



# STATE TAX COMMISSION OF MISSOURI

ANDREW SMITH, ) Appeal No. 21-16913  
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) Parcel/Locator: 18P130064  
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Complainant(s), )  
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v. )  
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)  
JAKE ZIMMERMAN, ASSESSOR, )  
ST. LOUIS COUNTY, MISSOURI, )  
Respondent. )

## DECISION AND ORDER

Andrew Smith (Complainant) appealed<sup>1</sup> the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$362,200. Complainant did produce substantial and persuasive evidence that Respondent failed to comply with Section 137.115, but did not produce substantial and persuasive evidence that the TVM of the subject property as of January 1, 2021 was \$1 as claimed. The BOE's decision is set aside. The TVM of the subject property as of January 1, 2021 was \$345,000.

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<sup>1</sup> Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

The evidentiary hearing for this appeal was held in person at the Wainwright Building in St. Louis Missouri on December 6, 2022.<sup>2</sup> Complainant appeared pro se. Respondent was represented by counsel, Tim Bowe.<sup>3</sup>

## **FINDINGS OF FACT**

**1. Subject Property.** The subject property is a single family home is located at 221 Pebble Acres Dr., St. Louis, Missouri. The parcel/locator number is 18P130064. Other than describing the various condition issues plaguing the home, Complainant did not describe the individual attributes or characteristics of the property in detail. Complainant testified that he and his wife live in the home on some days but their primary residence is in Innsbrook, Missouri.

**2. Assessment and Valuation.** Respondent classified the subject property as residential and determined the TVM on January 1, 2019, was \$407,000. The BOE classified the subject property as residential and independently determined the TVM on January 1, 2019, was \$362,000.

**3. Complainant's Proposed Value.** Complainant's opinion of value for the subject property is \$1.

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<sup>2</sup> Complainant made an oral Motion at hearing to transfer venue and conduct the hearing at the subject property so that the Senior Hearing Officer (SHO) could personally observe its condition. Complainant's Motion was overruled on the same grounds that were set out in the SHO's October 20, 2022 Order overruling Complainant's prior Motion to transfer venue.

<sup>3</sup> At the outset of the hearing, Complainant made an oral Motion for a default judgment arguing that Respondent was required to appear personally at the hearing, citing 12 CSR 30-3.010(2) for support. Complainant's Motion was overruled.

#### 4. Complainant's Evidence.

Complainant offered the following Exhibits. Respondent objected on hearsay grounds to all of Complainant's Exhibits where Complainant provided a narrative or was in communication with various individuals from Respondent's Office. Respondent's general objection was overruled at hearing, and the exhibits were admitted and given the weight appropriate.

<b>Exhibit</b>	<b>Description</b>
A	Photograph – Storm Water in Basement
B	Photograph – Storm Water in Basement
C	Photograph – Storm Water in Basement
D	Photograph – Storm Water in Basement
E	Photograph – Storm Water in Basement
F	Photograph – Storm Water in Basement
G	Photograph – Storm Water in Basement
H	Photograph – Storm Water in Basement
I	Photograph – Stain on Door Shows High Water Mark
J	Photograph – Deferred Maintenance (Roof)
K	Statute – 138.100
L	Photograph – Storm Water & Dirt
M	Floor Plan – Basement (Not to Scale)
N	Metropolitan St. Louis Sewer District

O	Statute – 137.115
P	Letter from Complainant to Respondent April 23, 2021 with attachments
Q	Email, May 4, 2021
R	Email, May 5, 2021
S	Email, May 5, 2021
T	St. Louis, MO Weather History
U	Postcard – Exterior Inspection Notice from Respondent
V	Letter from Complainant to BOE June 19, 2021 with attachments
W	2021 Change of Assessment Notice for Subject Property
X	Residential Sale Contract for subject property from 2000
Y	Emails – August 27, 2021 and August 28, 2021, BOE Notice of Hearing
Z	BOE Decision Letter from October 29, 2021
AA	Ongoing Hydrostatic Water Problem
AB	Ongoing Hydrostatic Water Problem
AC	Complaint for Review
AD	Assignment/Scheduling Order from STC
AE	Respondent’s Response to Complainant’s Motion to Exclude Respondent’s Evidence of Appraised Value and Motion to Direct a Verdict to the Complainant

AF	Order Denying Complainant's Motions for a Directed Verdict, Denying Respondent's Motion to Enforce Settlement, Granting Complainant's Motion for Continuance, and Setting Status Check from the Parties
AG	Motion to Exclude All Respondent's Evidence of Appraised Value and Motion to Direct a Verdict to the Complainant
AH (1)	Statute – 138.432
AH (2)	Estimate from Foundation Recovery Systems
AI	Certificate of Mold Analysis – October 2022
AJ	Email - April 14, 2022 and Residential Sales Contract - April 9, 2022
AK	J.R. Plumbing Residential Camera Service Invoice
AL	Photograph – Water in Basement after sump pump failure
AM	Photograph – Water in Basement after sump pump failure
AN	Photograph – Water in Basement after sump pump failure

Complainant testified that his opinion of value for the property is \$0 or a nominal value such as \$1. Complainant stated that “obviously the property has a value greater than \$1, but this would be an opportunity [by the STC] to say in no uncertain terms to the County Assessor that he must follow the Missouri statutory rules, not just the rules according to

Jake Zimmerman.”<sup>4</sup> Complainant also stated that assigning such a value would additionally hold the BOE accountable.<sup>5</sup>

Complainant testified at length regarding the water issues that have plagued the basement of the property. In August of 2020, the subject property suffered flooding in the basement from heavy rainfall in the area. Complainant runs a sump pump and dehumidifier constantly in the basement, but sewage water still backs up in the basement and mold is present in the home. Complainant mentioned as well that the property is devalued due to deferred maintenance, such as the air conditioning system and roof which both need to be replaced or upgraded. Complainant testified that he has tried to sell the property at various times and at different prices, but to no avail. Complainant offered Exhibit AJ to show that he did receive a recent offer on the property in April of 2022 for \$427,000, but testified that the sale was not completed.

Complainant testified at length regarding his interactions with Respondent’s office and the BOE for the 2021 assessment at issue. Complainant stated repeatedly that he believes that Respondent violated the law and did not follow statutory procedure when making his 2021 assessment of the subject property. For example, Complainant noted several times that despite his repeated requests for an interior inspection of his property pursuant to 137.115, no interior inspection was performed. As is discussed below, Respondent does not dispute this fact. Complainant presented all of these issues to the BOE. Complainant is not a licensed appraiser in the State of Missouri.

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<sup>4</sup> Tr. at 1:17:25.

<sup>5</sup> *Id.*

**5. Respondent's Evidence.** Respondent introduced Exhibit 1, a copy of the BOE decision letter dated October 29, 2021, stating the BOE's TVM for the subject property as of January 1, 2021. The Exhibit was admitted without any legal objection.

Respondent stipulated on the record that despite Complainant making repeated requests for an interior inspection pursuant to Section 137.110, that such an inspection was not performed by Respondent.

**6. Value.** The TVM of the subject property on January 1, 2021 was \$345,000.

## **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. Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of

property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48; *see also St. Louis Cty. v. Sec. Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977).

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id.* at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id.* at 348.

## **2. Evidence**

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*,



599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon 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.**

Complainant did not establish that the BOE valuation was erroneous, nor did Complainant produce substantial and persuasive evidence establishing his proposed opinion of value as to the TVM of the subject property as of January 1, 2021. Neither Complainant's exhibits nor his testimony utilized the comparable sales approach, income approach, or cost approach to support his proposed value of \$1. Last, Complainant did not offer an appraisal of the subject as evidence of the TVM of the property as of January 1, 2021.

Complainant's proposed value is speculative and is not based on an acceptable approach to value. Complainant admitted during his testimony that the property does have a value exceeding \$1, and his evidence shows that he had an offer in 2022 to purchase the property for \$427,000. Complainant therefore has not met his burden of proof for overvaluation.

#### **6. Section 137.115**

Although Complainant did not produce substantial and persuasive evidence of overvaluation, Complainant established Respondent raised the subject property's assessed value by more than 15% and that he made a timely request for an interior physical inspection under 137.115.11.

Section 137.115.10 requires an assessor to conduct a physical inspection of a residential property if the increase in the assessed valuation is more than 15% since the last assessment. A physical inspection is defined as "an on-site personal observation and review of all exterior portions of the land and any buildings or improvements to which the inspector has or may reasonably and lawfully gain external access, and shall include an

observation and review of the interior of any buildings or improvements on the property upon timely request of the owner . . . .” Section 137.115.10.

Section 137.115.11 requires, in those instances where a physical inspection is required under Section 137.115.10, the assessor to (1) notify the property owner in writing of the fact of the physical inspection being required; and (2) provide the owner with clear written notice of the owner’s rights relating to the physical inspection. The owner’s rights include requesting an interior inspection to be performed and having no less than thirty days to notify the assessor of a request for an interior physical inspection.

Once the issue is raised by a Complainant, Respondent has the burden to provide sufficient evidence to establish that the physical inspection was performed in accordance with section 137.115; if he does not, the property owner shall prevail on the appeal as a matter of law:

the assessor shall have the burden to prove that the assessor's valuation does not exceed the true market value of the subject property. In such county or city, in the event a physical inspection of the subject property is required by subsection 10 of section 137.115, the assessor shall have the burden to establish the manner in which the physical inspection was performed and shall have the burden to prove that the physical inspection was performed in accordance with section 137.115. ***In such county or city, in the event the assessor fails to provide sufficient evidence to establish that the physical inspection was performed in accordance with section 137.115, the property owner shall prevail on the appeal as a matter of law.***

Section 138.060.1. Emphasis added.

Exhibit W shows that Respondent increased the appraised value of the subject property from \$300,000 in 2019 to \$407,000 in 2021, a greater than 15% increase. Complainant submitted evidence showing that after receiving Respondent's postcard notice of inspection (Exhibit U), Complainant made a timely request for an interior inspection. The interior inspection was never performed by Respondent. At the evidentiary hearing, Respondent stipulated that Complainant made a timely request for an interior inspection but that no interior inspection occurred. Therefore, because Respondent did not comply with Section 137.115, Complainant prevails as a matter of law.

In an appeal of ad valorem taxation before the STC, the Hearing Officer shall issue a decision and order affirming, modifying or reversing the determination of the BOE, and correcting any assessment that is unlawful, unfair, improper, arbitrary, or capricious. Article X, Section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431.4. The record established that the Respondent's determination of the subject property's value was more than 15% above the value determined in the previous tax cycle. The record is devoid of evidence that Respondent complied with Sections 137.115. Therefore, the TVM for the subject property for tax year 2021 is limited to an increase of 15% of the TVM from the 2019 tax cycle, or \$345,000 from \$300,000.

### **CONCLUSION AND ORDER**

The TVM for the subject property as determined by the BOE is SET ASIDE. The TVM for the subject property for tax year 2021 is \$345,000 with an assessed value of \$65,550.

### **Application for Review**

A party may file with the Commission an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

***Failure to state specific facts or law upon which the application for review is based will result in summary denial.*** Section 138.432.

### **Disputed Taxes**

The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED June 16, 2023.  
STATE TAX COMMISSION OF MISSOURI

Benjamin C. Slawson  
Senior Hearing Officer  
State Tax Commission

**Certificate of Service**

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on June 16, 2023, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Stacy M. Ingle  
Legal Assistant