

The evidentiary hearing was held on July 12, 2022, via Webex. Complainant and Respondent appeared *pro se*. The appeal was heard and decided by Senior Hearing Officer Benjamin Slawson.

FINDINGS OF FACT

1. The Subject Property. The subject property is a 3.8 acre undeveloped lot located in Protem, Missouri, on Pine Hollow Road. The property is wooded and is located near Bull Shoals Lake. Complainant stated he keeps a beehive on the subject property and uses the property as a hobby “honey farm.” Complainant lives in Greene County, Missouri. Complainant testified that he put the beehive on the property in August 2020. In 2021, Complainant got two quarts of honey from the hive. Complainant testified that there are no utilities currently hooked up on the property. Complainant testified that he purchased the property in 2010 for about \$12,000.

2. Assessment and Valuation. Respondent classified the subject property as residential and determined the TVM on January 1, 2021, was \$27,700. The BOE classified the subject property as residential and independently determined the TVM on January 1, 2021, was \$27,700.

3. Complainant’s Evidence. Complainant submitted 64 Exhibits. Exhibits 1-63 were admitted without objection. Respondent objected to Exhibit 64 because she argued it was not submitted as an Exhibit at least seven days before hearing pursuant to the Scheduling Order. During the hearing, it was confirmed that at least seven days before the hearing (July 2, 2022) Complainant had emailed the Senior Hearing Officer and Respondent that he intended to offer Exhibit 64 which had been previously submitted in

March of 2022. Respondent's objection was therefore overruled, and Exhibit 64 was admitted into evidence into the record. The Exhibits are described below:

Exhibit	Description
1	2017 Tax Receipt
2	2018 Tax Amount
3	Tax Comparable chart from 2017 to 2018 (% of Increase)
4	CPI Inflation Calculator (May of 2010 to January of 2021)
5	2020 Tax Receipt
6	Picture of Property
7	Picture of soil make up
8	Picture of yearly water erosion
9	Picture of Bee Hive (Honey Farm) on property
10	Complainants Written Testimony of Property
11	Conclusion of Law pertaining to Agricultural Property Assessment
12	Agricultural Land Productivity Values Chart from STC
13	Picture of Property from Clarkson Rd. (2.3 Miles)
14	Map of Southwest Ozark County
15	Map of Southeast Taney County
16	Taney County Missouri Assessment Page
17	Assessment of Property (Lot 2.170 Acres)
18	Assessment of Property (Lot 5.150 Acres)

19	Assessment of Property (Lot 3.180 Acres)
20	Assessment of Property (Lot 3.230 Acres)
21	Assessment of Property (Lot 7.170 Acres)
22	Assessment of Property (Lot 8.330 Acres)
23	Bob Blackburn v. Jama Berry
24	Bob Blackburn v. Jama Berry (Breakdown of Property Assessment)
25	Ozark County Assessor's Exhibit 14 delivered at BOE
26	Ozark County Assessor's Exhibit 13 delivered at BOE
27	Ozark County Assessor's Exhibit 17 delivered at BOE
28	Ozark County Assessor's Exhibit 16 delivered at BOE
29	Taney County's Aerial view of Ozark County Assessor's Exhibit 16
30	Ariel View of Property in the Hollister area on Table Rock Lake (Comparable Property)
31	Map of Properties by Table Rock Lake
32	Taney County Assessment of Property (Lot 2.420 Acres by Table Rock Lake)
33	Taney County Assessment of Property (Lot 4.200 Acres by Table Rock Lake)
34	Taney County Assessment of Property (Lot 3.880 Acres by Table Rock Lake)
35	Taney County Assessment of Property (Lot 3.100 Acres by Table Rock Lake)
36	Greene County Property by Fellows Lake (Lot 5.13 Acres)
37	Greene County Assessment of Property (Lot 5.13 Acres by Fellows Lake)
38	Aerial View of Property (Lot 5.13 Acres by Fellows Lake)

39	Greene County Property by Fellows Lake (Lot 5.0 Acres)
40	Greene County Assessment of Property (Lot 5.0 Acres by Fellows Lake)
41	Aerial View of Property (Lot 5.0 Acres by Fellows Lake)
42	Greene County Property by Fellows Lake (Lot 10.0 Acres)
43	Greene County Assessment of Property (Lot 10.0 Acres by Fellows Lake)
44	Aerial View of Property (Lot 10.0 Acres by Fellows Lake)
45	Polk County Property by Stockton Lake (Lot 5.13 Acres)
46	Polk County Property by Stockton Lake (Lot 5.0 Acres)
47	Polk County Property by Stockton Lake (Lot 7.5 Acres)
48	Polk County Property by Pomme de Terre Lake (Lot 5.0 Acres)
49	Polk County Property by Pomme de Terre Lake (Lot 7.04 Acres)
50	Polk County Property by Pomme de Terre Lake (Lot 7.68 Acres)
51	Camden County Property Aerial View by Lake of the Ozarks (Lot 3.1 Acres)
52	Camden County Property Assessment Sheet (Lot 3.1 Acres)
53	Camden County Property Aerial View by Lake of the Ozarks (Lot 4.24 Acres)
54	Camden County Property Assessment Sheet (Lot 4.24 Acres)
55	Camden County Property Aerial View by Lake of the Ozarks (Lot 5.6 Acres)
56	Camden County Property Assessment Sheet (Lot 5.6 Acres)
57	Email to Jama Berry about Tax Obligation
58	Ozark County Assessor's Exhibit 7 delivered at BOE
59	Email to State Tax Commission regarding denial of public records from Assessor

60	Taney County Assessment of Property (Lot 3.950 Acres)
61	Taney County Assessment of Property (Lot 3.8 Acres)
62	Taney County Assessment of Property (Lot 8.33 Acres)
63	Taney County Assessment of Property (Lot 6.95 Acres)
64	Complainant's Amended Case Brief

Complainant testified that his opinion of value is \$558.60. Complainant testified that because the subject is agricultural land, he is allowed to set the value of property at this amount using the State Tax Commission's promulgated productivity valuation calculations provided in Missouri Code of Regulations 12 CSR 30-4.010 (1) and (2). Complainant testified his arguments for discrimination and misclassification are summarized in his brief, Exhibit 64.

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

Exhibit	Description
A1-A4	Listing of subject property by Sierra Ozark Corporation for \$34,250
B1-B12	Brian S. Sherrill Appraisal

Respondent testified that in preparation for this appeal, she searched for other sales in the subject property's area. In performing that search she discovered a current sales listing of the subject property advertised by Sierra Ozark Corporation for \$34,250 (Exhibit

A1-A4). She testified that she confirmed the listing was for the subject property after comparing the details about the property with her own data.

Brian S. Sherrill of Southern Ozark Appraisals also testified for Respondent. Mr. Sherrill is a licensed appraiser and performed an appraisal of the subject property to obtain a TVM for the property. Mr. Sherrill's appraisal determined a TVM of \$35,000 as of 10/08/2021. Mr. Sherrill employed the sales comparison approach and found three 2021 comparable sales in Ozark and Taney Counties that were similar to the subject. He found that the 3.5 acre sale of Tbd Oll Hart Road for \$35,000 was the most similar to the subject and that no market based adjustments for value were necessary. The two other comparable sales had adjusted sales prices of \$26,000 and \$42,450.

5. Classification and Value. The subject property is classified as residential real property and TVM of the subject property as of January 1, 2021, was \$27,700.

CONCLUSIONS OF LAW

1. Assessment, Valuation, and Discrimination. 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.

To obtain a reduction in assessed value based upon discrimination, a complaining taxpayer must (1) prove the true value, also known as the fair market value (FMV), of the subject property as of the taxing date, and (2) show an intentional plan of discrimination by the assessor resulting in an assessment at a greater percentage of value than other property within the same class and the same taxing district, or, in the absence of such an

intentional plan, show that the level of assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment. *Zimmerman v. Mid–America Financial Corp.*, 481 S.W.3d 564, 571 (Mo. App. E.D. 2015), quoting *Savage v. State Tax Comm’n of Missouri*, 722 S.W.2d 72, 78 (Mo. banc 1986). Evidence of value and assessments of a few properties does not prove discrimination. Substantial evidence must show that all other property in the same class, generally, is actually undervalued. *State ex rel. Plantz v. State Tax Commission*, 384 S.W.2d 565, 568 (Mo. 1964). The difference in the assessment ratio of the subject property the average assessment ratio in the subject county must be shown to be grossly excessive. *Savage* at 79. No other methodology is sufficient to establish discrimination. *Cupples-Hesse, supra*.

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 or misclassified. *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 his \$558.60 opinion of value and claim of overvaluation.

The comparable sales approach is typically used to value residential properties.

"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 sales comparison approach is generally recognized to be the most reliable methodology to be utilized in the valuation of residential real property.

Complainant did not present any recent comparable sales or a properly-authenticated appraisal report supported by the testimony of the appraiser who performed the appraisal to establish the TVM was lower than \$27,700.

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 \$558.60 as of January 1, 2021. As discussed below, Complainant's methodology of valuing the subject property based on its alleged agricultural production is improper. 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).

While not required to, Respondent presented substantial and persuasive evidence to establish a fair market value as of January 1, 2021, to be \$27,700 for the subject property. Respondent's appraiser developed an opinion of value of \$35,000 relying upon an established and recognized approach for the valuation of real property, the sales comparison or market approach. While Respondent's appraiser examined sales in 2021 and

used a valuation date of October 8, 2021 instead of January 1, 2021, his appraisal conclusions and the recent listing of the property for sale at \$34,250 support a valuation upholding the TVM set by the BOE.

5. Complainant Did Not Produce Substantial and Persuasive Evidence of Misclassification.

Complainant failed to meet his burden of proof as to misclassification.

There are three classes of property, in Missouri for ad valorem tax purposes: class 1, real property; class 2, tangible personal property; and class 3, intangible personal property. Art. X, Section 4(a), Mo. Const.1945. Property in class 1, real property, subclassified as subclass (1), residential property, subclass (2) agricultural and horticultural property, and subclass (3), utility, industrial, commercial, railroad, and all other property, not included in subclasses (1) and (2). Art. X, Section 4(b), Mo. Const.1945. Taxes must be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax. Art. X, Section 3, 4(a), Mo. Const.1945.

Complainant did not produce substantial and persuasive evidence to support his opinion that the subject property classified as residential was misclassified and should be classified as agricultural. “Agricultural and horticultural property” includes, in applicable part, “all real property used for agricultural purposes and devoted primarily to the raising and harvesting of crops; to the feeding, breeding and management of livestock which shall include breeding, showing, and boarding of horses; to dairying, or to any other combination thereof; and buildings and structures customarily associated with farming, agricultural, and horticultural uses.” Section 137.016.1(2).

There is a presumption of validity, good faith and correctness of assessment by the County Board of Equalization. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. It places the burden of going forward with some substantial evidence on the taxpayer - Complainant. In a misclassification appeal, the presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the Board's assessment is erroneous and what the correct classification should have been placed on the property. *Hermel*, supra; *Cupples-Hesse Corporation v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959).

Complainant testified that the entire subject property should be classified and assessed as agricultural property due to the fact that he installed a beehive on the property in 2020. Complainant referred to his beehive as hobby farming and Complainant's testimony was that the production of honey from the beehive was de minimus. Thus, Complainant failed to produce substantial and persuasive evidence showing that the subject property is devoted primarily to the raising and harvesting of crops and is agricultural property.

6. Complainant Did Not Prove Discrimination.

In addition to disputing the valuation of his property, Complainant alleges discrimination.

To obtain a reduction in assessed value based upon discrimination, the complaining taxpayer must (1) prove the true value in money of the subject property as of the taxing date; and (2) show an intentional plan of discrimination by the assessor, which resulted in an assessment at a greater percentage of value than other property within the same class and the same taxing district, or, in the absence of such an intentional plan, show that the level of assessment is “so grossly excessive as to be inconsistent with an honest exercise of judgment.” *Zimmerman v. Mid-America Financial Corp.*, 481 S.W.3d 564, 571 (Mo. App. E.D. 2015), quoting *Savage v. State Tax Comm'n of Missouri*, 722 S.W.2d 72, 78 (Mo. banc 1986).

Regarding the first point, Complainant did not rebut the correctness of the BOE’s valuation. As discussed above, Complainant did not present substantial and persuasive evidence rebutting the presumption of correctness of the BOE’s value and establishing that his value was correct. Complainant did not present any recent comparable sales or a properly-authenticated appraisal report supported by the testimony of the appraiser who performed the appraisal to establish the TVM was lower than \$27,700. Therefore, Complainant failed to establish a market value which would point to discrimination for the subject property.

Regarding the second point, Complainant presented no evidence establishing the market value of a representative sample of similar residential properties in Ozark County and average level of assessment for such property in 2021 in order to establish an intentional plan of discrimination by Ozark County or the level of assessment is “so grossly excessive as to be inconsistent with an honest exercise of judgment.” Complainant’s

exhibits contain information on other properties in several counties, not just Ozark County. Also, the data for these properties is taken from Beacon, a third party source.² Several of the Exhibits containing Beacon information note that the data was last updated in 2019, not the relevant year of valuation, 2021. In other words, this information contains no specific data or evidence for these properties showing actual assessed values versus the subject. There was no evidence presented that a statistically significant number of other residential properties within Ozark County are being assessed at a lower ratio of market value than the subject property or that the level of assessment is grossly excessive. Because Complainant failed to establish the market value of the subject property and failed to establish that it is being assessed at a higher percentage of market value than a statistically significant number of other properties in Ozark County, the claim of discrimination fails.

7. Section 137.130.

At the hearing, Complainant asked the STC to take official notice of 137.130 and argued that Respondent failed in her duty to inspect the property under this statute as a physical inspection was done by her appraiser Mr. Sherrill, who is not an employee of the County. Complainant misreads the statute, and his argument is misguided. The statute simply authorizes an inspection by the assessor and gives the assessor the lawful right of entry onto real property when the assessor does not have sufficient information to assess a property:

whenever the assessor has insufficient information *to assess* any real property, the assessor or an employee of the assessor

² <https://beacon.schneidercorp.com>

shall assess the property based upon a physical inspection or on the best information the assessor can obtain.

Section 137.130. Emphasis added.

Respondent testified that she had sufficient information to assess the subject property. Thus, Section 137.130 is inapplicable and Respondent's assessment is not invalid to due a lack of inspection.

CONCLUSION AND ORDER

The BOE decision is affirmed. The subject property is residential real property with a TVM as of January 1, 2021 of \$27,700 and an assessed value of \$5,263.

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 Ozark 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 April 21, 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 April 21, 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