



STATE TAX COMMISSION OF MISSOURI

WJD PROPERTIES, LLC,) Appeal No. 21-110394
) Parcel No. 16O230543
)
 Complainant,)
)
 v.)
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
)
 Respondent.)

ORDER REVERSING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On March 24, 2023, State Tax Commission (STC) Senior Hearing Officer Benjamin C. Slawson (Hearing Officer) entered a Decision and Order (Decision) finding that WJD Properties, LLC, (Complainant) was not an owner of the subject property on the valuation date of January 1, 2021, and, therefore, did not have standing to appeal the 2021 assessment of the subject property made by Jake Zimmerman, Assessor, St. Louis County (Respondent). Complainant subsequently timely filed an Application for Review of the Decision. Respondent filed a Response to Complainant's Application for Review.

We REVERSE 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 located at 1259 Hyannis Dr., Saint Louis, Missouri. The parcel/locator number is 16O230543. On December 29, 2021, Complainant purchased the subject property at a non-judicial foreclosure auction and made payment, which included the real property taxes owed on the subject property. Also on December 29, 2021, Complainant appealed Respondent's assessment to the STC pursuant to 12 CSR 30-3.010(1)(B)1¹ and claimed overvaluation as its grounds for appeal.

On January 24, 2023, Respondent filed his Motion to Dismiss asserting that Complainant did not have standing to appeal the valuation of the subject property as of January 1, 2021, because Complainant had not been the owner of the subject property on that date. Exhibit 1, which was filed along with the Motion to Dismiss, recited Respondent's stipulated facts regarding the appeal:

¹ 12 CSR 30-3.010(1)(B)1 provides: In any county or the City of St. Louis, the owner may appeal directly to the State Tax Commission (a) where the assessor fails to notify the current owner of the property of an initial assessment or an increase in assessment from the previous year, prior to thirty (30) days before the deadline for filing an appeal to the board of equalization, including instances in which real property was transferred and the prior owner was notified, or (b) where a new owner purchased real property less than thirty (30) days before the deadline for filing an appeal to the board of equalization or later in the tax year, regardless if the assessment is an initial assessment, an increase or decrease in assessment, or an assessment established in the prior year. Appeals under this paragraph shall be filed within thirty (30) days after a county official mailed a tax statement or otherwise first communicated the assessment or the amount of taxes to the owner or on or before December 31 of the tax year in question, whichever is later. Proof of late notice, the date of purchase, and/or notice sent to the prior owner shall be attached to, or set forth in, the complaint.

1. Complainant purchased the property at a nonjudicial foreclosure auction on December 29, 2021, and payment was made at that time. See attached Respondent's Exhibit 1 – Deed.¹
2. 2021 property taxes on the property were still due at the time of the sale and were paid by Complainant.
3. The trustee's deed to the property was executed on Jan 14, 2022 and recorded on Jan 18, 2022.
4. The parties stipulate that \$195,500 is what the property should be assessed at.
5. Complainant rightfully filed this original appeal directly to the State Tax Commission pursuant to 12 CSR 30-3.010(1)(B).

¹ Respondent stipulates that the date of the auction on the trustee's deed is incorrect. The deed incorrectly states at the bottom of the second paragraph that the date of the Auction was January 14, 2022, however, the correct date of the auction was December 29, 2021.

(Motion to Dismiss, Exhibit 1)

On February 2, 2023, Complainant filed its Reply to Respondent's Motion to Dismiss. In the Reply, Complainant stipulated that it had purchased and paid for the subject property at the foreclosure auction on December 29, 2021, received a deed to the subject property on January 14, 2022, and recorded the deed on January 18, 2022. Complainant opposed Respondent's Motion to Dismiss and argued that Complainant had standing to appeal the 2021 assessment because it owned the property on December 29, 2021, and had paid the taxes owed on the subject property for the 2021 tax year. Complainant had paid the taxes under protest.

On March 24, 2023, the Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law finding that the STC lacked

jurisdiction to hear Complainant's appeal because Complainant did not have standing to appeal as Complainant was not the owner of the subject property as of January 1, 2021.

Complainant subsequently timely filed its Application for Review of the Decision of the Hearing Officer. The STC thereafter issued its Order allowing the Application for Review and granting Respondent time to file a response. Respondent filed a Response.

CONCLUSIONS OF LAW

Complainant's Points on Review

Complainant asserts the Hearing Officer's Decision should be set aside because:

1. The parties stipulated to the fact that Complainant purchased and paid for the subject property on December 2021 and gave Complainant superior title as to the seller on that date regardless of whether the seller ever delivered a deed for recording;
2. The Decision erroneously relied on the notice statute for recording conveyances of real property, Section 442.380, which requires conveyances to be recorded, in that the notice statute does not control the actual transfer of ownership and Complainant had standing to appeal to the STC because it was the real party in interest, similar to the taxpayer in *Herky, LLC v. Holman*, 277 S.W.3d 702 (Mo. App. E.D. 2008);
3. The Decision erroneously analyzed the issue of standing as a question of legal title in light of case law on the issue because the proper analysis is not legal title to the property but whether Complainant was a real party in interest, i.e., Complainant had an interest in the outcome of the appeal.

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 138.432². The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify,

² All statutory references are to RSMo. 2000, as amended, unless otherwise indicated.

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 Complainant's Application for Review to be persuasive. The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision, the application for review of Complainant, and the response of Respondent, reverses the Hearing Officer's Decision.

Standing is a question of law. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). "Parties seeking relief 'bear the burden of establishing that they have standing.'" *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622 (Mo. banc 2011),

quoting *Manzara*, 343 S.W.3d at 659. Standing essentially means the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote. *St. Louis Ass'n of Realtors*, 354 S.W.3d at 622-23. “To assert standing successfully, a plaintiff must have a legally protectable interest.” *Id.* at 623. “A legally protectable interest exists only if the plaintiff is affected directly and adversely by the challenged action or if the plaintiff’s interest is conferred statutorily.” *Id.*

The Missouri Supreme Court has held:

Standing is a jurisdictional matter antecedent to the right to relief . . . It asks whether the persons seeking relief have a right to do so . . . Where, as here, a question is raised about a party's standing, courts have a duty to determine the question of their jurisdiction before reaching substantive issues, for if a party lacks standing, the court must dismiss the case because it does not have jurisdiction of the substantive issues presented. Lack of standing cannot be waived.

Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. banc 2002).

Complainant, relying on the decision in *Herky, LLC, v. Holman*, 277 S.W.3d 702 (Mo. App. E.D. 2008), argues that it possessed standing to appeal to the STC as a “real party in interest” because it paid the 2021 taxes and had an interest in the outcome of the appeal in that a reduction of the assessment would adjust both the 2021 and 2022 taxes. We find Complainant’s argument persuasive.

Under Section 137.075, every person owning or holding real property or tangible personal property on January 1, shall be liable for taxes thereon during the same calendar

year. Section 138.430 provides that “[e]very owner of real property . . . shall have the right of appeal from the local boards of equalization under rules prescribed by the state tax commission.” 12 CSR 30-3.010(1) provides that “the owner may appeal directly to the State Tax Commission . . . where a new owner purchased real property less than thirty (30) days before the deadline for filing an appeal to the board of equalization or later in the tax year . . . within thirty (30) days after a county official mailed a tax statement or otherwise first communicated the assessment or the amount of taxes to the owner or on or before December 31 of the tax year in question, whichever is later.”

While Chapters 137 and 138 and 12 CSR 30-3.010(1) do not define “owner,” we look to the plain language of these provisions to determine the meaning of “owner” in the context of standing to appeal to the STC. *Tinnin v. Modot and Patrol Employees’ Retirement System*, 647 S.W.3d 26, 34 (Mo. App. W.D. 2022). If a word is not statutorily defined, it is given its plain and ordinary meaning, as set forth in the dictionary. *Tinnin*, 647 S.W.3d at 34. “We will not look beyond the plain language of the statute and resort to rules of statutory construction unless the statute’s language is ambiguous or would lead to an absurd illogical result.” *Id.*

Merriam-Webster online dictionary defines “owner” as a person who owns something, one who has a legal or rightful title to something, and one to whom property belongs. See <https://www.merriam-webster.com/dictionary/owner>, last retrieved July 27, 2023.

Here, Complainant became the new owner of the subject property on December 29, 2021, when it purchased and paid for the subject property through the foreclosure auction. Complainant alone paid the 2021 ad valorem taxes for the subject property on the same day as the purchase, December 29, 2021. Complainant also filed its appeal of the 2021 assessment of the subject property on December 29, 2021.

In *Herky*, the court discussed ownership as an element for establishing standing as a real party in interest:

Furthermore, the parties disagree about what date during the assessment and appeal process a litigant must own his or her property in order to satisfy Section 138.430. The Assessor claims that “the time of the appeal” is the required date for ownership, while the Developers argue it is the lien date.

Mandating the required dates of ownership for purposes of satisfying Section 138.430.1 is outside the scope of this appeal. *However, the ownership timeline in this case supports the Developers contention that they are the real parties in interest. The Developers owned the property in January 2005, and also on the reassessment date. Furthermore, the Assessor mailed the reassessment notices to the Developers in March 2005, and the Developers still owned the property at that time. Given the proration agreements and that the Developers owned the property through June 2005, we conclude that the Commission erred in holding that the Developers were not real parties in interest.* Points one and two are granted.

Herky, 277 S.W.3d at 705. Emphasis added.

In this case, Complainant owned the property in 2021. Moreover, similar to the taxpayers in *Herky*, Complainant was a real party in interest to the outcome of the appeal

given that Complainant owned the subject property in 2021 *and* paid the 2021 taxes based on the 2021 assessment of the subject property. Consequently, Complainant had standing to appeal pursuant to Section 138.430 and 12 CSR 30-3.010(1).

We find that the Hearing Officer erred in granting Respondent's Motion to Dismiss and in finding that Complainant did not have standing to appeal Respondent's 2021 assessment of the subject property.

The evidence in the record further established that Complainant and Respondent stipulated the correct TVM of the subject property was \$195,500, which was lower than Respondent's initial valuation of \$221,900.

ORDER

The Decision of the Hearing Officer is REVERSED. Complainant had standing to appeal the initial TVM Respondent placed on the subject property as of January 1, 2021. The correct TVM of the subject property as of January 1, 2021, is \$195,500, as stipulated by Complainant and Respondent and established by the substantial and persuasive evidence in the record.

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 St. Louis 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 sent electronically or mailed postage prepaid this 11th day of August, 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

WJD PROPERTIES, LLC,)	Appeal Nos. 21-110394
)	Parcel/locator No.
Complainant,)	16O230543
)	
v.)	
)	
JAKE ZIMMERMAN, ASSESSOR,)	
ST. LOUIS COUNTY, MISSOURI,)	
Respondent.)	

DECISION AND ORDER

WJD Properties, LLC (Complainant) appeals Respondent’s valuation of the subject property finding the true value in money (TVM) of the subject property on January 1, 2021, was \$221,900. Complainant does not have standing in the appeal. As Complainant does not have standing to prosecute the appeal, the State Tax Commission (STC) is without jurisdiction and must dismiss.

PROCEDURAL BACKGROUND

1. On January 24, 2023, Respondent filed a Motion to Dismiss with exhibits asserting that Complainant does not have standing because it is not an owner of the subject property. Respondent therefore asks the STC to dismiss the appeal.

2. On January 25, 2023, the STC issued an Order canceling the hearing and ordering Complainant to file a response to the Motion on or before February 3, 2023.

3. On February 2, 2023, Complainant filed its response to Respondent’s Motion (“Reply”). Complainant admits that it received the deed to the property in January of 2022, but argues in principle that it did have standing in this appeal as a real party in interest because it paid the taxes.

4. In their filings, Complainant and Respondent agree to the essential facts regarding Complainant’s purchase of the subject property and the recording of its deed to the property. The parties also have stated that they agree as to the value of the property as of January 1, 2021 (\$195,500), but that a written stipulation to that effect has not been submitted due to the underlying question of standing raised by Respondent’s Motion.

FINDINGS OF FACT

1. On December 29, 2021, Complainant purchased the subject property at a foreclosure auction. At the time of the sale, property taxes for 2021 were owed and they were paid by Complainant.

2. Also on December 29, 2021, as a new purchaser of the property, Complainant directly appealed Respondent’s assessment pursuant to 12 CSR 30-3.010(1)(B)1.

3. Complainant received the deed to the property on January 14, 2022, and it was recorded in St. Louis County on January 18, 2022.

CONCLUSIONS OF LAW AND DECISION

“Parties seeking relief ‘bear the burden of establishing that they have standing.’”

St. Louis Ass'n of Realtors v. City of Ferguson, 354 S.W.3d 620, 622 (Mo. banc 2011), quoting *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). To prove standing, Complainant must show that it has standing to prosecute this appeal as an owner of the subject property.

Appeals to the local board of equalization shall be made by the aggrieved taxpayer in the manner required by law. Section 137.275, RSMo. (emphasis added). Every **owner** of real property or tangible personal property shall have the right to appeal from the decision of the local board of equalization, upon compliance with Missouri law and the rules set by the State Tax Commission (“STC”). 12 CSR 30-3.010(1) (Emphasis added). Similarly, with direct appeals to the STC for taxpayers who recently acquired property, **owners** of property may appeal. 12 CSR 30-30.3.010(1)(B) provides, in pertinent part:

1. In any county or the City of St. Louis, **the owner** may appeal directly to the State Tax Commission (a) where the assessor fails to notify the current owner of the property of an initial assessment or an increase in assessment from the previous year, prior to thirty (30) days before the deadline for filing an appeal to the board of equalization, including instances in which real property was transferred and the prior owner was notified, or **(b) where a new owner purchased real property less than thirty (30) days before the deadline for filing an appeal to the board of equalization or later in the tax year, regardless if the assessment is an initial assessment, an increase or decrease in assessment, or an assessment established in the prior year.** Appeals under this paragraph shall be filed within thirty (30) days after a county official mailed a tax statement or otherwise first communicated the assessment or the amount of taxes to the **owner** or on or before December 31 of the tax year in question, whichever is later.

Proof of late notice, the date of purchase, and/or notice sent to the prior owner shall be attached to, or set forth in, the complaint.

Complainant has not shown that it owned the subject property in the tax year of 2021. Complainant was not an owner of the property until January 2022. An “owner” is a person who has a legal title to the real estate. *State ex rel. Missouri Highway and Transportation Commission v. Wallach*, 826 S.W.2d 901 (Mo. App. 1992). In Missouri, ownership is conveyed through a deed. Section 442.380 provides:

Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner herein prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

Section 442.400 provides the consequence for failing to record the instrument with the applicable office of the recorder: “(n)o such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the recorder for record.”

The parties agree a deed transferring ownership to Complainant was recorded on January 18, 2022. Therefore, Complainant did not become owner of the subject property for purposes of an appeal of ad valorem taxes until the deed was recorded. A December 29, 2021, contract to purchase real estate at auction does not give Complainant standing in these appeals, ownership does. Section 138.430.1. Therefore, because Complainant

has not proven ownership for tax year 2021, Complainant cannot proceed with this appeal of the 2021 assessment.

Further, Complainant cannot remedy that defect now. Although in a different context, the Eastern District of Missouri Court of Appeals' decision in *Bray v. Lee*, 620 S.W.3d 278 (Mo. App. E.D. 2021), instructive. There, the Court held that a purported property owner failed to establish that he had an ownership interest or some other legally protectable interest in the property at issue in that case at the time the alleged damages occurred or at the time the litigation was commenced, and that he could not cure that defect at a later time during the action. *Id.* at 281-283.

Last, Complainant cites *Herky, LLC v. Holman*, 277 S.W.3d 702 (Mo. Ct. App. 2008) in its Reply to Respondent's Motion. Reply, p. 2. However, that case is distinguished from this case as it involved a proration agreement for taxes which is not present here.

Complainant's failure to establish standing is fatal to its appeal. As an administrative tribunal, the STC can only give relief to those parties to whom statutes give the right to appeal. If standing is not established, the STC cannot give relief.

The Missouri Supreme Court has held:

Standing is a jurisdictional matter antecedent to the right to relief ... It asks whether the persons seeking relief have a right to do so ... Where, as here, a question is raised about a party's standing, courts have a duty to determine the question

of their jurisdiction before reaching substantive issues, for if a party lacks standing, the court must dismiss the case because it does not have jurisdiction of the substantive issues presented. Lack of standing cannot be waived.

Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. banc 2002).

CONCLUSION AND ORDER

Complainant was not the owner of the subject property in 2021 and did not have the statutory right to appeal the 2021 ad valorem assessment. Therefore, for the reasons stated above, Respondent's Motion to Dismiss is sustained and Complainant's appeal is hereby DISMISSED.

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 March 24, 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 March 24, 2023 to:
Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel