



STATE TAX COMMISSION OF MISSOURI

QUIK TRIP CORPORATION) Appeal No. 19-32019
) Parcel/Loc. No.
) 14-705-00-03-003.81
)
 Complainant,)
)
 v.)
)
 CATHY RINEHART, ASSESSOR,)
 CLAY COUNTY, MISSOURI,)
)
 Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On February 12, 2021, a State Tax Commission (STC) Senior Hearing Officer (Hearing Officer) entered a Decision and Order (Decision) setting aside the decision of the Clay County Board of Equalization (BOE) and finding the true value in money (TVM) of the subject commercial property on January 1, 2019¹, was \$0 because the subject property consisted of a combination of intangible use restrictions, a right of first refusal, and a reservation of subsurface mineral rights for property not currently being used or permitted

¹ Missouri operates on a two-year assessment cycle for valuing real property. See Section 137.115.1. Absent new construction or improvements to a parcel of real property, the assessed value as of January 1 of the odd year remains the assessed value as of January 1 of the following even year. *Id.*

for mining.

Cathy Rinehart, the former assessor² of Clay County, Missouri, (Respondent) filed a timely Application for Review of the Decision of the Hearing Officer. Quik Trip Corporation (Complainant) subsequently filed its response.

We AFFIRM the Decision of the Hearing Officer. Segments of the Hearing Officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The subject property is comprised of a use restriction, a right of first refusal, and a reservation of mineral rights related to real property located at 6309 NE Antioch Road, in Gladstone, Clay County, Missouri. The parcel/locator number assigned to the subject property is 14-705-00-03-003.81. The subject property was formerly combined with a parcel of land consisting of approximately 1.01 acres of land and improved by a convenience store gas station. Complainant had sold the land and improvement to Quarter King LLC for \$370,000 in 2017. Quarter King LLC converted the former convenience store gas station into a coin-operated laundry mat. Complainant conveyed title of the land and improvement to Quarter King LLC by Special Corporation Warranty Deed (Deed). The Deed contained a description of the use restriction, the right of first refusal, and the reservation of mineral rights reserved by Complainant. Specifically, the Deed provided:

- A. Use Restriction. The Property shall not be used as a retail convenience grocery store, donut shop, coffee shop, fast food or quick-service restaurant (excluding any sit-down restaurant with full-service wait staff), smoke shop, or other retail outlet selling tobacco products, electronic cigarettes, vapor devices or nicotine-based products as one of its primary

² Tracy Baldwin is the current Assessor of Clay County.

uses, a sexually oriented business for the sale of adult materials or drug paraphernalia, the retail sale of package or carryout beer, wine, liquor or spirits, the retail sale of motor fuels, or for the sale of items commonly sold in a convenience store including, but not limited to, candy, chips, donuts, sandwiches, pizza, snacks, coffee, soda and other carbonated beverages; and

B. Right of First Refusal. If Grantee, within thirty (30) years from May 31, 2017, elects to sell the Property, Grantee shall provide written notice of such election to Grantor and, upon entering into a binding contract or letter of intent with a third party to sell the Property, provide Grantor with a copy of the third party contract. The third party contract must (a) contain the legal name of the purchasing entity together with the names and addresses of all persons and/or other legal entities having an ownership interest in such entity, and (b) be non-assignable. Upon Grantor's receipt of a copy of the third party contract, Grantor shall have the right of first refusal to purchase the Property on the same terms and conditions of such third party contract or letter of intent. Grantor may exercise its right of first refusal at any time within thirty (30) days of Grantor's receipt of such third party contract (the "ROFR Period"). The exercise of the right of first refusal by Grantor shall be by written notice to Grantee prior to the expiration of the ROFR Period. In the event Grantor has not exercised its right of first refusal prior to the expiration of the ROFR Period, Grantee shall be free to sell the Property to such third person, in accordance with the terms and conditions of such third party contract. In any event, Grantor's failure to exercise its right of first refusal on any offer shall not be a waiver of its right of first refusal on any subsequent sale. In the event Grantor exercises its right of first refusal, Grantor and Grantee shall promptly enter into a purchase and sale contract for the purchase and sale of the Property on the terms set forth in the third party contract.

C. Mineral Rights. Any and all mineral rights associated with the Property are hereby reserved and retained by and unto the Grantor.

Respondent subsequently informed Complainant that she had split the parcel containing the land and improvement into two parcel accounts for assessment and taxation: one consisting of the surface land and improvement and one purporting to consist of the use restriction, the right of first refusal, and the reservation of mineral rights retained by Complainant through the Deed. Respondent informed Complainant that Respondent had split the ownership interest of the original parcel into two separate taxable parcel accounts because the title of the original parcel was not transferred to Quarter King LLC in fee simple absolute. The appraised value of the original parcel in 2017 was \$542,700.

In the 2018 Notice of Valuation that Respondent sent to Complainant, Respondent appraised the subject property consisting of the use restriction, the right of first refusal, and the reservation of mineral rights retained by Complainant as commercial real property at \$172,700.

In the 2019 Notice of Valuation that Respondent sent to Complainant, Respondent appraised the subject property consisting of the use restriction, the right of first refusal, and the reservation of mineral rights retained by Complainant as commercial real property at \$172,700.

The BOE valued the subject property as commercial real property with a TVM of \$172,700 as of January 1, 2019. Complainant filed a timely appeal with the STC, and the case proceeded to an evidentiary hearing in which both parties were represented by counsel and presented exhibits and evidence.

The Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law finding that Complainant presented substantial and persuasive

evidence establishing that the subject property had no TVM as of January 1, 2019.

Respondent subsequently filed her Application for Review. The Commission issued its Order allowing Complainant time to file its Response. Complainant filed its Response.

CONCLUSIONS OF LAW

Respondent's Points on Review

Respondent asserts the Hearing Officer's Decision is erroneous because:

- (1) The Hearing Officer erred in classifying some of the interests retained by Complainant in the Deed as intangible property and not subject to ad valorem assessment;
- (2) The Hearing Officer erred in interpreting and applying Section 137.115.7 in finding that the mineral rights must be assessed based on the subject property's current use;
- (3) The Hearing Officer erred in determining the fair market value of the subject property to be \$0 as of January 1, 2019.

In its response to Respondent's Application for Review, Complainant counter argues that the Hearing Officer's Decision was not erroneous because Respondent was authorized only to assess real property and tangible personal property, not the intangible business interests comprised of the right of first refusal and the use restrictions. Complainant further counter argues that the Hearing Officer was not erroneous because the undersurface of the subject property comprising the reservation of mineral rights in favor of Complainant had not been bonded and permitted under Chapter 444 of the Revised Statutes of Missouri and was not being used on the relevant date of assessment for any purpose. Complainant requests this Commission to examine whether the Hearing Officer erred in concluding that Complainant failed to prove its claim of discriminatory assessment.

Standard of Review

A party subject to a decision and order of a hearing officer of the STC may file an

application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the hearing officer the decision and order of the hearing officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). "The extent of that review extends to credibility as well as questions of fact." *Lebanon Properties I*, 66 S.W.3d at 770. The Commission "is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to." *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

Commission's Ruling

For the reasons that follow, the Commission finds Respondent's Application for Review to be unpersuasive. Given our determination regarding Respondent's Application for Review, we find it unnecessary to review Complainant's argument regarding its claim of discriminatory assessment. The Commission, having reviewed the whole record and having considered the Hearing Officer's Decision, the Application for Review of Respondent, and the Response of Complainant, affirms the Hearing Officer's Decision.

There is a presumption of validity, good faith and correctness of assessment by the

BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE's assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” *See, Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

The Hearing Officer is not bound by any single formula, rule or method in

determining true value in money, but is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled. The Hearing Officer is the fact finder, and the relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County*, 515 S.W.2d at 450; *Chicago, Burlington & Quincy Railroad Company*, 436 S.W.2d at 650.

The Hearing Officer as the trier of fact may consider the testimony of an expert witness and give it as much weight and credit as he or she may deem it entitled to when viewed in connection with all other circumstances. The Hearing Officer is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all or none of the expert's testimony and accept it in part or reject it in part. *St. Louis County v. Boatmen's Trust Co.*, 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); *Vincent by Vincent v. Johnson*, 833 S.W.2d 859, 865 (Mo. 1992); *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. 1991); *Curnow v. Sloan*, 625 S.W.2d 605, 607 (Mo. banc 1981).

Proper methods of valuation and assessment of property are delegated to the STC. It is within the purview of the Hearing Officer to determine the method of valuation to be adopted in a given case. *See, Nance v. STC*, 18 S.W.3d 611, at 615 (Mo. App. W.D. 2000); *Hermel*, 564 S.W.2d at 896; *Xerox Corp. v. STC*, 529 S.W.2d 413 (Mo. banc 1975). Missouri courts have approved the comparable sales or market approach, the cost approach and the income approach as recognized methods of arriving at fair market value. *St. Joe Minerals Corp.*, 854 S.W.2d at 529 (App. E.D. 1993); *Aspenhof Corp. v. STC*, 789 S.W.2d 867, 869 (App. E.D. 1990); *Quincy Soybean Company, Inc., v. Lowe*,

773 S.W.2d 503, 504 (App. E.D. 1989), *citing Del-Mar Redevelopment Corp v. Associated Garages, Inc.*, 726 S.W.2d 866, 869 (App. E.D. 1987); and *State ex rel. State Highway Comm'n v. Southern Dev. Co.*, 509 S.W.2d 18, 27 (Mo. Div. 2 1974).

Section 137.115.16 provides, in relevant part:

Any portion of real property that is available as reserve for strip, surface, or coal mining for minerals for purposes of excavation for future use or sale to others that has not been bonded and permitted under chapter 444 shall be assessed based upon how the real property is currently being used. . . .For purposes of this subsection, “mine property” shall mean all real property that is in use or readily available as a reserve for strip, surface, or coal mining for minerals for purposes of excavation for current or future use or sale to others that has been bonded and permitted under chapter 444.

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. A Hearing Officer sits as the trier of fact with discretion to weigh the evidence admitted into the record. A Hearing Officer may consider the testimony of an expert witness and give it as much weight and credit as he or she may deem it entitled when viewed in connection with all other circumstances. A Hearing Officer is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all, some, or none of the expert’s testimony and accept it in part or reject it in part. A Hearing Officer is not bound by appraisal industry standards; rather, he or she applies the law to the facts in evidence, weighing the evidence to determine which evidence is more persuasive.

Here, Complainant had the burden of proving that the BOE’s determination regarding the TVM of the subject property was erroneous and establishing the correct TVM to place upon the subject property. Although Respondent presented evidence in an attempt to establish that the use restrictions, the right of first refusal, and the mineral

rights constituted taxable property that was required to be assessed, we disagree given the specific facts established by the evidence in the record. The weight of the credible evidence established that the use restrictions and the right of first refusal simply were *not* real property or tangible personal property and therefore, not taxable and not required to be assessed. The weight of the credible evidence in the record established that the mineral rights were not taxable and not required to be assessed because the property had not been bonded and permitted under Chapter 444 and was not being used for any purpose as of January 1, 2019. Furthermore, Respondent's approach to valuing the subject property did not fit within any of the three recognized approaches to value, *to wit*: the sales comparison approach, the income approach, or the cost approach.

The Hearing Officer specifically found:

When Complainant sold the land and improvement to Quarter King in a negotiated sale, the parties to the sale agreed that Quarter King would own the land and improvement subject to Complainant's retention of use restrictions on the land and improvement, a right of first refusal if Quarter King decided to sell the land and improvement, and mineral rights. . . .

Respondent's method of simply subtracting the purchase price of the property now owned by Quarter King subject to deed restrictions and the reservation of mineral rights from the 2017 TVM of the single parcel formerly owned by Complainant is improper and arbitrary based upon authority cited in Respondent's own Post-Hearing Brief. Such states '[t]he sale price cannot be considered as a reflection of the fee estate's market value because Complainant admitted that they only dispose of their real estate for salvage value. The Assessor does not value real estate at its salvage value. 'Real property is to be valued and taxed at its highest and best use – its true value in money.' *citing Snider*, 156 S.W.3d at 341. Contrary to this authority, Respondent determined the value of the Quarter King parcel to have a TVM equal to its sales price (potentially only its salvage value) and then simply subtracted this value from the 2017 TVM of the formerly combined parcels. Based upon Respondent's own brief, Quarter King likely did not pay market value for its parcel but instead paid salvage value. This constitutes substantial and persuasive evidence that Respondent's methodology for valuation of the subject property had an

internal calculation flaw, namely the use of the sale price paid by Quarter King subtracted from the 2017 value placed on the entire property formerly owned by Complainant.

No effort was made to determine the TVM of the single parcel formerly owned by Complainant or the subject property consisting of intangible use restrictions, a right of first refusal, and mineral rights based upon any of the three accepted methods to value real property. Under the income approach, income and expenses would be utilized in determining TVM. In the sales comparison approach, multiple comparable sales would be identified and adjustments would be made to account for differences between the subject property and the comparable properties. Under the cost approach, the cost to replace or reproduce the property would be calculated. None of this was done for either the former single parcel formerly owned by Complainant or the two parcels, one of which consists of the land and improvement now owned by Quarter King and one of which consists of the intangible use restrictions, a right of first refusal, and mineral rights owned by Complainant. The evidence also established that Respondent did not do a highest and best use analysis of either the subject property or the Quarter King property for 2019.

The Hearing Officer also specifically found that Respondent was not entitled to assess and tax the mineral rights held by Complainant because the evidence in the record established that the subject property had not been bonded and permitted under Chapter 444 and was not being used for mining or any other purpose as of January 1, 2019.

We find that the record supports the Hearing Officer's findings and conclusions and that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895-96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err in finding the TVM of the subject property to be \$0 as of January 1, 2019.

ORDER

The Decision of the Hearing Officer is AFFIRMED. Segments of the Hearing Officer's Decision, including the findings of fact and conclusions of law therein, may

have been incorporated into our Order without further reference, as if set out in full, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order. If judicial review of this Order is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this Order is deemed final and the Collector of Clay County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED August 11, 2023.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on August 11, 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



STATE TAX COMMISSION OF MISSOURI

QUIK TRIP CORPORATION) Appeal No. 19-32019
) Parcel/Loc. No. 14-705-00-03-
) 003.81
)
 Complainant,)
)
 v.)
)
 CATHY RINEHART, ASSESSOR,)
 CLAY COUNTY, MISSOURI,)
)
 Respondent.)

DECISION AND ORDER

Quik Trip Corporation (Complainant) appeals the Clay County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2019, was \$172,700, with an assessed value of \$55,040. Complainant claims the property is overvalued and proposes a value of \$0. Complainant produced substantial and persuasive evidence establishing overvaluation. The BOE's decision is set aside.³

Complainant was represented by counsel Chris Mattix and Greg Musil. Cathy Rinehart (Respondent) was represented by counsel Patricia Hughes. The evidentiary

³ Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

hearing was conducted on June 16, 2020, via Webex, with the consent of both parties.

FINDINGS OF FACT

2. Subject Property. The subject property is located at 6309 NE Antioch Road, in Gladstone, Clay County, Missouri. The parcel/locator number is 14-705-00-03-003.81. The subject property was formerly part of a parcel of land consisting of approximately 1.01 acres land and comprised of approximately 45,220 square feet improved by a convenience store gas station. (Hrg. Tr. at 75:6-10).

In May 2017, Complainant sold the land and improvement to Quarter King for \$370,000.00. (Ex A, B, C, 2i) Complainant conveyed title to Quarter King LLC by Special Corporation Warranty Deed dated November 15, 2017. (Ex E, 2h) The Deed contained the following provisions:

A. Use Restriction. The Property shall not be used as a retail convenience grocery store, donut shop, coffee shop, fast food or quick-service restaurant (excluding any sit-down restaurant with full-service wait staff), smoke shop, or other retail outlet selling tobacco products, electronic cigarettes, vapor devices or nicotine-based products as one of its primary uses, a sexually oriented business for the sale of adult materials or drug paraphernalia, the retail sale of package or carryout beer, wine, liquor or spirits, the retail sale of motor fuels, or for the sale of items commonly sold in a convenience store including, but not limited to, candy, chips, donuts, sandwiches, pizza, snacks, coffee, soda and other carbonated beverages; and

B. Right of First Refusal. If Grantee, within thirty (30) years from May 31, 2017, elects to sell the Property, Grantee shall provide written notice of such election to Grantor and, upon entering into a binding contract or letter of intent with a third party to sell the Property, provide Grantor with a copy of the third party contract. The third party contract must (a) contain the legal name of the purchasing entity together with the names and addresses of all persons and/or other legal

entities having an ownership interest in such entity, and (b) be non-assignable. Upon Grantor's receipt of a copy of the third party contract, Grantor shall have the right of first refusal to purchase the Property on the same terms and conditions of such third party contract or letter of intent. Grantor may exercise its right of first refusal at any time within thirty (30) days of Grantor's receipt of such third party contract (the "ROFR Period"). The exercise of the right of first refusal by Grantor shall be by written notice to Grantee prior to the expiration of the ROFR Period. In the event Grantor has not exercised its right of first refusal prior to the expiration of the ROFR Period, Grantee shall be free to sell the Property to such third person, in accordance with the terms and conditions of such third party contract. In any event, Grantor's failure to exercise its right of first refusal on any offer shall not be a waiver of its right of first refusal on any subsequent sale. In the event Grantor exercises its right of first refusal, Grantor and Grantee shall promptly enter into a purchase and sale contract for the purchase and sale of the Property on the terms set forth in the third party contract.

C. Mineral Rights. Any and all mineral rights associated with the Property are hereby reserved and retained by and unto the Grantor.

(Ex E, 2h).

Quarter King converted the convenience store gas station into a coin-operated laundry mat. (Hrg. Tr. at 34:11-17; 77:8-9). Respondent subsequently split the parcel into two parcels, one consisting of the surface land and improvement and one consisting of the interest retained by Complainant. The parcel consisting of the interest retained by Complainant is the subject property in this appeal.

3. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2019, was \$172,700. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2019, was \$172,700.

Respondent informed Complainant that Respondent split the ownership interests of the previous parcel into two separate taxable parcel accounts because the title of the previous parcel was not transferred in fee simple absolute. The appraised value of the previous parcel in 2017 prior to the sale had been \$542,700. In the 2018 Notice of Valuation sent to Complainant, Respondent placed an appraised value of \$172,700 on the deed restrictions and mineral rights retained by Complainant. In the 2019 Notice of Valuation sent to Complainant, Respondent placed an appraised value of \$172,700 on the deed restrictions and mineral rights retained by Complainant. (Ex. F) The BOE affirmed this TVM.

4. Complainant's Evidence. Complainant offered into evidence the following:

Exhibit	Description
Exhibit A	Contract for Sale of Real Estate to Quarter King
Exhibit B	First Amendments to Sale Contract
Exhibit C	Second Amendment to Sale Contract
Exhibit D	2018 Valuation Notice and 2018 Appraisal Card
Exhibit E	Special Corporate Warranty Deed to Quarter King
Exhibit F	2019 Valuation Notice and 2019 Appraisal Card
Exhibit G	2019 Clay County BOE Appeal
Exhibit H	2019 STC Appeal
Exhibit I	Clay County Answers to Quik Trip's First Set of Interrogatories and First Request for Production of Document
Exhibit J	Clay County Responses to Quick Trip's First Request for Admissions
Exhibit K	Written Direct Testimony of Jim Beilman

Exhibits A through H and K were admitted to be given such weight as the Hearing Officer deems appropriate. Exhibits I and J were not admitted.

Complainant cross-examined Respondent's appraiser, Mr. Shoun. Mr. Shoun acknowledged that Respondent did not prepare a highest and best use analysis to support its appraisal conclusions. (Hrg. Tr. at 77:20-24). When asked whether it is a common

appraisal practice to reference a prior year's fair market value (TVM) to determine a current year's TVM, Mr. Shoun testified it is not. (Hrg. Tr. at 91:16-19).

5. Respondent's Evidence. Respondent offered into evidence the following:

Exhibit	Description
Written Direct	Mike Shoun
Exhibit 1	Valuation Report and Appendix
Exhibit 2	Listing of Quik Trip properties
Exhibit 3	Mineral Resources in Clay County, Missouri

Exhibits 1 through 3 were admitted to be given such weight as the Hearing Officer deems appropriate.

6. Value. The TVM of the subject property on January 1, 2019, was \$0, with an assessed value of \$0.

7. No Evidence of New Construction & Improvement. There was no evidence of new construction and improvement from January 1, 2019, to January 1, 2020, therefore the assessed value for 2019 remains the assessed value for 2020. Section 137.115.1.

CONCLUSIONS OF LAW AND DECISION

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best

use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

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

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

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

2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties

or based solely upon evidence presented by the parties. Id.

3. Complainant's Burden of Proof

The BOE's valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage*, 722 S.W.2d at 77 (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party"). A taxpayer does not meet his burden if the 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. Discrimination

To obtain a reduction in assessed value based upon discrimination, the Complainants must (1) prove the TVM of their property on January 1, 2019; and (2) show an intentional plan of discrimination by the assessing officials resulting in an assessment of that property at a greater percentage of value than other property, generally, within the same class within the same taxing jurisdiction. *Koplar v. State Tax Commission*, 321

S.W.2d 686, 690, 695 (Mo. 1959). Evidence of value and assessments of a few properties does not prove discrimination. Substantial evidence must show that all other property in the same class, generally, is actually undervalued. *State ex rel. Plantz v. State Tax Commission*, 384 S.W.2d 565, 568 (Mo. 1964). The difference in the assessment ratio of the subject property the average assessment ratio in the subject county must be shown to be grossly excessive. *Savage*, 722 S.W.2d at 79. No other methodology is sufficient to establish discrimination. *Cupples-Hesse v. State Tax Commission*, 329 S.W.2d 696 (Mo. banc 1959).

5. Complainant Fails To Prove Discrimination

Where there is a claim of discrimination based upon a lack of valuation consistency, Complainant has the burden to prove the level of assessment for the subject property in 2019. This is done by independently determining the market value of the subject property and dividing the market value into the assessed value of the property as determined by the assessor's office.

Complainant must then prove the average level of assessment for commercial property in Clay County for 2019. This is done by (a) independently determining the market value of a representative sample of residential properties in Clay County; (b) determining the assessed value placed on the property by the assessor's office for the relevant year; (c) dividing the assessed value by the market value to determine the level of assessment for each property in the sample, and (d) determining the mean and median of the results.

The difference between the actual assessment level of the subject property and the

average level of assessment for all residential property, taken from a sufficient representative sample in Clay County must demonstrate a disparity that is grossly excessive. *Savage*, 722 S.W.2d at 79.

Complainants did not demonstrate that a statistically significant number of other commercial properties within Clay County are being assessed at a lower ratio of market value than its property. Complainant's claim of discrimination is based upon nothing more than speculation and conjecture.

6. Intangibles

In Missouri, intangible personal property is not subject to property taxation. Intangible property has no physical substance but, rather, is a right of action such as goodwill or trade secrets and which may be evidenced by documents that have no intrinsic value, such as stocks, bonds, notes, and judgments. *Webster's Third New International Dictionary*, unabridged, 1976. *John Hancock Mutual Life v. Stanton*, No. 95-45000, 1996 WL 663128, at 13 (Mo.St.Tax.Com.).

Some properties have both a "market value" and a "going concern value." The latter is value enhanced by, among other things, the intangible value of an operating business enterprise.

"Going concern" has both a tangible and intangible component. That portion of the going concern value which is the result of assemblage is tangible and taxable; while the portion of going concern value which is attributable to a saleable business asset based upon reputation rather than physical assets is intangible and not taxable. *Boise Cascade*

Corporation v. Department of Revenue, 12 Or. Tax 263 (1991); *John Hancock Mutual Life*, 1996 WL 663128, at 13.

Similar to assemblage value, the concept that one buying the real estate necessarily gets the business is called "transmissible value." Courts have long held that transmissible value constitutes taxable real estate, even when intertwined with a business. *Public Service Company of New Hampshire v. Hew Hampton*, 136 A. 2d 591 (N.H. 1957); *John Hancock Mutual Life*, 1996 WL 663128, at 13.

As articulated in *State ex rel. N/S Associates v. Board of Review of the Village of Greendale*, 473 N.W.2d 554 (Wisc. App. 1991), the test for isolating intangible business value is as simple as asking whether the disputed value is appended to the property and, thus transferrable with the property or is it independent of the property so that it either stays with the seller or dissipates upon sale. *John Hancock Mutual Life*, 1996 WL 663128, at 13.

The presence of intangibles is determined using the following test:

- (1) The intangible asset must be identifiable, i.e., legally recognized;
- (2) It must be capable of private ownership;
- (3) It must be marketable, i.e., capable of being financed and/or sold separate and apart from the tangible property; and
- (4) Practically, it must possess value, i.e., have the potential to earn income, or its existence is of no consequence. *Simon Property Group v. Boley*, Nos. 95-30038 through 95-30041, 95-30043 and 95-30044, 1996 WL 600855, at 8 (Mo.St.Tax.Com).

7. What May Be Taxed

Section 137.115 describes what "real" property is subject to ad valorem assessment. The relevant portion of the statute reads: "[t]he assessor shall annually assess all real

property, including any new construction and improvements to real property, and possessory interests in real property at the percent of its true value in money set in subsection 5 of this section.” Section 137.115.1. Additionally, certain mineral and mining interests are taxable, but only if at the time of assessment the mining activity has been bonded or permitted under chapter 444; if not, then the property must be assessed based upon how it is currently being used. Section 137.115.17². In summation, the relevant portion of the statute only permits ad valorem assessment on (i) real property; (ii) possessory interests in real property; and (iii) certain mineral interests if the property has been bonded and permitted for mining activity.

8. Complainant Proves Value

Complainant presented substantial and persuasive evidence to establish the TVM as of January 1, 2019, to be \$0 for the subject property. Complainant’s evidence established that the subject property has no TVM. When Complainant sold the land and improvement to Quarter King in a negotiated sale, the parties to the sale agreed that Quarter King would own the land and improvement subject to Complainant’s retention of use restrictions on the land and improvement, a right of first refusal if Quarter King decided to sell the land and improvement, and mineral rights. No mining permit pursuant to Section 444 had been or has since been applied for, and no mining was or is now occurring. Thus, pursuant to 137.115.17, the subject property is to be assessed based upon how it is currently being

² The version of Section 137.115 in effect as of August 28, 2020, contains subsection .16, which contains the language of subsection .17 in effect as of January 1, 2019.

used. As of January 1, 2019, to the date of the evidentiary hearing, Complainant was not making any use of the subject property, which consisted of intangibles.

Respondent's method of simply subtracting the purchase price of the property now owned by Quarter King subject to deed restrictions and the reservation of mineral rights from the 2017 TVM of the single parcel formerly owned by Complainant is improper and arbitrary based upon authority cited in Respondent's own Post-Hearing Brief. Such states "[t]he sale price cannot be considered as a reflection of the fee estate's market value because Complainant admitted that they only dispose of their real estate for salvage value. The Assessor does not value real estate at its salvage value. Real property is to be valued and taxed at its highest and best use –its true value in money." *citing Snider*, 156 S.W.3d at 341. Contrary to this authority, Respondent determined the value of the Quarter King parcel to have a TVM equal to its sales price (potentially only its salvage value) and then simply subtracted this value from the 2017 TVM of the formerly combined parcels. Based upon Respondent's own brief, Quarter King likely did not pay market value for its parcel but instead paid salvage value. This constitutes substantial and persuasive evidence that Respondent's methodology for valuation of the subject property had an internal calculation flaw, namely the use of the sale price paid by Quarter King subtracted from the 2017 value placed on the entire property formerly owned by Complainant.

No effort was made to determine the TVM of the single parcel formerly owned by Complainant or the subject property consisting of intangible use restrictions, a right of first refusal, and mineral rights based upon any of the three accepted methods to value real

property. Under the income approach, income and expenses would be utilized in determining TVM. In the sales comparison approach, multiple comparable sales would be identified and adjustments would be made to account for differences between the subject property and the comparable properties. Under the cost approach, the cost to replace or reproduce the property would be calculated. None of this was done for either the former single parcel formerly owned by Complainant or the two parcels, one of which consists of the land and improvement now owned by Quarter King and one of which consists of the intangible use restrictions, a right of first refusal, and mineral rights owned by Complainant. The evidence also established that Respondent did not do a highest and best use analysis of either the subject property or the Quarter King property for 2019.

Respondent cites Section 259.220, which states:

All rights and interests in or to oil, gas or other minerals underlying land, whether created by or arising under deed, lease, reservation of rights, or otherwise, which rights or interests are owned by any person other than the owner of the land, **shall be assessed and taxed separately to the owner of such rights or interests in the same manner as other real estate.** The taxes on such rights or interests which are not owned by the owner of the land shall not be a lien on the land.

However, such statute must be read in line with 137.115.17 which states:

Any portion of real property that is available as reserve for strip, surface, or coal mining for minerals for purposes of excavation for future use or sale to others that has not been bonded and permitted under chapter 444 shall be assessed based upon how the real property is currently being used.

Respondent split the subject property from the land and improvement owned by Quarter King and subsequently assessed the subject property separately from the land and

improvement. However, the evidence in the record established that Respondent split the subject property from the land and improvement on the ground that the subject property consists of intangible use restrictions *and* a right of first refusal *and* mineral rights. Section 259.220 does not provide for the assessment of anything more than rights and interests in or to oil, gas or other minerals underlying land. Additionally, Respondent's method of assessing the subject property by combining all of these intangibles into a single parcel account and subtracting the sale price of the land and improvement from the 2017 TVM Respondent had placed on the single parcel formerly owned by Complainant is not a method of assessment conducted in the same manner as other real estate. Furthermore, the subject property is not "being used." Complainant put forth evidence that it has no actual use of the property.

ORDER

The assessed valuation for the subject property as determined by Respondent and sustained by the BOE for the subject tax day is SET ASIDE.

The assessed value for the subject property for tax years 2019 and 2020 is set at \$0.

Application for Review

A party may file with the STC 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 facts or law as grounds upon which it is claimed the decision is erroneous. Said application must be in writing addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, and a copy of

said application must be sent to each person at the address 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 139.031.8.

Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed.

Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED, February 12, 2021.

STATE TAX COMMISSION OF MISSOURI

John J. Treu³
Senior Hearing Officer

³ The Hearing Officer heard the appeal and drafted this Decision and Order prior to his departure from employment with the STC.

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on February 12, 2021, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Elaina McKee
Legal Coordinator

Contact Information for State Tax Commission:

Missouri State Tax Commission
421 East Dunklin Street
P.O. Box 146
Jefferson City, MO 65102-0146
573-751-2414
Fax 573-751-1341