



**STATE TAX COMMISSION OF MISSOURI**

COUNTRY CLUB PLAZA JV LLC,	)	Appeal Nos. 19-30227 through 19-
	)	30235, 19-30237 through 19-30246,
	)	and 19-30248 <sup>1</sup> (See table, below.)
Complainant(s),	)	
	)	
v.	)	
GAIL MCCANN BEATTY,	)	
ASSESSOR,	)	
JACKSON COUNTY MISSOURI,	)	
Respondent.	)	

**DECISION AND ORDER**

Country Club Plaza JV LLC (Complainant) appeals the Jackson County Board of Equalization's (BOE) decisions finding the true values in money (TVM) of the subject properties on January 1, 2019, classified as commercial, as shown in the table, below:

Appeal No.	Parcel/locator No.	BOE's TVM
19-30227	30-520-20-14-01-0-00-000	\$17,061,603
19-30228	30-440-12-01-00-0-00-000	\$12,469,828
19-30229	30-440-12-02-00-0-00-000	\$2,308,764
19-30230	30-440-12-03-00-0-00-000	\$7,018,239
19-30231	30-440-01-01-01-0-00-000	\$30,068,984
19-30232	30-440-01-01-02-0-00-000	\$20,043,520
19-30233	30-410-28-17-00-0-00-000	\$21,323,351
19-30234	30-520-22-02-00-0-00-000	\$5,421,956

<sup>1</sup> Some of the appeals initially filed by Complainant were resolved through voluntary dismissal or stipulation of value following the evidentiary hearing and prior to the entry of this Decision and Order.

19-30235	30-520-22-08-00-0-00-000	\$3,601,025
19-30237	30-520-22-07-00-0-00-000	\$4,760,013
19-30238	30-530-10-01-00-0-00-000	\$23,164,907
19-30239	30-530-11-01-00-0-00-000	\$15,601,478
19-30240	30-530-08-01-00-0-00-000	\$13,115,475
19-30241	30-440-13-01-00-0-00-000	\$12,000,000
19-30242	30-440-02-02-00-0-00-000	\$30,000,000
19-30243	30-440-03-02-00-0-00-000	\$22,105,866
19-30244	30-530-06-01-00-0-00-000	\$12,467,354
19-30245	30-530-06-03-00-0-00-000	\$7,606,871
19-30246	30-530-07-01-00-0-00-000	\$22,808,777
19-30248	30-520-21-05-00-0-00-000	\$8,872,963

Complainant filed its Complaints for Review of Assessment alleging the subject properties were overvalued.<sup>2</sup> Complainant produced substantial and persuasive evidence establishing overvaluation. The BOE's decisions are SET ASIDE.<sup>3</sup>

Complainant was represented by counsel Seth Wright and Linda Terrill<sup>4</sup>. Respondent was represented by counsel Dawn Diel and Josh Haner. Case heard and decided by Chief Counsel Amy S. Westermann (hearing officer).

## FINDINGS OF FACT

**1. Subject Properties.** The subject properties are individual parcels commonly

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<sup>2</sup> In its Complaints for Review of Assessment for the subject properties, Complainant also alleged discrimination in assessment as a ground for appeal. The discrimination claims were voluntarily dismissed, and no evidence of discrimination in assessment was presented.

<sup>3</sup> Complainant timely filed its Complaints for Review of Assessment in each appeal. The State Tax Commission (STC) has authority to hear and decide Complainant's appeals. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

<sup>4</sup> Ms. Terrill, a non-Missouri licensed attorney, was admitted *pro hac vice* to appear before the STC administrative tribunal, pursuant to 12 CSR 30-3.010(2)(B).

referred to collectively as the Country Club Plaza (Country Club Plaza), which is a commercial real property complex comprised of retail, restaurant, entertainment, office, and parking space.

The Country Club Plaza was believed to be the first planned suburban shopping center and the first regional shopping center to accommodate shoppers by car. The basic design of The Country Club Plaza reflects classic European influences, especially those of Seville, Spain, even though it does not include the traditional open plaza. The Country Club Plaza has over 30 statues, murals, and tile mosaics on display along with other works of art and fountains. The Country Club Plaza is also ranked as the second largest retail center in the Kansas City area. The Country Club Plaza has also become one of the neighborhoods within Kansas City that large employers choose to locate. Some of the most notable are CBIZ, Lockton, American Century Investments, Bernstein-Rein Advertising, Polsinelli and Husch Blackwell. The property has been a well-maintained retail and office center over the past three ownership groups. After another ownership group owned The Country Club Plaza for more than 15 years, The Country Club Plaza was purchased as a portfolio in a joint venture between Taubman Center and The Macerish Company in early 2016. The specific subject properties under appeal, which are some but not all of the properties that make up the totality of The Country Club Plaza, are more particularly described in the table, below:

Appeal No.	Property Identification	Property Description
19-30227	30-520-20-14-01-0-00-000 306 W. 47th Street Balcony 2 Building	The subject property consists of approximately 1.18 acres or 51,606 SF improved by a two-story commercial structure constructed in 1926

		with a total of 56,800 gross building SF and 54,292 SF of rentable area. This includes a 20,554 SF below-grade restaurant occupied by Buca di Beppo. The net rentable area includes 25,423 leasable SF of grade-level retail area, an 8,072 leasable SF restaurant space at grade (vacant), the 10,554 SF occupied by Buca di Beppo and 10,243 leasable SF of upper-level office space. As of January 1, 2019 effective appraisal date, the subject property was 82% occupied.
19-30228	30-440-12-01-00-0-00-000 4771 Jefferson Street Penguin Building	The subject property consists of approximately .84 acres or 36,609 SF improved by a retail structure constructed in 1900 with a total of 22,728 gross building SF and rentable area. It is a single-story building with a basement area used for tenant storage, maintenance, and mechanical areas. The below-grade area consists of 18,361 SF with ceiling heights declining on the eastern portion to only 4-5 feet. As of the January 1, 2019 effective appraisal date, the subject property was 93% occupied.
19-30229	30-440-12-02-00-0-00-000 614 W. 48th Street 48 <sup>th</sup> Shops 1	The subject property consists of approximately 0.11 acres or 4,889 SF improved by a retail structure constructed in 1928 with a total of 4,983 gross building SF and rentable square footage. As of the effective date, the subject was being operated as a single-tenant restaurant structure. There is also 5,033 SF of below-grade space. As of January 1, 2019, the subject property was 100% occupied.
19-30230	30-440-12-03-00-0-00-000 4740 Pennsylvania Avenue 48 <sup>th</sup> Shops 2	The subject property consists of approximately .27 acres or 11,962 SF improved by a single-story commercial structure constructed in 1928 with a total of 5,799 gross building SF and 15,499 SF of rentable area. It includes 11,116 SF of general retail and a 3,500 SF restaurant suite. The restaurant includes an additional 14,024 SF of basement area. The northern most suite consisting of 1,565 SF is part of the subject building but located on an adjacent parcel. The appraisal report analysis does not include the 1,565 SF suite. As of the January 1, 2019 effective appraisal date, the subject property was 95% occupied.

19-30231	30-440-01-01-01-0-00-000 410 Nichols Road Grenada Esplanade	The subject property consists of approximately 2.48 acres or 107,866 SF improved by two mixed-use commercial structures constructed in 1930 (including a 486-space parking structure built in 2001) with a total of 95,538 gross building SF and 94,863 SF of rentable area. The net rentable area includes 56,629 SF of retail area and 38,234 SF of office space. The Granada building (one-story) contains 19,247 SF and the Esplanade building has approximately 21,532 SF of below-grade area. As of January 1, 2019, the subject property was 89% occupied.
19-30232	30-440-01-01-02-0-00-000 444 Nichols Road Cordoba	The subject property consists of approximately .70 acres or 30,316 SF improved by a 3-story commercial structure constructed in 1983 with a total of 68,235 gross building SF and 64,113 SF of rentable area. The net rentable area includes 22,745 SF of grade level retail area and 41,368 SF of upper-level office space. The second level has 20,671 rentable SF, and the third level has 20,697 rentable SF on the third level. There is no below-grade space. As of the January 1, 2019, the subject property was 90% occupied.
19-30233	30-410-28-17-00-0-00-000 400 W. 47th Street Valencia B	The subject property consists of approximately .54 acres or 23,598 SF improved by a three-story commercial structure constructed in 1930 with a total of 72,661 gross building SF and rentable area. Approximately 10,625 SF of the building is located below grade plus an additional 2,350 SF of below-grade area; the building area also includes 21,510 leasable SF on the second level and 21,591 leasable SF on the third level. As of the January 1, 2019, effective appraisal date, the subject property was 100% occupied.
19-30234	30-520-22-02-00-0-00-000 209 W. 46th Terrace Millcreek 2	The subject property consists of approximately 0.31 acres or 13,496 SF improved by a commercial structure constructed in 1923 with a total of 2,786 gross building SF and 2,786 SF of rentable area. The subject property also includes a 65-space parking structure constructed in 1984. As of January 1, 2019, the subject property was 100% occupied.

19-30235	30-520-22-08-00-0-00-000 102 W. 47th Street Millcreek 4	The subject property consists of approximately .25 acres or 11,054 SF improved by two commercial structures constructed in 1924 with a total of 15,900 gross building SF and 14,868 SF of rentable area. The subject includes a single-story restaurant structure containing 7,150 SF connected to a two-story structure with 2,869 SF of grade-level retail space and 4,849 rentable SF of second level office space. There is also an estimated 1,032 SF of common area on the second level. The subject property also has an additional 9,274 SF of basement area. As of January 1, 2019, the subject was 92% occupied.
19-30237	30-520-22-07-00-0-00-000 4638 J.C. Nichols Parkway Millcreek 3	The subject property consists of approximately .23 acres or 9,903 SF improved by a 2-story commercial structure constructed in 1924 with a total of 16,872 gross building SF and 16,589 SF of rentable area. The net rentable area includes 8,387 SF of grade-level restaurant area and 8,202 SF of upper-level office space. The subject property also has 5,047 SF of below-grade space. January 1, 2019, the subject property was 92% occupied.
19-30238	30-530-10-01-00-0-00-000 301 Nichols Road Nichols Building	The subject property consists of approximately 1.17 acres or approximately 50,751 SF improved by a two-story commercial structure and a single-story restaurant structure constructed in 1936 containing 8,958 SF with a total of 75,669 gross SF and 74,866 SF of rentable area. The net rentable area includes 29,294 SF of grade level retail area, the 8,958 SF restaurant space and 20,634 rentable SF of upper level office space. There is also 23,912 SF of below-grade space. As of January 1, 2019, the subject property was 63% occupied.
19-30239	30-530-11-01-00-0-00-000 211 Nichols Road Plaza 211	The subject property consists of approximately 1.35 acres or 58,667 SF improved by a commercial structure constructed in the 1930s with a total of 31,699 gross building SF and rentable area. The subject also includes a 725-space parking structure constructed in 1964. As of January 1, 2019, the subject property was 73% occupied.

19-30240	30-530-08-01-00-0-00-000 301 W. 47th Street Plaza Central Building	The subject property consists of approximately 1.48 acres or 64,489 SF improved by four single-story commercial structures constructed in the 1930s with a total of 17,692 gross building area and 21,001 SF of rentable area. There is 12,177 SF of rentable retail space and 2 restaurant suites with a total of 4,928 SF. In addition to the grade level retail space, the subject also includes a 370-space parking structure. The four structures are surrounded by the parking structure. There is also 8,787 SF of below-grade building area. This includes 5,038 SF of basement area and 3,749 SF of sub-basement space. As of January 1, 2019, the subject property was 100% occupied.
19-30241	30-440-13-01-00-0-00-000 601 W. 48th Street Plaza Savings	The subject property consists of approximately .79 acres or 34,560 SF improved by two commercial structures constructed in the 1930s with a total of 28,435 gross building SF and 29,004 SF of rental area. All seven suites in the two structures are at grade. However, the suite area for Parkway Social Kitchen includes 2,849 SF of finished basement. The three retail suites are 7,514 SF and four restaurant suites total 21,490 SF. The subject also includes an additional 12,336 SF of below-grade space. As of January 1, 2019, the subject property was 100% occupied.
19-30242	30-440-02-02-00-0-00-000 502 Nichols Road Seville East	The subject property consists of approximately 0.75 acres or 32,547 SF of land and includes a five-story commercial structure constructed in 1947 with a total of 110,750 gross SF including a 10,821 SF mechanical penthouse and 94,941 SF of rentable area. Approximately 8,132 SF is below grade, 10,779 SF is general retail, 14,283 SF is grade-level restaurant space, 9,590 SF is second level restaurant area, and the balance of the structure is theater space (Cinemark). An additional 20,943 SF is below grade space. As of the January 1, 2019, the subject property was 92% occupied.
19-30243	30-440-03-02-00-0-00-000 4710 Jefferson Street Seville West	The subject property consists of approximately 2.98 acres or 129,774 SF of land and includes a commercial structure constructed in 1964 with a total of 57,182 gross and rentable SF. There was 5,013 SF of grade level restaurant

		space, and 15,207 SF of grade level retail space. There was 30,663 SF of theater space on the second level and 6,299 SF of theater space on the third level. In addition to the retail, restaurant and theater space, the subject site was also improved with a 1,278-space parking structure. As of the inspection date, the commercial structure had been demolished. The parking structure remained. As of the January 1, 2019, the subject property was 81% occupied.
19-30244	30-530-06-01-00-0-00-000 4701 Wyandotte Street Swanson 1	The subject property consists of approximately 1.26 acres or 55,019 SF improved by a commercial structure constructed in 1967 with a total of 55,420 gross building SF and 49,759 SF of rentable area. Forever 21, a clothing store, occupied 26,150 SF of retail area, 12,150 SF of which is on the second level. Approximately 10,125 SF of the restaurant space was on the second level. Approximately 25,550 SF of below grade space not included in the statistics above. The subject property also includes a 135-space parking structure constructed in 1966. As of January 1, 2019, the subject property was 91% occupied.
19-30245	30-530-06-03-00-0-00-000 4725 Wyandotte Street Swanson 2	The subject property consists of approximately 0.13 acres or 5,756 SF improved by a two-story commercial structure constructed in the 1930s with a total of 8,047 gross building area and rentable SF. The structure includes 2,663 SF of grade-level area and 2,960 SF of second level area in the two-story structure. There is also 2,424 leasable SF at grade that is occupied by Fiorella's Jack Stack BBQ. There is also 4,557 SF of below-grade area not include in these statistics. As of January 1, 2019, the subject property was 100% occupied.
19-30246	30-530-07-01-00-0-00-000 201 W. 47th Street Theater Building	The subject property consists of approximately 1.24 acres or 53,896 SF improved by a 2-story commercial structure constructed in 1920 with a total of 85,850 gross building SF and 81,846 SF of rentable area. The net rentable area includes 43,845 SF of retail area, a 3,509 square foot restaurant suite and 34,492 rentable SF of office space. There is also an estimated 4,000 SF common area on the



		second level. The subject also includes 34,418 SF of below-grade area. As of January 1, 2019, the subject property was 80% occupied.
19-30248	30-520-21-05-00-0-00-000 200 W. 47th Street Triangle Building	The subject property consists of approximately .42 acres or 18,485 SF improved by a commercial structure constructed in 1924 with a total of 21,137 SF of gross building area and 20,968 SF of rentable area. It is configured for multi-tenant use. All suites are at grade level. As of the January 1, 2019, the subject property was 97% occupied.

Complainant purchased the subject properties as part of a multiple-parcel purchase containing approximately 600,000 square feet of retail space, 252,000 square feet of restaurant space, 480,000 square feet of office area, and supporting parking structures and surface parking areas. According to the evidence in the record, the transaction represented not only the purchase of real property and improvements but also the purchase of operating businesses and included personal property, art, contracts, financial instruments, and other intangibles as well as all assets and rights to operate The Country Club Plaza. The reported contract price for the total purchase was \$660,000,000. (See Complainant’s Exhibit A)

**2. Respondent and BOE.** Respondent and the BOE classified the subject properties as commercial and determined their TVM on January 1, 2019, as shown in the table, below:

Appeal No.	Parcel/locator No.	Respondent’s TVM	BOE’s TVM
19-30227	30-520-20-14-01-0-00-000	\$18,569,600	\$17,061,603
19-30228	30-440-12-01-00-0-00-000	\$8,225,700	\$12,469,828
19-30229	30-440-12-02-00-0-00-000	\$1,505,300	\$2,308,764
19-30230	30-440-12-03-00-0-00-000	\$4,237,300	\$7,018,239
19-30231	30-440-01-01-01-0-00-000	\$42,227,600	\$30,068,984
19-30232	30-440-01-01-02-0-00-000	\$15,443,000	\$20,043,520
19-30233	30-410-28-17-00-0-00-000	13,496,400	\$21,323,351

19-30234	30-520-22-02-00-0-00-000	\$3,919,700\$	\$5,421,956
19-30235	30-520-22-08-00-0-00-000	\$4,626,300	\$3,601,025
19-30237	30-520-22-07-00-0-00-000	\$4,366,300	\$4,760,013
19-30238	30-530-10-01-00-0-00-000	\$21,071,800	\$23,164,907
19-30239	30-530-11-01-00-0-00-000	\$28,486,200	\$15,601,478
19-30240	30-530-08-01-00-0-00-000	\$10,445,300	\$13,115,475
19-30241	30-440-13-01-00-0-00-000	\$9,629,000	\$12,000,000
19-30242	30-440-02-02-00-0-00-000	\$17,058,100	\$30,000,000
19-30243	30-440-03-02-00-0-00-000	\$59,775,800	\$22,105,866
19-30244	30-530-06-01-00-0-00-000	\$20,521,400	\$12,467,354
19-30245	30-530-06-03-00-0-00-000	\$1,816,000	\$7,606,871
19-30246	30-530-07-01-00-0-00-000	\$25,974,500	\$22,808,777
19-30248	30-520-21-05-00-0-00-000	\$4,973,200	\$8,872,963

The BOE’s decisions for each of the subject properties demonstrated that the BOE either increased or decreased Respondent’s valuation of the properties, which had been valued by Respondent using mass appraisal techniques.

**3. Complainant’s Opinions of Values.** Complainant filed its Complaints for Review of Assessment with the STC<sup>5</sup> alleging the BOE overvalued the subject properties. In Complainant’s exhibits, Complainant proposed the following values:

Appeal No.	Parcel/locator No.	Complainant’s Opinion of TVM under theory that assumes subject properties were 100% vacant and available for lease as of the effective appraisal date	Complainant’s Opinion of TVM under theory that assumes market rent and market occupancy
19-30227	30-520-20-14-01-0-00-000	\$8,300,000	\$10,500,000
19-30228	30-440-12-01-00-0-00-000	\$6,000,000	\$7,150,000
19-30229	30-440-12-02-00-0-00-000	\$1,590,000	\$1,510,000

<sup>5</sup> The decisions of the BOE were dated February 11, 2020. Complainant filed the Complaints for Review with the STC on or about February 25, 2020. Every owner of real property or tangible personal property shall have the right to appeal from local boards of equalization to the STC within 30 days following the date of the decision of the BOE or September 30 of the tax year, whichever date occurs later. Section 138.430.1; 12 CSR 30-3.010(1)(B).

19-30230	30-440-12-03-00-0-00-000	\$3,300,000	\$4,270,000
19-30231	30-440-01-01-01-0-00-000	\$18,100,000	\$22,150,000
19-30232	30-440-01-01-02-0-00-000	\$8,750,000	\$11,000,000
19-30233	30-410-28-17-00-0-00-000	\$9,250,000	\$11,500,000
19-30234	30-520-22-02-00-0-00-000	\$950,000	\$900,000
19-30235	30-520-22-08-00-0-00-000	\$2,950,000	\$3,600,000
19-30237	30-520-22-07-00-0-00-000	\$2,200,000	\$2,800,000
19-30238	30-530-10-01-00-0-00-000	\$10,000,000	\$13,000,000
19-30239	30-530-11-01-00-0-00-000	\$10,250,000	\$11,800,000
19-30240	30-530-08-01-00-0-00-000	\$9,500,000	\$11,100,000
19-30241	30-440-13-01-00-0-00-000	\$9,200,000	\$10,700,000
19-30242	30-440-02-02-00-0-00-000	\$9,500,000	\$12,320,000
19-30243	30-440-03-02-00-0-00-000	\$10,100,000	\$12,400,000
19-30244	30-530-06-01-00-0-00-000	\$8,500,000	\$10,500,000
19-30245	30-530-06-03-00-0-00-000	\$2,380,000	\$2,250,000
19-30246	30-530-07-01-00-0-00-000	\$11,500,000	\$14,900,000
19-30248	30-520-21-05-00-0-00-000	\$4,500,000	\$5,300,000

**4. Procedural Background.** Following the filing of the appeals and their initial assignment to a hearing officer, the parties engaged in a lengthy series of disputes regarding discovery. The current hearing officer was assigned to the appeals on December 18, 2020.

On December 21, 2020, following a dispute regarding exchanges of information between the parties and involving the prior orders issued by the initial hearing officer, the current hearing officer issued her Order Denying Complainant’s Motion for Sanctions and Ordering Respondent to Respond to Outstanding Requests (the December 21 Order). Complainant had filed a motion for sanctions alleging Respondent failed to comply with prior discovery orders of the STC. Respondent filed a response alleging that Respondent’s former counsel had not made Respondent aware of the motion for sanctions and new counsel for Respondent had been assigned to the appeals. Respondent requested that her

new counsel be allowed to participate in good faith in the discovery process. In the December 21 Order, the hearing officer entered the following ruling:

In the interest of justice and fundamental fairness to both parties, under the circumstances, Complainant's Motion for Sanctions is DENIED. However, Respondent shall in good faith respond no later than December 31, 2020, to all outstanding discovery requests made by Complainant. Given the procedural history of these appeals, failure by Respondent to respond to such requests by December 31, 2020, shall be viewed as a deliberate refusal to comply with the rules of discovery and the orders of the STC and shall result in sanctions.

In the first half of 2021, the parties engaged in additional discovery, additional discovery disputes, a Prehearing Conference with the hearing officer, and the entry of Complainant's counsel *pro hac vice*. On May 18, 2021, the hearing officer issued her Order (May 18 Order):

Counsel for Complainant and Counsel for Respondent appeared for a Prehearing Conference on May 18, 2021, via WebEx.

Counsel for Complainant presented three issues: (1) a request for leave to file a motion for sanctions for Respondent's alleged non-compliance with previous discovery orders of the hearing officer; (2) the renewal of a previously-filed motion for protective order and request for a ruling on said motion; and (3) a request for an extension of the dates and times for the evidentiary hearing in the appeals.

Counsel for Respondent argued that (1) Respondent has made efforts to comply with Complainant's discovery requests but current counsel entered on the appeals after some discovery had already occurred and now objects on the ground that some of the requests are overburdensome; (2) Respondent has filed objections to the request for protective order, which is inappropriate under the law and given that similar information had been supplied by other taxpayers and is subject to Sunshine Law requests for said information; and (3) Respondent does not object to an extension of dates and times for evidentiary hearing or to a severance of the appeals to aid in the evidentiary hearing process.

Being duly advised in the prehearing matters involving these appeals, Complainant's request for leave to file a motion for sanctions for Respondent's alleged non-compliance with previous discovery orders is GRANTED. Complainant's motion for protective order along with Respondent's previous objections and response is taken under advisement for ruling. Complainant's request to extend the dates and times of the evidentiary hearing on these appeals is GRANTED. The evidentiary hearing currently scheduled for June 23, 2021, is hereby CANCELLED. The parties shall file a jointly proposed schedule for new hearing dates and times along with a list of the appeals that can be grouped together to the extent possible for purposes of efficiently hearing the appeals (for example, all appeals involving parking garages would be heard in a consolidated fashion). The parties shall propose a schedule for the evidentiary hearings in the appeals with the first evidentiary hearing beginning no sooner than September 1, 2021.

The parties engaged in further disputes through the summer of 2021. Complainant subsequently filed its second motion for sanctions against Respondent, renewed a request for a protective order, and filed its motion *in limine* requesting a pre-trial order excluding evidence other than evidence limited to a specific valuation methodology.

On August 23, 2021, the hearing officer issued her Order on Motion for Sanctions, Motion for Protective Order, Motion in Limine, Request for Mediation, and Dates for Evidentiary Hearing (the August 23 Order). Complainant's motion for sanctions alleged Respondent had engaged in a pattern of refusal to produce evidence material to the administration of the appeals and requested the hearing officer to (1) enter summary judgment in favor of Complainant; (2) preclude Complainant from presenting direct evidence or rebuttal/impeachment evidence or cross examining Complainant's witnesses and supporting or opposing matters that are or may become at issue; (3) order Respondent to pay Complainant for reasonable expenses, including attorneys' fees incurred due to Respondent's violations of previous STC orders and the rules of discovery; and (4) to grant

other such relief deemed just, equitable, and proper. In the August 23 Order, the hearing officer found, in part:

The burden of proof in an appeal before the STC is on the complainant to show through substantial and persuasive evidence that the BOE's valuation was incorrect and that the complainant's proposed value is correct. As relevant to the claims made by Complainant in these appeals, Complainant bears the burden of establishing through substantial and persuasive evidence that Respondent overvalued the subject properties and engaged in an intentional plan of discrimination in assessing the subject properties. Where Respondent has failed to produce requested discovery, Complainant still must prove its claims by substantial and persuasive evidence. Consequently, even if the STC were to exercise its discretion and find that some sanction for Respondent's failure to produce discovery might be proper, the entry of a summary order in favor of Complainant and against Respondent would be improper given that it is Complainant who bears the burden of proof.

However, Respondent is not free to disregard the STC's repeated orders requiring disclosure of information or production of discovery without reproach. The record in these appeals reveals that Complainant made discovery requests; Respondent objected to some requests on grounds that the requested information was "irrelevant to the de novo review of the valuation of the parcels subject to these appeals" and "vague," "overbroad," and "overly broad"; the parties engaged in discussion of the requests; Complainant filed a motion to compel production; the STC ordered Respondent to produce the documents and information requested; and Respondent continued to refuse to produce the documents and information as ordered. Notably, Respondent did not file any response to Complainant's Second Motion for Sanctions.

Complainant's Second Motion for Sanctions is GRANTED with regard to the request for an order precluding Respondent from presenting or offering direct evidence in its case in chief regarding Respondent's opinion of value of the subject properties, including but not limited to written or oral testimony of Respondent's experts and reports of Respondent's experts. Complainant's Second Motion for Sanctions is DENIED with regard to the request for entry of a summary order in favor of Complainant; DENIED with regard to the request for payment of reasonable expenses and attorneys' fees related to discovery; and DENIED with regard to the request for precluding Respondent from presenting or offering impeachment evidence, cross-examining Complainant's witnesses, objecting to or opposing Complainant's

evidence, or engaging in any attempt to support or oppose any matters that are or may become an issue in these appeals.

The Order further denied Complainant's renewed request for a protective order on the ground that Complainant had not shown good cause under Rule 56.01(c); denied Complainant's motion *in limine* requesting exclusion of certain valuation evidence at the evidentiary hearing; and denied Complainant's request to order the parties to mediation because not all parties consented to mediation, which was required under Section 138.431.4 before an order for mediation could be entered.

Complainant and Respondent subsequently filed cross motions to strike each other's evidence and exhibits and to preclude testimony of witnesses. On November 5, 2021, the hearing officer issued her Order (the November 5 Order) finding:

The parties have filed cross motions to strike each other's evidence and exhibits and to preclude testimony of witnesses. The record in these appeals reveals that the scheduling orders issued by the hearing officer initially assigned to the appeals did not contain deadlines for the filing of objections, rebuttal evidence, or surrebuttal evidence. Given the protracted discovery disputes in these appeals and in the interest of due process and fairness to both parties, the parties' motions to strike are hereby DENIED. Respondent shall be allowed to introduce its evidence and exhibits filed on November 3, 2021, during the rebuttal phase of the Evidentiary Hearing for the sole purpose of rebuttal.

The evidentiary hearing was conducted over two days, November 9 and 10, 2021, via WebEx. On December 10, 2021, the parties filed their post-hearing briefs pursuant to the hearing officer's order limiting the briefs to 10 pages in length and to addressing the legal standards to be applied to the facts in evidence.

**5. Complainant's Evidence.** Complainant presented testimony from Gerald

Maier (Complainant’s Appraiser), Managing Partner of Mainland Appraisal Services. Complainant’s Appraiser’s job duties included managing the business, writing commercial real estate appraisals, preparing review appraisals, and supervising staff appraisers. Complainant’s Appraiser was a Member of the Appraisal Institute with the MAI designation. Complainant’s Appraiser had earned his bachelor of science degree in Business Administration and Accounting and his juris doctorate degree from the University of Kansas. Complainant’s Appraiser had completed the requirements to become a Certified Public Accountant but had not practiced as an accountant since the late 1980s. Complainant’s Appraiser was a certified general real property appraiser in Missouri, Kansas, Oklahoma, and Iowa and had been an appraiser for approximately 30 years.

Complainant introduced the written direct testimony (WDT) of Complainant’s Appraiser for each of the appeals, which was admitted. Complainant’s Appraiser also provided a summary appraisal report for each of the subject properties, which were introduced as the following exhibits:

Appeal No.	Property Name	Exhibit	Ruling
19-30227	Balcony 2	Exhibit A	Admitted
19-30228	Penguin	Exhibit A	Admitted
19-30229	48 <sup>th</sup> Shops 1	Exhibit A	Admitted
19-30230	48 <sup>th</sup> Shops 2	Exhibit A	Admitted
19-30231	Grenada Esplanade	Exhibit A	Admitted
19-30232	Cordoba	Exhibit A	Admitted
19-30233	Valencia B	Exhibit A	Admitted
19-30234	Millcreek 2	Exhibit A	Admitted
19-30235	Millcreek 4	Exhibit A	Admitted
19-30237	Millcreek 3	Exhibit A	Admitted
19-30238	Nichols Building	Exhibit A	Admitted
19-30239	Plaza 211	Exhibit A	Admitted
19-30240	Plaza Central Building	Exhibit A	Admitted
19-30241	Plaza Savings	Exhibit A	Admitted
19-30242	Seville East	Exhibit A	Admitted



19-30243	Seville West	Exhibit A	Admitted
19-30244	Swanson 1	Exhibit A	Admitted
19-30245	Swanson 2	Exhibit A	Admitted
19-30246	Theater Building	Exhibit A	Admitted
19-30248	Triangle Building	Exhibit A	Admitted

The appraisal reports considered all three approaches to value but developed and relied on the sales comparison approach and the income approach for each of the subject properties and utilized the cost approach as “a test of reasonableness.” Complainant’s Appraiser made findings specific to each of the subject properties in the appraisal reports (Exhibits A) as summarized below:

19-30227 Balcony 2: The highest and best use is its existing use as improved/mixed-use commercial structure and a 228-space parking structure. The sales comparison approach indicated a value of \$10,990,000. The income approach indicated a value of \$10,400,000. The reconciled opinion of value was \$10,500,000.

19-30228 Penguin: The highest and best use is its existing use as improved/ multi-tenant retail structure. The sales comparison approach indicated a value of \$6,880,000. The income approach indicated a value of \$7,160,000. The reconciled opinion of value was \$7,150,000.

19-30229 48<sup>th</sup> Shops 1: The highest and best use is its existing use as improved/single-tenant restaurant structure. The sales comparison approach indicated a value of \$1,590,000. The income approach indicated a value of \$1,510,000. The reconciled opinion of value was \$1,510,000.

19-30230 48<sup>th</sup> Shops 2: The highest and best use is its existing use as improved/multi-tenant retail structure. The sales comparison approach indicated a value of \$4,230,000. The income approach indicated a value of \$4,270,000. The reconciled opinion of value was \$4,270,000.

19-30231 Grenada Esplanade: The highest and best use is its existing use as improved/mixed-use commercial structure and 486-space parking structure. The sales comparison approach indicated a value of \$22,010,000. The income approach indicated a value of \$22,180,000. The reconciled opinion of value was \$22,150,000.

19-30232 Cordoba: The highest and best use is its existing use as improved/mixed-use commercial structure. The sales comparison approach indicated a value of \$11,720,000. The income approach indicated a value of \$10,840,000. The reconciled opinion of value was \$11,000,000.

19-30233 Valencia B: The highest and best use is its existing use as improved/multi-tenant commercial structure. The sales comparison approach indicated a value of \$11,950,000. The income approach indicated a value of \$11,430,000. The reconciled opinion of value was \$11,500,000.

19-30234 Millcreek 2: The highest and best use is its existing use as improved/commercial structure with a 65-space parking garage. The sales comparison approach indicated a value of \$930,000. The income approach indicated a value of \$900,000. The reconciled opinion of value was \$900,000.

19-30235 Millcreek 4: The highest and best use is its existing use as improved/ mixed-use commercial structure. The sales comparison approach indicated a value of \$3,580,000. The

income approach indicated a value of \$3,600,000. The reconciled opinion of value was \$3,600,000.

19-30237 Millcreek 3: The highest and best use is its existing use as improved/mixed-use commercial structure. The sales comparison approach indicated a value of \$2,900,000. The income approach indicated a value of \$2,790,000. The reconciled opinion of value was \$2,800,000.

19-30238 Nichols Building: The highest and best use is its existing use as improved/mixed-use commercial structure. The sales comparison approach indicated a value of \$12,520,000. The income approach indicated a value of \$13,060,000. The reconciled opinion of value was \$13,000,000.

19-30239 Plaza 211: The highest and best use is its existing use as improved/multi-tenant retail structure and a 725-space parking structure. The sales comparison approach indicated a value of \$11,560,000. The income approach indicated a value of \$11,860,000. The reconciled opinion of value was \$11,800,000.

19-30240 Plaza Central Building: The highest and best use is its existing use as improved/multi-tenant retail project and a 370-space parking structure. The sales comparison approach indicated a value of \$10,860,000. The income approach indicated a value of \$11,140,000. The reconciled opinion of value was \$11,100,000.

19-30241 Plaza Savings: The highest and best use is its existing use as improved/two multi-tenant retail structures. The sales comparison approach indicated a value of \$10,110,000. The income approach indicated a value of \$10,730,000. The reconciled opinion of value was \$10,700,000.

19-30242 Seville East: The highest and best use is its existing use as improved/multi-tenant commercial structure. The sales comparison approach indicated a value of \$12,360,000. The income approach indicated a value of \$12,320,000. The reconciled opinion of value was \$12,320,000.

19-30243 Seville West: The highest and best use is its existing use as improved/ multi-tenant commercial structure and a 1,278-space parking structure; the retail and theater space and part of the parking structure had been demolished to allow construction of a Nordstrom's department store. The sales comparison approach indicated a value of \$12,550,000. The income approach indicated a value of \$12,370,000. The reconciled opinion of value was \$12,400,000.

19-30244 Swanson 1: The highest and best use is its existing use as improved/multi-tenant retail structure and a 135-space parking structure. The sales comparison approach indicated a value of \$11,050,000. The income approach indicated a value of \$10,380,000. The reconciled opinion of value was \$10,500,000.

19-30245 Swanson 2: The highest and best use is its existing use as improved/single-tenant commercial structure and a portion of the adjacent restaurant. The sales comparison approach indicated a value of \$2,380,000. The income approach indicated a value of \$2,050,000. The reconciled opinion of value was \$2,250,000.

19-30246 Theater Building: The highest and best use is its existing use as improved/mixed-use commercial structure. The sales comparison approach indicated a value of \$14,530,000. The income approach indicated a value of \$14,980,000. The reconciled opinion of value was \$14,900,000.

19-30248 Triangle Building: The highest and best use is its existing use as improved/multi-tenant commercial structure. The sales comparison approach indicated a value of \$5,150,000. The income approach indicated a value of \$5,340,000. The reconciled opinion of value was \$5,300,000.

In performing the sales comparison approach to value the subject properties, Complainant's Appraiser utilized data from numerous comparable sales in the Kansas City metropolitan area and made market-based adjustments to the comparables for characteristics such as size, age, condition, location, quality and parking availability.

In performing the income approach to value the subject properties, Complainant's Appraiser reviewed the "income and expense history of the entire holdings" of Complainant for 2017 and 2018. (See Exhibits A) Complainant's Appraiser noted that separate income and expense (INE) histories for each subject property had not been provided, so he used the overall INE history and details of the operating history for each subject property to prepare a pro forma operating statement forecasting the income and expenses for each subject property. Complainant's Appraiser further noted that his analysis "forecast the income and expenses anticipated by an owner of only the subject operated independent of the other 23 parcels." (See Exhibits A) Complainant's Appraiser developed a capitalization rate for each of the subject properties based on market and investor surveys.<sup>6</sup>

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<sup>6</sup> Complainant's Appraiser also performed an "as vacant" valuation analysis for each of the subject properties. Given that such an analysis was based on the hypothetical assumption that the subject properties were 100% vacant as of the relevant taxation date while the evidence in the

Complainant's Appraiser testified that he had used INE data for 2017 and 2018 because the 2019 data was not available as of the taxation date. Complainant's Appraiser testified that he had reviewed a lease summary provided by Complainant and also estimated market rents as of January 1, 2019. Complainant's Appraiser testified that the 2016 sale price of The Country Club Plaza was not a relevant indicator of value for the individual parcels subject to appeal because potential purchasers of the individual parcels and potential purchasers of The Country Club Plaza as a unit were different types of investors. Complainant's Appraiser further testified that, for tax purposes, the subject properties should be valued separately.

**6. Respondent's Evidence.** Given the hearing officer's rulings on pre-hearing motions related to the parties' ongoing discovery disputes, Respondent did not present direct evidence of Respondent's opinion of the value of the subject properties as of January 1, 2019. However, Respondent was allowed to present evidence to rebut or counter Complainant's direct evidence.<sup>7</sup> Respondent presented live testimony from witnesses

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record established the subject properties had stabilized occupancy as of the relevant taxation date, the "as vacant" analysis was speculative and was given no weight in this decision.

<sup>7</sup> In its post-hearing brief, Complainant cites *State v. Ousley*, 419 S.W.3d 65 (Mo. banc 2013) to support the proposition that Respondent's evidence was actually surrebuttal evidence, not rebuttal evidence. "In a criminal case, the purpose of surrebuttal evidence is to give the defendant an opportunity to rebut or respond to the State's rebuttal evidence." *Ousley*, 419 S.W.3d 65, 70. The Hearing Officer disagrees with Complainant's characterization of rebuttal evidence for purposes of these appeals. "A party is entitled to introduce evidence to rebut that of his adversary, and for this purpose any competent evidence to explain, repel, counteract, or disprove the adversary's proof is admissible." *Aliff v. Cody*, 26 S.W.3d 309, 315 (Mo. App. W.D. 2000) (internal quotation omitted). While the use of rebuttal is not unfettered and a "party cannot, as a matter of right, offer in rebuttal evidence which was appropriate or should have been proffered in the case in chief, even if it tends to contradict or rebut the adverse party's evidence," trial courts, and by extension administrative tribunals, "have considerable discretion in excluding

Brian Everly (Mr. Everly) and Robin Marx (Mr. Marx). Respondent also introduced the following rebuttal exhibits<sup>8</sup>:

Rebuttal Exhibit	Description	Ruling
1	COSTAR Report	Admitted
2	Consolidated Certificate of Value (COV) for subject properties following 2016 sale	Admitted
3	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing	Admitted
4	BOE “workup” document	Admitted

The COSTAR Report indicated The Country Club Plaza was estimated to be in the mid-range of market rents, capitalization rates, vacancy/occupancy rates, and availability rates in the Kansas City region for 2019. (Rebuttal Exhibit 1) The COSTAR Report indicated that the subject properties had been purchased as part of an investment portfolio. The COSTAR Report provided detailed information and descriptions of each individual property. (Rebuttal Exhibit 1)

The COV indicated that “all furniture, fixtures, equipment, art, records, supplies, tools and vehicles necessary to operate Country Club Plaza” had been included in the purchase price. (Exhibit 2) The COV stated that Complainant did not believe the purchase

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or admitting rebuttal testimony which was available and should have been offered in the case in chief.” *Aliff*, 26 S.W.3d at 315-316 (internal quotation omitted). Given the August 23 Order, which sanctioned Respondent for discovery violations by precluding Respondent from presenting valuation evidence, the Hearing Officer exercised discretion in allowing Respondent to present rebuttal testimony and exhibits that were available and otherwise would have been offered in her case-in-chief.

<sup>8</sup> Complainant objected to Rebuttal Exhibit 1 and Rebuttal Exhibit 4 on grounds of lack of foundation for hearsay and no authentication of the document. The objections were taken with the case and are hereby overruled.

price reflected the market value of the real property for assessment purposes because the purchase price represented:

a bulk purchase of an operating business, Country Club Plaza. The purchase price includes 15 blocks, 18 tracts, 31 assembled parcels of real estate plus personal property. Also included were art, contracts, files [and] records, bonds, financial instruments, goodwill, intangibles and any and all assets or rights necessary to assume operation from [the previous owner]. If these parcels were to have been purchased separately, the individual purchase prices would not sum to the assembled value.

(Rebuttal Exhibit 2)

The Deed of Trust document indicated that Complainant had obtained a loan in the principal amount of \$320,000,000 to purchase The Country Club Plaza. (Rebuttal Exhibit 3) Attached to the Deed of Trust was “Exhibit A,” a list of the individual real properties parcels included in the purchase and their legal descriptions. (Rebuttal Exhibit 3)

The document labeled Rebuttal Exhibit 4 contained a handwritten notation, “At BOE 2019 started going in income.” (Rebuttal Exhibit 4) The document also contained a table with columns displaying data for each of the subject properties’ parcel numbers, BOE appeal numbers, addresses, property names, and Jackson County’s “revised value after sq ft correction based on Plaza GLA” for each of the subject properties. (Rebuttal Exhibit 4) The document reported a total value of \$403,088,018. (*Id.*)

Mr. Everly testified that he was employed by Respondent as a commercial real property appraiser and had held a general appraiser’s license in Missouri since 2007. Mr. Everly graduated from the University of Missouri with a degree in business administration. He has been an appraiser for Johnson County, Platte County, and Jackson County. Mr. Everly testified that the subject properties were “niche” boutique commercial properties,



uniquely built and planned by the designer. Mr. Everly testified that he had not looked at Complainant's Appraiser's appraisal report or WDT. When asked whether the loan Complainant obtained to purchase the subject properties was secured and included more than the value of the real property, Mr. Everly testified that he knew Complainant's purchase of the subject properties was "very complex." Mr. Everly admitted that the "Country Club Plaza" consisted of more than just the subject properties owned by Complainant. Mr. Everly opined that Complainant's 2016 purchase price of the subject properties was relevant to assessing the properties as of January 1, 2019, because a purchaser would need a lot of money to make the purchase and because the value of the subject properties would need to be higher than the loan used to purchase the properties. Mr. Everly testified that the lender shown on the Deed of Trust, Teachers Insurance and Annuity Association of America, would lend on only prime properties. Mr. Everly testified that Respondent had assessed the subject properties as individual parcels but viewed the properties as a single economic unit. Mr. Everly testified that Respondent had used mass appraisal techniques to value the subject properties and had presented the BOE with a total value of \$403,088,018<sup>9</sup> for the subject properties, which had been determined using the income approach for each parcel and then adding the values together. Mr. Everly testified that Respondent had not performed an individual appraisal for any of the subject properties. Mr. Everly testified that he stood by the BOE's total valuation of the subject properties.

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<sup>9</sup> This value did not deduct the values of the properties that were the subject of appeals settled or dismissed as described in a previous footnote.

Mr. Marx testified that he was a Missouri certified appraiser with over 46 years of experience appraising property in the Kansas City area. Respondent's Appraiser held the MAI designation and a real estate broker's license. Mr. Marx testified that he was familiar with Country Club Plaza and had performed an appraisal there 30 years ago as well as recently. Mr. Marx testified that he used different appraisal techniques from Complainant's Appraiser because the main issue was to value the subject properties as an economic unit. Mr. Marx testified that Complainant's Appraiser's appraisal reports regarding the subject properties were not credible or reliable, misstated numbers, and provided misleading information. Mr. Marx disagreed with Complainant's Appraiser's comparables, statements of income and expenses, and capitalization rate. However, Mr. Marx admitted that he did not read or review all of Complainant's Appraiser's appraisal reports in their entirety.

**7. Value.** The substantial and persuasive evidence established the TVM of the subject properties as of January 1, 2019, as shown in the table, below:

Appeal No.	Parcel/locator No.	TVM as of January 1, 2019
19-30227	30-520-20-14-01-0-00-000	\$10,500,000
19-30228	30-440-12-01-00-0-00-000	\$7,150,000
19-30229	30-440-12-02-00-0-00-000	\$1,510,000
19-30230	30-440-12-03-00-0-00-000	\$4,270,000
19-30231	30-440-01-01-01-0-00-000	\$22,150,000
19-30232	30-440-01-01-02-0-00-000	\$11,000,000
19-30233	30-410-28-17-00-0-00-000	\$11,500,000
19-30234	30-520-22-02-00-0-00-000	\$900,000
19-30235	30-520-22-08-00-0-00-000	\$3,600,000
19-30237	30-520-22-07-00-0-00-000	\$2,800,000
19-30238	30-530-10-01-00-0-00-000	\$13,000,000
19-30239	30-530-11-01-00-0-00-000	\$11,800,000
19-30240	30-530-08-01-00-0-00-000	\$11,100,000
19-30241	30-440-13-01-00-0-00-000	\$10,700,000
19-30242	30-440-02-02-00-0-00-000	\$12,320,000

19-30243	30-440-03-02-00-0-00-000	\$12,400,000
19-30244	30-530-06-01-00-0-00-000	\$10,500,000
19-30245	30-530-06-03-00-0-00-000	\$2,250,000
19-30246	30-530-07-01-00-0-00-000	\$14,900,000
19-30248	30-520-21-05-00-0-00-000	\$5,300,000

## 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 cost approach may be based on either reproduction cost or replacement cost. The reproduction cost, or cost of construction, is a determination of the cost of constructing an exact duplicate of an improved property using the same materials and construction standards. The replacement cost is an estimate of the cost of constructing a building with the same utility as the building being appraised but with modern materials and according to current standards, design and layout. 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*, 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. 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.

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. 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. The initial step in applying the income approach is to find comparable rentals and make adjustments for any differences. *Snider*, 156 S.W.3d at 347.

## **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 Proved Overvaluation.**

Here, Complainant presented substantial and persuasive rebutting the presumption that the BOE's valuations were correct and establishing the proper TVM for the subject properties. Complainant's Appraiser credibly testified and presented credible appraisal reports regarding the value of the subject properties based on estimates of market rent and the subject properties' occupancy as of January 1, 2019, as well as INE data based on historical data for the subject properties along with a capitalization rate derived from market and investor surveys. Respondent's evidence presented to rebut Complainant's evidence regarding value was not persuasive.

Furthermore, Respondent's evidence had the overall effect of supporting Complainant's position that the subject properties should be valued separately. Although the subject properties are included in the area known collectively as The Country Club Plaza, the subject properties are, in fact, individual parcels that were assessed by Respondent and taxed by Jackson County as individual parcels. This evidence brings into question Respondent's theme throughout the litigation and then repeated in her post-hearing brief, *to wit*, the subject properties "operate as a single economic unit as a lifestyle center for shopping, dining, and entertainment" and, therefore, should be valued as an economic unit. To the contrary, the credible evidence demonstrated that even though the subject properties were purchased collectively in 2016 as part of an investment portfolio, they in fact can be bought, sold, and leased individually. As of the relevant taxation date, the subject properties were leased individually to various individual businesses for various individual purposes; they were not leased collectively, were not assessed collectively, and

were not taxed collectively. Consequently, to the extent Respondent’s rebuttal evidence attempted to establish the subject properties should be valued as a single economic unit is not credible.

**CONCLUSION AND ORDER**

The BOE decisions are set aside. The TVM of the subject properties as of January 1, 2019, were as shown in the table below:

Appeal No.	Parcel/locator No.	TVM as of January 1, 2019
19-30227	30-520-20-14-01-0-00-000	\$10,500,000
19-30228	30-440-12-01-00-0-00-000	\$7,150,000
19-30229	30-440-12-02-00-0-00-000	\$1,510,000
19-30230	30-440-12-03-00-0-00-000	\$4,270,000
19-30231	30-440-01-01-01-0-00-000	\$22,150,000
19-30232	30-440-01-01-02-0-00-000	\$11,000,000
19-30233	30-410-28-17-00-0-00-000	\$11,500,000
19-30234	30-520-22-02-00-0-00-000	\$900,000
19-30235	30-520-22-08-00-0-00-000	\$3,600,000
19-30237	30-520-22-07-00-0-00-000	\$2,800,000
19-30238	30-530-10-01-00-0-00-000	\$13,000,000
19-30239	30-530-11-01-00-0-00-000	\$11,800,000
19-30240	30-530-08-01-00-0-00-000	\$11,100,000
19-30241	30-440-13-01-00-0-00-000	\$10,700,000
19-30242	30-440-02-02-00-0-00-000	\$12,320,000
19-30243	30-440-03-02-00-0-00-000	\$12,400,000
19-30244	30-530-06-01-00-0-00-000	\$10,500,000
19-30245	30-530-06-03-00-0-00-000	\$2,250,000
19-30246	30-530-07-01-00-0-00-000	\$14,900,000
19-30248	30-520-21-05-00-0-00-000	\$5,300,000

**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 Jackson 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 June 30, 2023.  
STATE TAX COMMISSION OF MISSOURI

Amy S. Westermann  
Chief Counsel

### Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on June 30, 2023, to:

Counsel for Complainant,  
Counsel for Respondent  
Assessor  
Collector  
Clerk

Stacy M. Ingle  
Legal Assistant