



STATE TAX COMMISSION OF MISSOURI

GROUP HIGHLAND PARK PLAZA) Appeal Nos. 21-32013 through 21-32015
LLC, ET AL.,)
)
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)
)
Complainant(s),)
)
v.)
)
TRACY BALDWIN, ASSESSOR,)
CLAY COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Group Highland Park Plaza LLC and a number of other property owners (Complainants) appeal the Clay County Board of Equalization's (BOE) decisions determining the true value in money (TVM) of the subject commercial properties as of January 1, 2021. Complainants did not produce substantial and persuasive evidence of overvaluation. The BOE's decision is affirmed.¹

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

Complainants were represented by counsel, Michael LeVota. Respondent was represented by counsel, Lucas Wallingford. The evidentiary hearing was conducted on May 23, 2022, via WebEx.

FINDINGS OF FACT

1. Subject Property. The subject properties are listed below:

Appeal No.	Taxpayer Name	Parcel Locator Number
21-32013	Group Highland Park Plaza LLC	10-919-00-01-018.00
21-32014	Group Highland Park Plaza LLC	10-920-00-07-027.00
21-32015	Bloch Family 2005 Partnership LP AWG Attn Lease Admin	12-313-00-02-001.02

2. Property Descriptions. The subject properties are owner occupied, built-to-suit grocery stores, which are operated as Price Chopper. For ease of analysis and administrative efficiency, Appeal Nos. 21-32013 and 21-32014 are reviewed together.

21-32013 and 21-32014 The subject is located at 9717 N. Ash Avenue, Kansas City, Clay County, Missouri. The subject represents a single-tenant retail/grocery store building containing 76,138 square-feet of gross building area and net rentable area located on two tracts of land, which share a boundary, containing approximately 6.98 acres. The improvements were constructed in 2008. The subject includes approximately 246 striped parking spaces for a ratio of 3.2 space per 1,000 square feet of gross building area. As of January 1, 2021, the subject was 100% occupied by Price Chopper Grocery.

21-32015 The subject is located at 1645 Kearney Road in Excelsior Springs, Clay County, Missouri. The property includes a single-tenant retail/grocery store building

containing 59,233 square-feet of gross building area and net rentable area located on a tract of land containing approximately 5.6 acres. The improvements were constructed in 1996. The subject includes approximately 161 striped parking spaces for a ratio of 2.7 space per 1,000 square feet of gross building area. As of January 1, 2021, the subject was 100% owner-occupied by Price Chopper Grocery.

3. BOE. The BOE classified the subject properties as commercial and independently determined the TVM on January 1, 2021, of each parcel was:

Appeal No.	BOE VALUE
21-32013	\$7,967,000
21-32014	\$265,800
21-32015	\$3,500,000

4. Procedural History and Evidentiary Objections.

The SHO issued various pre-trial discovery orders regarding dismissal, compelling answers and requests for sanctions.² Prior to the Evidentiary Hearing, counsel for

² Respondent filed a Motion to Dismiss or Compel Discovery due to the late arrival of certificate to prosecute and initial disclosures and the Complainants’ failure to provide “adequate responses” to Respondent’s First Interrogatories and Request for Production of Documents to Complainants. Complainants filed a Motion to Modify the Discovery and Exchange Schedule and a Response Motion to Dismiss, citing partial compliance with answering Respondent’s First Interrogatories and Request for Production of Documents and further requesting an extension of time in order to complete answers, but also citing that most had been complied with by the date of Complainants’ Motion and delays were caused by various factors, including illness and heavy caseload. The SHO issued an Order to Compel and Denying Dismissal, granting Complainants additional time to submit complete answers. On January 4, 2022, Respondent filed its Motion for Sanctions on the ground that Respondent had failed to comply with orders issued by the STC. Respondent asserted “no discovery disclosures or communications have been received from the Complainants. Complainants have had over three months to produce documents and

Respondent filed written objections to the admission of all of Complainants' exhibits on the ground that Complainants had failed to comply with the Hearing Officer's scheduling order requiring the submission of the disputed discovery answers by the deadlines stated in the order. The deadline was set for March 25, 2022. Respondent specifically alleged that Complainants "failed to comply . . . and have not submitted any documents to the Respondent which would support their position." Complainants filed their response to objections alleging that they had provided supporting documents to Respondent that were available to them. Complainants sent Exhibits and WDT timely, by March 25, 2022. The Hearing Officer noted the objections and took it under advisement for ruling with the Decision.

During the Evidentiary Hearing, when Complainants offered their exhibits for admission into the record, counsel for Respondent renewed the objection and asked for a continuing objection to the admission of Complainants' exhibits. Respondent argued that

answers and have done nothing but delay." On or about January 14, 2022, Complainants filed various discovery responses and a Motion to Extend the Time to Respond to Respondent's Motion for Sanctions. On or about February 24, 2022, Respondent filed a request for a ruling. On March 11, 2022, Complainants' response to the Motion for Sanctions was received, wherein, Complainants cites the dismissal of several of the appeals was imminent and other STC appeals burdening the time of the appraiser as reasons for the delay, but overall has used their "best efforts to provide information". The SHO overruled Respondent's Motion for Sanctions finding Complainants' delay was not deliberate. Complainants was given until March 25, 2022, to provide any and all information and failure to provide such would be viewed as a deliberate refusal to comply with the rules of discovery and the orders of the STC and would result in either exclusion of the offending party's evidence or dismissal of the appeal. In the same Order, Respondent was provided additional 30 days, until April 29, 2022, to submit their exhibits and written direct testimony.

Respondent had received none of Complainants' answers or responsive documents until May 20, 2022 (Friday before the hearing), and as such, Respondent had not been able to review them to ascertain if they would assist Respondent in support of their position. Respondent argued that Complainants violated the scheduling orders by failing to file discovery responses, thereby precluding the admission of non-disclosed evidence and any exhibits utilizing such information to determine overvaluation. In response, counsel for Complainants argued that all of Complainants' exhibits had been provided timely and they provided their answers as attachments to their responses. Complainants further argued that Complainants' did not have access to many of the discovery requests from Respondent until May 2022 and those were emailed to Respondent as soon as they were discovered. Complainants' counsel suggested that the remedy for any alleged failure to formally pre-file these answers would be to allow the parties to continue Evidentiary Hearing so Respondent could review such information. Respondent did not agree to any continuance due to the busy schedule.

The Hearing Officer issued an interlocutory ruling allowing the introduction and admission of Complainants' exhibits subject to the continuing objection and any specific objections Respondent might make with regard to individual exhibits and given that Complainants' witness' live testimony would be subject to cross examination. The Hearing Officer reserved a final ruling on Respondent's continuing objection for the Decision and Order.

In proceedings before the STC, the admission or exclusion of evidence is within the Hearing Officer's discretion. Although technical rules of evidence are not controlling in

administrative hearings, fundamental rules of evidence apply. *Homa v. Carthage R-IX School District*, 345 S.W.3d 266, 282 (Mo. App. S.D. 2011); see also *Luscombe v. Missouri State Bd. of Nursing*, 2013 WL 68899 (Mo. App. W.D. 2013) at *13. When a proper objection is made and preserved, statements in violation of evidentiary rules do not qualify as competent and substantial evidence to support an agency's decision. *Homa*, 345 S.W.3d at 282, quoting *Dorman v. State Bd. of Registration for Healing Arts*, 62 S.W.3d 446, 454 (Mo. App. W.D. 2001). However, Section 536.070(7) allows an administrative tribunal to receive proffered evidence into the record regardless of the merit of any evidentiary objections:

Evidence to which an objection is sustained shall, at the request of the party seeking to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in the record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it is wholly irrelevant, repetitious, privileged, or unduly long

“Reception of hearsay or other inadmissible evidence does not dictate a reversal unless there is not sufficient competent evidence to sustain the decision.” *Homa*, 345 S.W.3d at 282 (quotation omitted).

In this case, Respondent's continuing objection was grounded on a procedural error by Complainants that essentially created a violation of evidentiary rules, i.e., the failure to file discovery responses pursuant to the deadline set by the scheduling order left the exhibits at trial without foundation for their admission, making them hearsay. However, after reflecting upon the arguments of the parties and examining the evidence as it was presented under interlocutory order, the facts establish that Respondent was in fact

provided with Complainants’ timely submitted exhibits in the months leading up to the evidentiary hearing and was granted an additional 30 days after review of Complainants’ exhibits to submit their own exhibits and written direct testimony. Respondent was also afforded the opportunity to conduct cross-examination of the witness for Complainants and to present their own testimony evidence in rebuttal. Consequently, Respondent was not prejudiced by Complainants’ technical non-compliance with the scheduling order. Consequently, in light of all of this information and in the interest of fairness to both parties, Respondent’s continuing objection to Complainants’ Exhibits A and B is hereby overruled.

5. Complainants’ Evidence. Complainants submitted the TVMs of the subject properties on January 1, 2021, as follows:

Appeal No.	OPINION OF VALUE
21-32013 and 21-32014	\$5,380,000
21-32015	\$2,410,000

Complainants presented Written Direct testimony (WDT) and the following exhibits:

Appeal No.	Exhibits	Description	Ruling
21-32013 and 21-32014	A	WDT Thomas Scaletty	Admitted
	B	Appraisal Report Scaletty	
21-32015	A	WDT Thomas Scaletty	Admitted
	B	Appraisal Report Scaletty	

Respondent’s written objections, objections based on RSMo 536.070(3), and objections regarding Complainants’ exhibits as incomplete or inconclusive are overruled. Complainants’ Exhibits are entered into evidence to be given the weight deemed appropriate.

Complainants presented testimony from witness Thomas Scaletty, an MAI designated commercial real estate appraiser with approximately 30 years of appraisal experience. Mr. Scaletty composed an appraisal report for Complainants in which he developed sales comparison and income approaches to estimate the TVM in fee simple of the subject properties on January 1, 2021. Mr. Scaletty weighted the Sales Comparison Approach 75% and the Income Approach 25% when estimating the market value. (Exhibits B) Mr. Scaletty testified that he did not develop a cost approach. Mr. Scaletty testified he updated his report to a final opinion of value of \$5,380,000.

Regarding the sales comparison approach, Mr. Scaletty testified the categories of sales for comparison in an analysis of this type includes built-to-suit/leasebacks, second generation leased fee sales, and fee simple sales. He excluded built-to-suit and leasebacks because the nature of these sales reflect decreasing sale prices and increasing capitalization rates as the remaining lease term declines. (Exhibit B). He testified that these sales are not indicative of an investment in a fee simple estate in the subject, because sale leaseback transactions may have purchase prices that are significantly higher, so too many adjustments would need to be made and make the transaction unreliable as a comparable. (Exhibits B) He testified a comparable of a built-to-suit/leaseback would not be used “where the purchase price is a direct reflection of the income stream guaranteed by the tenant in place and is opposite of what a fee simple interest is”, therefore; in his opinion, those sales would be irrelevant. Regarding second generation leased fee sales, Mr. Scaletty testified if the tenant leases the space “as is” and makes no upgrades or alterations, a sale in this category may provide a good indication of the market value for the real estate.

(Exhibits B) Regarding fee simple sales, Mr. Scaletty testified that these represent the best way to estimate market value, and these transactions involving properties that were vacant at the time of their sale or were vacated by the seller for occupancy by the buyer. (Exhibits B) Mr. Scaletty testified he made adjustments based on time/market conditions, age/condition, location, and building size. His reliance on this approach was 75% of the final valuation. (Exhibits A and B)

Regarding the income approach, Mr. Scaletty testified that second generation lease properties were the appropriate comparables for this type of comparison and utilized six rent comparables within all appraisals submitted for these parcels. The rent comparables are all located in and around the greater Kansas City area. Mr. Scaletty testified he confirmed lease information through brokers and market participants. Mr Scaletty testified that he did not use the lease for the subject properties as they are owner occupant leases, not “arms length” transactions and therefore not useful in determining income. (Exhibits A and B) Following adjustments for differences in lease terms, age/condition, location, etc., he calculated a lease rate range for each property and calculated a NOI to arrive at a capitalization rate. His reliance on this approach was 25% of the final valuation. (Exhibits A and B)

21-32013 and 21-32014: Price Chopper

Mr. Scaletty testified he considered nine verified sales of properties in Nebraska, Kansas, Iowa and Missouri. Mr. Scaletty relied most heavily on the sales comparison approach and found an average \$70.00 per square-foot market rent. Multiplied by 76,138

square-foot building of the subject property, the TVM he developed for the sales comparison approach is \$5,330,000. (Exhibits A and B)

Regarding the income approach, Mr. Scaletty calculated a lease rate range between \$5.00 and \$13.00 per net rentable square-foot. (Exhibit B) Relying on the data, a concluded typical market lease rate of \$7.50 per square-foot was estimated. (Exhibit A and B) After expenses, Mr. Scaletty found a NOI of \$5.67 per square-foot. (Exhibit B) Mr. Scaletty estimated an adjusted unloaded capitalization rate of 8.50%. (Exhibit B) Mr. Scaletty's overall conclusion of TVM for the subject under both approaches to value was \$5,380,000.

21-32015: Price Chopper

Mr. Scaletty considered eight verified sales of properties in Kansas and Missouri and relied most heavily on the sales comparison approach. Mr. Scaletty found an average \$40.00 per square-foot market rent. (Exhibit B) Applied to the 59,233 square-foot building of the subject property, the TVM he developed for the sales comparison approach is \$2,370,000 (rounded).

Regarding the income approach, Mr. Scaletty calculated a lease rate range between \$4.03 and \$5.50 per net rentable square was indicated. (Exhibit A) Relying on the data, a concluded typical market lease rate of \$4.75 per square foot was estimated. After expenses, Mr. Scaletty found a NOI of \$3.83 per square foot. (Exhibit B) Mr. Scaletty estimated an adjusted capitalization rate of 9% (rounded) because of smaller marketability where the subject property is located. (Exhibit B) Mr. Scaletty's overall conclusion of TVM for the subject under both approaches to value was \$2,410,000.

6. Respondent's Evidence. Respondent submitted the TVMs of the subject properties on January 1, 2021, as follows:

Appeal No.	OPINION OF VALUE
21-32013	\$7,967,000
21-32014	\$334,800
21-32015	\$4,513,100

Respondent submitted WDT of Grant Knauff and the following Exhibits:

Appeal No.	Exhibit	Description	Ruling
21-32013 and 21-32014	1	Property Record Card and Cost Approach Report	Admitted
	2	Appraisal Of Grant Knauff	
		WDT of Grant Knauff	
21-32015	1	Property Record Card and Cost Approach Report	Admitted
	2	Appraisal of Grant Knauff	
		WDT of Grant Knauff	

Mr. Knauff testified he is a Commercial Real Estate Appraiser employed by Clay County, with about 7 years' experience. Mr. Knauff testified within the Exhibit 2 for each appeal is the valuation report, which utilizes the cost approach to value the subject property with consideration given to the sales comparison approach. (WDT) Mr. Knauff did not rely on the income approach to value the subject property, although it was developed.

Mr. Knauff's cost approach was the primary approach to value the subject property in each appeal. Mr. Knauff used the same three land comparables to find a land value in each appraisal. He utilized Marshall Valuation Service (MVS), which is a proven national cost service, to value the improvements. (WDTs and Exhibits 2) He testified he deducted depreciation that he itemized by all causes. Mr. Knauff testified he estimated the

contributory value of the site improvements, which components constitute the contributory value of the improvements, then the land value was added for a value indication via the cost approach. Mr. Knauff found land sales in the Clay County market area for comparison purposes, land purchased for similar retail use, and which were similar in size and proximate in time to the effective date.

In the sales comparison approach, Mr. Knauff used three comparables. Mr. Knauff chose economically similar comparables to the subject property verified by MLS or the County. (WDT and Exhibits 2) He utilized sales data in and around the Kansas City market area for comparison. (Exhibits 2) He testified he chose large free standing retail stores: grocery, discount, and retail as sales comparables, making adjustments for property characteristics including age and quality of construction. (Exhibits 2) Mr. Knauff's comparables have the same or very similar highest and best use to the subject property in each appeal. (Exhibits 2)

7. Evidence of New Construction & Improvement. There was no evidence of new construction and improvements from January 1, 2021, to January 1, 2022³. Section 137.115.1.

8. Value. The TVM of the subject properties was:

Appeal No.	BOE VALUE
21-32013	\$7,967,000
21-32014	\$265,800
21-32015	\$3,500,000

³ There was evidence in the record of renovations completed sometime during 2021 to the subject property in appeal 21-32015. However, the parties presented no evidence assigning a value to those improvements that would constitute substantial and persuasive evidence to rebut the BOE's presumptively correct valuation for tax year 2022.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

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

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

The income approach "is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. "The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id.* "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use." *Id.* (internal quotation omitted).

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. Complainants' 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. Complainants Did Not Prove Overvaluation.

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

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id.* at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id.* at 348. Complainants argues the comparables should attempt to exclude built-to-suit or sale leaseback sales. However, if the appraiser determines dollar adjustments are warranted for property rights, financing terms, conditions of sale, or market conditions, those adjustments are to be made. Mr. Scaletty rejected the use of sale leasebacks or built-to-suit properties to compare with the subject properties and, in so doing, did not develop an accurate measure for the market value. Complainants presented no substantial and persuasive evidence indicating the property rights cannot be adjusted properly under USPAP standards or appraisal practice to each of the subject properties. The theory that a leased property is encumbered, and therefore not a preferable comparable is unpersuasive, is speculative, and not a methodology utilized in Missouri Courts to value property. Courts have addressed a leasehold's non-impact on the transferability of a fee simple estate, stating, "Cases and treatises frequently describe a conveyance of real estate subject to a leasehold estate as a conveyance of a 'remainder'

interest, *notwithstanding that fee simple title is what is conveyed.*" *Cooper v. Ratley*, 916 S. W.2d 868, 870 n. 3 (Mo. App. 1996) (emphasis added). The STC has recently decided *St. Louis BOA Plaza, LLC, et al. v. Stephen Conway, Assessor, City of St. Louis*, 17-20066, 17-20067, and 17-20068 (2019) and the Commission, in affirming the decision of the hearing officer, stated:

“The assessor values property in fee simple interest. An estate in fee simple is ownership of all the rights in a property. A lease conveys property rights to another. The tenant receives a leasehold interest that allows the tenant the right to use and occupy the property under conditions. *The fee ownership remains with the owner of the property.* For ad valorem purposes, the property to be assessed consists of the land and improvements and the possessory interests in the property. Section 137.115.1 RSMo. In most cases, the value of the leased fee and the value of the leasehold should approximate the value of the fee simple unencumbered by a lease.” (emphasis added).

“While the Commission has some discretion in deciding which approach best estimates the value of a particular property,” the Commission's choice of valuation approach “must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors.” *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). To assume that a vacant property is the best or most accurate measure for a value of the subject properties doesn't equate to evidence. The present record contains no evidence to support the theory. Respondent's appraisal summary included comparable sales in the Kansas City area. The record indicates a lack of sufficient comparable sales for Complainants. There was no substantial or persuasive evidence to support Complainants' TVM under the sales comparison approach.

The income approach "is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. "The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id.* "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use." *Id.* (internal quotation omitted). "When applying the income approach to valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered." *Id.*

True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future. *Aspenhof Corp. v. State Tax Commission*, 789 S.W. 2d 867, 869 (Mo. App. 1990). It is true that property can only be valued according to a use to which the property is readily available. But this does not mean that in order for a specific use to be the highest and best use for calculating the property's true value in money that particular use must be available to anyone deciding to purchase the property. A determination of the true value in money cannot reject the property's highest and best use and value the property at a lesser economic use of the property. *Snider* at 341, 348-349 (Mo. 2005).

Mr. Scaletty determined there is sufficient market-based income data for retail properties to estimate the potential NOI of the subject property and utilize the income approach. “Any property that has the potential to generate income can be valued under the income capitalization approach.” Appraisal Institute, *The Appraisal of Real Estate* 441 (14th ed. 2013). Like the sales comparison and cost approach, the income approach is market-based and is aimed at estimating “the property’s true value in money.” *Snider*, 156 S.W.3d at 347; see also *The Appraisal of Real Estate* at 36 n.1 (noting “all three approaches to value are ‘market’ approaches in that they rely on market data”). The concept of “fair market value is a hypothetical metric that asks what price an informed buyer and an informed seller would agree on when neither must act, but both are willing.” *Grantson v. Langenbach*, 599 S.W.3d 167, 183 (Mo. banc 2020). One way to estimate fair market value is with an income approach capitalizing the income the real property could generate. *Snider*, 156 S.W.3d at 347. Mr. Scaletty’s income approach did develop a value by superimposing a market-based “potential” NOI and capitalization rate on the subject’s real estate to estimate the TVM. But, no evidence was presented that Complainants did supply its appraisers with income and expenses from which the subject property’s actual NOI could be calculated. This preference to use hypothetical information over actual information for the subject properties to establish a TVM diminishes the credibility of Mr. Scaletty’s income approach. Mr. Scaletty’s finding of value is ultimately not persuasive due to the lack of comparables that truly parallel the subject property’s potential income. There was no substantial or persuasive evidence to support Complainants’ appraisers’ opinions of TVM under the income approach.

Although not required given the burden of proof, Respondent presented exhibits and testimony that support the BOE's valuation of the subject property. Respondent's evidence persuasively supports the BOE's values.

CONCLUSION AND ORDER

The BOE decision is AFFIRMED. The TVM of the subject properties, as of January 1, 2021, was:

Appeal No.	BOE VALUE
21-32013	\$7,967,000
21-32014	\$265,800
21-32015	\$3,500,000

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 Clay 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

Erica M. Gage
Senior Hearing Officer
State Tax Commission

Certificate of Service

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