIC BEACH LLC,) Appeal No. 21-33001 and 21-33002
) Parcel/locator No(s): 1904401205 and
) 1904401190
)
)
) Complainant(s),
)
)
v.)
)
BRENT JOHNSON, ASSESSOR,)
GREENE COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Agree Atlantic Beach LLC (Complainant) appeals the Greene County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$297,300 and \$5,564,200, a total of \$5,861,500 for both parcels. Complainant claims the property is overvalued and proposes a value of \$4,103,000 for both parcels. Respondent claims the property is undervalued and proposes a value of \$7,680,000 for both parcels. Complainant did not produce substantial and persuasive

evidence establishing overvaluation. Respondent did not produce substantial and persuasive evidence establishing undervaluation. The BOE's decision is affirmed.¹

Complainant was represented by counsel, Jerome Wallach. Respondent was represented by counsel, Aaron Klusmeyer. The evidentiary hearing was conducted on May 12, 2022, via WebEx. The parties submitted post-hearing briefs which are incorporated into the record.

FINDINGS OF FACT

1. Subject Property. The subject properties are located at 3200 and 3248 E Montclair St, Springfield, Greene County, Missouri. The parcel/locator numbers are 1904401205 and 1904401190.

The subject property consists of two parcels with a shared boundary line. Parcel No. 1904401190 is a 5.75 acre site improved with a movie theater and parking lot, built in 1991 and renovated in 2011. Parcel No. 1904401205 is a vacant lot containing 1.6562 acres of land and is adjacent to the parcel containing the movie theater. The movie theater contains eleven theaters, one of which is an IMAX theater. The property operated as of January 1, 2021, with AMC Theaters as tenant. Complainant purchased the subject property in 2018 for \$11,137,578, which included the land, improvements, and personal property.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was \$297,300 and \$5,564,200. The BOE

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

classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$297,300 and \$5,564,200.

3. Official Notice Request by Respondent. Respondent requests the State Tax Commission take official notice of the STC's decisions in 2011 WL 4436199, 2006 WL 1583469, 2012 WL 3637337, 2015 WL 1593287, 1993 WL 87192 and 1992 WL 112025. In each of these prior appeals, the STC analyzes Mr. Demba's methodologies and comes to a conclusion regarding his appraisals in each of those cases. Respondent's Reply Brief also outlines a short summary of these cases within their arguments. Agencies shall take official notice of all matters of which the courts take judicial notice. *Section 536.070(6)*. Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts. *In re Murphy*, 732 S.W.2d 895, 902 (Mo. banc 1987); *State v. Gilmore*, 681 S.W.2d 934, 940 (Mo. banc 1984); *State v. Keeble*, 399 S.W.2d 118, 122 (Mo. 1966).

4. Complainant's Evidence. Complainant submitted Exhibit A, Written Direct Testimony (WDT) of Appraiser, Ernest A. Demba and Exhibit B, Complainant's Appraisal. Complainant submitted a proposed TVM of the subject property on January 1, 2021, of \$4,103,000. Mr. Demba is a Missouri licensed real estate appraiser with over 30 years' experience in Missouri. Mr. Demba testified he developed the income approach to value the subject properties and he did not develop the cost or sales comparison approaches to value. (WDT at 6) Mr. Demba valued both parcels as combined into one appraisal, with one ultimate TVM.

Mr. Demba’s income approach utilized the net operating income of Complainant for 2020, of \$624,965, which was divided by the 2021 assessed market value of \$5,861,500 to find an unloaded capitalization rate of 10.7%. (WDT at 7) Mr. Demba concluded the “effects of the Covid-19 virus are very evident.”

The relevant lease terms outlined in Exhibits A and B are summarized as follows:

Date	Lease or Revision	Rent amount
July 1, 2014	Initial Base Rent	\$807,470/yr.
April 16, 2015	Restated	\$1,243,570/yr.
April 7, 2021	Ominibus	\$875,402 (this was an estimate)
2020 (net)	Actual Rents collected	\$624,965

Mr. Demba testified the stock fell 31% in value and Complainant’s decrease in value was calculated according to that percentage. Mr. Demba asserts in his appraisal “the subject would not most likely be marketed individually and would be marketed with the lease in place. In fact, the marketability of the subject is the marketability of the lease.” (Exhibit B at 21). Mr. Demba concludes regarding his calculations, “as of December 31, 2020, that REIT stock was selling at \$32.50 per share. During the prior year in March 2020, the stock was selling up to \$70 per share. Moving forward into 2021, the stock price has regained only a selling price of around \$48 per share. A stock dividend payment was made on May 15, 2020, of \$.375 per share. The next dividend payment made thru 2020 and on August 16, 2021, was .250 for a decrease of 34.64%! And this dividend payment has stayed reduced since then. AMC as a corporation and an investment has an increased risk factor over the period of concern for our investment decision. On April 3, 2020, prior to our effective date of value, S & P downgraded the rating for AMC from Highly Speculative to

CCC- (default could be imminent with little prospect of recovery). The ability to continue to make lease payments under the lease could be in doubt and therefore, the income stream to the owner would vanish along with the value. There appears to be a high level of risk with this property at this time from a purchaser's view point." (Exhibit B at 22, *See also* Exhibit B at 21-26)

5. Respondent's Evidence. Respondent submitted Exhibit 1 and 2, appraisal reports, and the WDT of Andrea Burton, a staff appraiser for Greene County. Ms. Burton concludes in her exhibits the TVM of the subject property on January 1, 2021, was \$7,100,000 and \$580,000, totaling \$7,680,000. Ms. Burton testified the "appraisal(s) indicate that the subject property is currently significantly undervalued. Therefore, the Assessor's Office is requesting the Commission increase the true value in money" of the subject properties. (WDT at 9)

Exhibit 1 utilizes the cost, sales comparison, and income approaches to estimate the market value of the improved subject property with the movie theater. Ms. Burton testified the most reliance was placed on the income and cost approaches, with less weight placed on the sales comparison approach because "there are limited local and national sales and most of the sales include leased fee investment scenarios." (WDT at 8)

In the cost approach, Ms. Burton estimated the value of the land using three comparable land sales. Ms. Burton found replacement cost new of the improvements using Marshall and Swift cost manuals. (WDT at 3) The total value of the land and its improvements was determined by adding the value of the land and the replacement cost new of the improvements less depreciation, to find a TVM.

In the sales comparison approach, Ms. Burton uses sales of three comparable properties. Using a valuation method of price per screen and price per square foot, Ms. Burton concludes concerning the subject, “using the average of the sales comparables, 11 screens at \$935,269 per screen would be \$10,300,000, rounded.” (WDT at 5). Adjustments were made for sale date (2% per year), age of improvement, and size.

In the income approach, Ms. Burton concludes the loaded capitalization rate of 10.14%. The rent rate of \$17.00 per square foot was chosen for the subject by examining the rent rates of six comparable rentals, as well as the rent rate of the subject. (WDT at 7).

Exhibit 2 utilizes the sales comparison approach to develop a TVM for the parcel with the land only using four comparable sales. The exhibit indicates no adjustments were made to the subject property because the comparables are of similar size and location. (Exhibit 2) The TVM was calculated using an average \$8.00 per square-foot multiplied by 72,144 square-foot lot. (Exhibit 2)

6. Value. The TVM of the subject property on January 1, 2021, was \$297,300 and \$5,564,200, a total of \$5,861,500 for both parcels.

7. No Evidence of New Construction & Improvement. There was no evidence of new construction and improvement from January 1, 2021, to January 1, 2022, therefore the assessed value for 2021 remains the assessed value for 2022. 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.

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). 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 did not develop the comparable sales approach. Respondent’s analysis indicated that less weight was placed on the sales comparison approach because “there are limited local and national sales and most of the sales include leased fee investment scenarios.” (WDT at 8) Complainant argues in their post-hearing brief “Respondent’s Appraiser’s Sales Comparison Approach references sales, other than the subject, remote both in distance and time. No analysis of what the sales included is provided.” (Complainant’s Reply Brief at 2) Complainant’s argument is compelling. Even Respondent’s appraiser testified their reliance on this approach was not given much weight regarding the parcel with the movie theater. Regarding both parcels sales comparison approaches, Respondent’s comparables are too dissimilar to the subject property to draw any real comparison. There was no substantial or persuasive evidence to support Respondent’s TVM under the sales comparison approach. The sales comparison approach

was not developed by Complainant. Thus, there was no substantial or persuasive evidence to support a TVM from either party under the sales comparison approach.

The cost approach may be based on either reproduction cost or replacement cost. The cost approach is most appropriate when the property being valued has been recently improved with structures that conform to the highest and best use of the property or when the property has unique or specialized improvements for which there are no comparables in the market. While reproduction cost is the best indicator of value for newer properties where the actual costs of construction are available, replacement cost may be more appropriate for older properties. *Snider* at 341, 347 (citations omitted). Ms. Burton utilized replacement cost new of the improvements using Marshall and Swift cost manuals. Although Respondent's valuation is a proper method, the absence of new construction here is the ultimate fact for which this approach fails. The property was built in 1991 and renovated 10 years ago according to the facts in evidence. Respondent's appraiser's cost approach does not contain substantial and persuasive evidence to raise the TVM and rebut the BOE.

The cost approach was not developed by Complainant. Thus, there was no substantial or persuasive evidence to support a TVM from either party under the cost 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.

Under Missouri law, the income approach is the most reliable method for valuing this property. Mr. Demba used the subject property's actual income, but no rent comparables, to arrive at his income approach, with the rationalization that the specific use of the property was limiting for potential investment. He argues the evidence of actual income alone was sufficient for calculation of a TVM. "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 subject property itself is the best or most accurate measure for a value of the subject property doesn’t equate to evidence. To find a market value, proper adjustments must be made to proper comparables. The present record contains no evidence to support a calculation of this nature and there is no evidence presented by Complainant that the property is actually leased at a market rate. 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”) (emphasis added). In sum, Mr. Demba uses no market data, therefore his appraisal does not comply with accepted appraisal methodology.

Ms. Burton 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. Respondent's Exhibit 1 concludes the market value of the subject property is higher than the value determined by the Respondent or the BOE, \$7,100,000, and advocates for the STC to increase the property’s value. However, Respondent’s evidence does not establish substantial and persuasive evidence that the BOE’s values are incorrect and therefore, their attempt fails. Complainant points out that specifically within Respondent’s income approach, “the retail market lease rates provided by Respondent’s Appraiser are dated and consequently unreliable. The most recent lease rate in time is 2017 and the others

date back to 2011.” (Complainant’s Reply Brief at 2) Ms. Burton’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 lack of details regarding the comparable rent properties make the findings in relation to the subject property’s attributes too vague in order to find value. Also of note, within the appraisal, Ms. Burton concludes, “the subject is number 7 in these lease rates provided at \$17.01 however, the new rental rate given to our office for 2020, during the board of equalization was \$17.79 per square foot from the subject’s representative.” (Exhibit 1 at 25) The fact that the evidence utilized here was presented to the BOE and their conclusion was a TVM of \$5,564,200, validates the BOE’s TVM. There was no substantial or persuasive evidence to support Respondent’s appraiser’s opinions of TVM under the income approach.

Complainant did not produce substantial and persuasive evidence of the alleged TVMs for the subject properties. Respondent did not produce substantial and persuasive evidence of the alleged TVMs for the subject properties.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$297,300 and \$5,564,200, a total of \$5,861,500 for both parcels.

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 Greene 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 24, 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 24, 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