



STATE TAX COMMISSION OF MISSOURI

GRADY HOTEL INVESTMENTS,)
LLC,)
)
Complainant,)
) Appeal No. 16-79001
v.) Parcel No. 17-5.0-22-000-000-001.001
)
DAVID COX, ASSESSOR,)
PLATTE COUNTY, MISSOURI,)
)
Respondent.)

ORDER AFFIRMING
HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On July 15, 2022, a State Tax Commission (STC) Senior Hearing Officer (Hearing Officer) entered a Decision and Order (Decision) setting aside the decision of the Platte County Board of Equalization (BOE) and finding the true value in money (TVM) of the subject commercial property on January 1, 2016, was \$6,139,505.

David Cox, Assessor, Platte County, Missouri, (Respondent) filed a timely Application for Review of the Decision of the Hearing Officer. The Commission provided Grady Hotel Investments, LLC (Complainant) with time to file its response. Complainant 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

As of January 1, 2016, the subject property consisted of land improved with a hotel. The land is located within the boundaries of the Kansas City International Airport and is owned by the City of Kansas City. The City-owned land is exempt from *ad valorem* taxation. Mo. Const. art. X, sec. 6. The Platte County Board of Equalization (BOE) determined the TVM of the subject property as of January 1, 2016, was \$13,447,000. Complainant appealed to the STC, alleging overvaluation. A STC hearing officer issued a decision and order finding Complainant owned a taxable possessory interest. The hearing officer further found Complainant's 2015 purchase of the subject property for \$8,500,000 represented market value. As required by Section 137.115.1, the hearing officer deducted \$1,200,000 in new construction and improvements and concluded the TVM of the subject property as of January 1, 2016, was \$7,300,000. Complainant filed an application for review with the STC. The STC issued a decision and order concluding Complainant had a leasehold interest in the hotel and that the TVM of Complainant's leasehold was zero because there was no bonus value. Respondent filed a petition for review in circuit court. Respondent asserted, *inter alia*, the circuit court should order the STC to "consider the sale of \$8,500,000 as evidence of valuation." (Compl. Reply Br. Ex. 1, Petition for Review, "Prayer and Allegations for Relief")

The circuit court issued a final judgment reversing the STC's decision and order. The circuit court concluded: (1) the bonus value method does not apply because Complainant owns the subject improvements; (2) the STC "should consider the sale

price of the property as evidence of value;" and (3) the STC "should not exclude valuation evidence other than a 'bonus value' appraisal." Complainant appealed.

The court of appeals affirmed the circuit court's judgment. *Cox v. Grady Hotel Investments, LLC*, 605 S.W.3d 575, 586 (Mo. App. W.D. 2020). The court held the STC erred in concluding Complainant had a leasehold interest subject to valuation by the bonus value method. The court noted that "[c]onsistent with section 137.115.1, the Hearing Officer found the TVM of Grady's possessory interest to be \$7,300,000, to-wit: the purchase price stated in the Agreement of Purchase and Sale of the improvements in 2015 (\$8,500,000), less costs paid toward new construction or improvements completed after January 1, 2008 (\$1,200,000)." *Grady*, 605 S.W.3d at 579. The court affirmed the circuit court's judgment and remanded the appeal "to the STC for reconsideration consistent with this opinion." *Id.* at 586.

The Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law finding that on remand, the court of appeals mandated that the STC consider the \$8,500,000 purchase price as evidence of fair market value. The Hearing Officer found the substantial and persuasive evidence in the record established the subject's personal property was valued at \$1,160,495. Consistent with the court's mandate, the hearing officer then deducted the \$1,200,000 in new construction and improvements. The Hearing Officer found that there was substantial and persuasive evidence supporting Complainant's proposed value and finding a January 1, 2016, TVM of \$6,139,505.

Respondent subsequently filed his 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

In his Application for Review, Respondent argues the Hearing Officer's \$1,200,000 deduction was erroneous:

The Hearing Officer's application of RSMo. [Section] 137.115.1 allowing a deduction in value of the subject property to arrive at value is unconstitutional in that:

1. It creates a new class of property for purposes of ad valorem taxation in violation of art. X, Section 6 of the Missouri Constitution;
2. It violates the uniformity clause of art. X, Section 3 of the Missouri Constitution because it does not treat properties inside and outside the boundaries of the Kansas City International Airport uniformly;
3. It irrevocably grants a special privilege to the taxpayer by exempting the taxpayer from paying real estate taxes on improvements to and new construction on real property in violation of Art. X, Section 4(b) of the Missouri Constitution's command to assess property in classes 1 and 2 'at its value or such percentage of its value as may be fixed by law.'

The Hearing Officer determined he did not have jurisdiction to decide the constitutional issues. Decision, p.12-13. The Assessor and District hereby preserve their rights to challenge in a judicial forum the valuation of the subject property through the Hearing Officer's application of RSMo. [Section] 137.115.1, which is unconstitutional on its face and as applied.

Complainant counter argues that the STC, an administrative agency, does not have jurisdiction to hear Respondent's constitutional challenge. Additionally, Complainant argues that Respondent's arguments are meritless as the Missouri Supreme Court has already found that (a) the statute does not create an exemption in violation of Article X, Section 6 and (b) that the uniformity requirements of Article X, Section 3 do not apply to

the manner in which property is valued.

In its response, Complainant states:

Respondent argues that the valuation methodology found in the statute violates the uniformity clause because it purportedly creates a new subclass of property. Respondent seemingly forgets that Article X, Section 3 does not apply to valuation issues like this. *Armstrong-Trotwood, LLC v. State Tax Comm'n*, 516 S.W.3d 830, 835-36 (Mo. 2017).

Respondent's argument is in direct contradiction of Missouri Supreme Court precedent. The General Assembly took great care in drafting a statute to determine the value of improvements that sit on tax-exempt government-owned airport land that will resort back to the government. This methodology does not equate to a violation of the uniformity clause. *Id.*; see also, *Missouri Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 513 (Mo. banc 1993) (stating, "a factor exists which impacts on the value of one piece of property that does not affect every other piece of property in the same class is not a basis for violation of the uniformity clause."); *Tibbs v. Poplar Bluff Associates I, L.P.*, 599 S.W.3d 1, 12-14 (Mo. App. 2020). Rational valuation distinctions between properties are acceptable. See e.g., *Michael Jaudes Fitness Edge, Inc. v. Dir. of Revenue*, 248 S.W.3d 606 (Mo. banc 2008); *Gammaitoni v. Dir. of Revenue*, 786 S.W.2d 126, 130-31 (Mo. banc 1990).

While there are value differences, the tax rate applied to the values remain unaffected by § 137.115.1. And there certainly exists a rational basis to treat property located on airport grounds differently from property located elsewhere.

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. The Commission, having reviewed the whole record and having considered the Hearing Officer's Decision following the Court of Appeals opinion remanding the case to the STC, 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).

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.

Section 137.115.1 provides, in relevant part:

The true value in money of any possessory interest in real property in subclass (3), where such real property is on or lies within the ultimate airport boundary as shown by a federal airport layout plan, as defined by 14 CFR 151.5, of a commercial airport having a FAR Part 139 certification and owned by a political subdivision, shall be otherwise applicable true value in money of any such possessor interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real property completed after January 1, 2008, and which are included in the above-mentioned possessory interest, regardless of the year in which such costs were incurred or whether such costs were considered in any prior year.

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. The Hearing Officer found that Complainant presented substantial and persuasive evidence of value. In the Decision, the Hearing Officer made detailed findings of fact and conclusions of law examining the parties' evidence and analyzing the facts under established legal precedent and established valuation methods. The Hearing Officer specifically found that:

Respondent testified the total amount of new construction and improvements was \$1,200,000. (Resp. WDT at paragraph 9) Respondent's Exhibit B likewise indicates Complainant made

\$1,200,000 in improvements to the subject property. No evidence persuasively contradicts Respondent's testimony or Exhibit B. Section 137.115.1 requires a \$1,200,000 deduction from value of the subject property.

Respondent asserts a central issue is whether Section 137.115.1 can be applied "without violating the Missouri Constitution." (Resp. Br. at 2). The constitutionality of Section 137.115.1 is not at issue in this contested case proceeding. "The declaration of the validity or invalidity of statutes ... is purely a judicial function." *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 75 (Mo. banc 1982). Consequently, "[a]dministrative agencies lack the jurisdiction to determine the constitutionality of statutory enactments." *Duncan v. Missouri Bd. for Architects, Pro. Engineers & Land Surveyors*, 744 S.W.2d 524, 531 (Mo. App. E.D. 1988). Section 137.115.1 applies and requires the deduction of \$1,200,000 for new construction and improvements.

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 that Section 137.115.1 applied and that the statute required the \$1,200,000 deduction for new construction and improvements made after January 1, 2008, and in concluding the TVM of the subject property was \$6,139,505 as of January 1, 2016.

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 Platte 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, September 22, 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 September 22, 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

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DECISION AND ORDER

Grady Hotel Investments, LLC, (Complainant) appealed the Platte County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject commercial property was \$13,447,000 as of January, 1, 2016. The State Tax Commission (STC) concluded Complainant held a leasehold interest in subject property, the leasehold had no bonus value, and that the TVM of the subject property was \$0. Respondent filed a petition for judicial review.

The court of appeals affirmed a circuit court judgment reversing the STC's decision and order. The court of appeals remanded the appeal to the STC for a determination of the true value in money (TVM) of the subject property as of January 1, 2016. *Cox v. Grady*

Hotel Investments, LLC, 605 S.W.3d 575, 586 (Mo. App. W.D. 2020).

Pursuant to the court of appeals' directions on remand, the substantial and persuasive evidence in the record shows the TVM of the subject property as of January 1, 2016, was \$6,139,505. The TVM reflects the \$8,500,000 purchase price less the statutorily required deduction for construction and new improvements (\$1,200,000) and the value of personal property included in the sale price (\$1,160,495); i.e., $(\$8,500,000 - \$1,200,000 - \$1,160,495 = \$6,139,505)$.

Background

As of January 1, 2016, the subject property consisted of land improved with a hotel. The land is located within the boundaries of the Kansas City International Airport and is owned by the City of Kansas City. The City-owned land is exempt from *ad valorem* taxation. Mo. Const. art. X, sec. 6. The Platte County Board of Equalization (BOE) determined the TVM of the subject property as of January 1, 2016, was \$13,447,000. Complainant appealed to the STC, alleging overvaluation.

An STC hearing officer issued a decision and order finding Complainant owned a taxable possessory interest. The hearing officer further found Complainant's 2015 purchase of the subject property for \$8,500,000 represented market value. As required by Section 137.115.1, the hearing officer deducted \$1,200,000 in construction and new improvements – an amount Respondent acknowledged in written testimony – and concluded the TVM of the subject property as of January 1, 2016, was \$7,300,000. Complainant filed an application for review with the STC.

The STC issued a decision and order concluding Complainant had a leasehold

interest in the hotel and that the TVM of Complainant's leasehold was zero because there was no bonus value. Respondent filed a petition for review in circuit court. Respondent asserted, *inter alia*, the circuit court should order the STC to "consider the sale of \$8,500,000 as evidence of valuation." (Compl. Reply Br. Ex. 1, Petition for Review, "Prayer and Allegations for Relief")

The circuit court issued a final judgment reversing the STC's decision and order. The circuit court "specifically" concluded: (1) the bonus value method does not apply because Complainant owns the subject improvements; (2) the STC "should consider the sale price of the property as evidence of value;" and (3) the STC "should not exclude valuation evidence other than a 'bonus value' appraisal." Complainant appealed.

The court of appeals affirmed the circuit court's judgment. *Grady*, 605 S.W.3d at 586. The court held the STC erred by concluding Complainant had a leasehold interest subject to valuation by the bonus value method. The court noted that "[c]onsistent with section 137.115.1, the Hearing Officer found the TVM of Grady's possessory interest to be \$7,300,000, to-wit: the purchase price stated in the Agreement of Purchase and Sale of the improvements in 2015 (\$8,500,000), less costs paid toward new construction or improvements completed after January 1, 2008 (\$1,200,000)." *Id.* at 579. The court affirmed the circuit court's judgment and remanded the appeal "to the STC for reconsideration consistent with this opinion." *Id.* at 586.

Respondent asserts this appeal presents two issues on remand: (1) determining the TVM of the subject property as of January 1, 2016; and (2) whether that value can be reduced pursuant to the deduction for new construction and improvements pursuant to

Section 137.115.1 "without violating the Missouri Constitution." (Resp. Br. at 2)
Respondent asserts the TVM of the subject property should "be established within a range of \$12,280,000 to \$13,447,000." (Resp. Br. at 5)

Complainant asserts the TVM of the subject property was either "\$2,300,000 or \$6,139,505[.]" (Compl. Br. at 14) Complainant's proposed \$2,300,000 value is based on Complainant's assertion the \$8,500,000 purchase price and Respondent's \$4,000,000 land value indicates a TVM of \$12,500,000. (Id. at 12; Ex. L. at 7) Complainant further asserts the Rushmore Method for hotel valuation allocates 60% of the value to the real property ($\$12,500,000 \times 0.60 = \$7,500,000$). (Id.) Complainant deducted from the purported \$7,500,000 real property value the land value (\$4,000,000) and new construction and improvements (\$1,200,000), resulting in a proposed value of \$2,300,000. (Compl. Br. at 12)

Complainant's proposed \$6,139,505 value is based on the \$8,500,000 purchase price, a deduction for the \$1,200,000 in new improvements and construction pursuant to Section 137.115.1 and a \$1,160,495 deduction for personal property consistent with Respondent's valuation of personal property at the hotel. (Compl. Reply Br. at 5).

FINDINGS OF FACT

1. The Subject Property. The subject property is located within the boundaries of the Kansas City International Airport on land owned by the City of Kansas City (City). As of January 1, 2016, the land was improved with a hotel commonly known as the Marriott Hotel at KCI. Complainant leases the land from the City but owns the improvements. Complainant purchased the subject property in 2015 for \$8,500,000.

The hotel has a nine-story tower built in 1974 and a six-story tower built in 1988. As of the valuation date, the hotel had 384 rooms, meeting spaces, a restaurant, business center, indoor pool, and fitness center.

Complainant and the City executed a Second Amendment to Lease and Concession Agreement obligating Complainant to make capital investments of at least \$16,000,000. (Resp. Ex. E) To receive a Marriott franchise, Complainant was required to invest \$20,631,000 in renovations, with at least \$3,781,000 was dedicated to real property improvements. (Compl. Ex. B, Addendum 8)

2. Assessment and Valuation. The BOE determined the TVM of the subject commercial property was \$13,447,000 as of January 1, 2016.

3. Complainant's Evidence. Complainant introduced the following exhibits into evidence:

Written Direct Testimony (WDT)	Complainant's appraiser, Thomas Slack, testified Complainant's leasehold interest in the subject property had no bonus value. Slack concluded the TVM of Complainant's purported leasehold interest was \$0 as of January 1, 2016.
WDT	Randy Meyer, the CFO of Complainant's parent company, testified that as of January 1, 2016, Complainant was paying market rent to lease the subject property. Meyer also testified Complainant's 2015 purchase of the subject property included personal property.
WDT	David Long, Deputy Director of the Kansas City Aviation Department, testified the subject property is located "on the Kansas City International Airport" and that Complainant was paying fair market rent for a leasehold interest in the property.

Exhibit A	Slack's Resume
Exhibit B	Slack's Appraisal Report concluding the TVM of Complainant's purported leasehold interest was \$0 as of January 1, 2016.
Exhibit C	April 29, 2015, Purchase and Sale Agreement showing Complainant purchased the hotel for \$8,500,000. The sale price included personal property.
Exhibit D	August 5, 2019, quitclaim deed "to improvements" executed by Complainant, grantee, and Host Hotels & Resorts L.P., grantor.
Exhibit E	STC Assessor's Manual
Exhibit F	October 14, 2007, lease agreement between City of Kansas City and Host Hotels & Resorts L.P.
Exhibit G	May 26, 2015, lease amendment between City of Kansas City and Complainant.
Exhibit H	2016 Platte County tax receipt showing Complainant paid property taxes on a \$4,303,040 assessment.
Exhibit I	Federal Aviation Administration (FAA) document establishing several "Assurances" regarding "the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors."
Exhibit J	FAA guidance regarding financial sustainability requirements for airports.
Exhibit K	Respondent's 2016 Valuation Analysis for the BOE with an "Assessor's recommended value" of \$13,447,000. Also submitted as Complainant's Exhibit A.
Exhibit L	Slack's appraisal review report. Slack concluded Respondent's valuation analysis failed to value Complainant's leasehold interest and apply the bonus value method.
Rebuttal WDT	Slack testified Respondent's appraiser failed to follow STC guidance and Missouri law providing the bonus value

	defines the fair market value of leasehold interests.
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Slack's appraisal report and testimony focused on determining the bonus value of Complainant's purported leasehold interest in the improvements. Slack did not perform a complete Rushmore Method analysis. Complainant's evidence, however, establishes it purchased the subject property for \$8,500,000 several months prior to the January 1, 2016, valuation date. Complainant's evidence further shows the \$8,500,000 purchase price included personal property and intangible business value. (Ex. C, section 1.1.61; section 2.2.1; Meyer WDT at 3).

4. Respondent's Evidence. Complainant introduced the following exhibits into evidence:

Respondent's WDT	Respondent's testimony authenticating exhibits and asserting the subject property was a full-service hotel as of January 1, 2016. Respondent testified the purchase price was "\$8.5 M" and that "permanent improvements were completed in 2016 of \$1.2 M[.]
Exhibit A	Respondent's two-page, income-based valuation analysis recommending a value of \$13,447,000. The two-page analysis is accompanied by several photos of the subject property and the quitclaim deed recorded on August 7, 2016, showing Complainant as the "grantee."
Exhibit B	Complainant's BOE appeal form asserting the "full value" of the subject property as of January 1, 2016, was \$0. Complainant also asserted it made \$1,200,000 in improvements to the subject property.
Exhibit C	July 7, 2015, letter from Eliot Johnson, Senior Property Tax Manager for Marriott International, Inc., concluding the "subject

	property's revised assessment for improvements solely would be \$8,339,020" as of January 1, 2015.
Exhibit D	Narrative description of planned capital expenditures with representative photos depicting areas in need of renovation.
Exhibit E	Second Amendment to lease agreement.

Respondent testified Complainant purchased the subject property for \$8,500,000, but concluded the TVM of the subject property was \$11,222,000 as of January 1, 2016. (Resp. WDT at paragraph 3) Respondent's written testimony is inconsistent with the \$13,447,000 value Respondent recommended in his valuation analysis prepared for the BOE. (Ex. A at 2)

Respondent's testimony also concedes Complainant expended at least \$1,200,000 in new construction and improvements to the subject property. (Resp. WDT at paragraph 9). Respondent's Exhibit B also shows Complainant reported \$1,200,000 in improvements to the subject property.

Respondent's two-page valuation analysis purports to utilize an income-based approach to value the subject property, but does not mention the Rushmore Method utilized to value hotel properties. While Respondent's analysis included a \$1,160,495 deduction in 2015 for furniture, fixtures, and equipment (FF&E), Respondent made no deduction for franchise value. (Ex. A at 1) Aside from an unexplained reference to a "Craig Cap Rate Study," there is no verification of the purported market-based capitalization rate underlying Respondent's two-page valuation analysis. Further, Respondent's valuation analysis does not explain why an 8.6% capitalization rate represents a market rate when the subject's April 2015 sale price indicates a 22.3% capitalization rate. (Compl. Ex. L)

5. Value. The TVM of the subject property as of January 1, 2016, was \$6,139,505. The \$6,139,505 value is based on Complainant's arms-length purchase of the hotel property and business for \$8,500,000, a \$1,200,000 deduction for new improvements and construction pursuant to Section 137.115.1, and a \$1,160,495 deduction for personal property consistent with Respondent's valuation analysis.

CONCLUSIONS OF LAW

1. Assessment and Valuation. 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). The TVM is "the fair market value of the property on the valuation date[.]" *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). "True value in money is defined in terms of value in exchange not value in use." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). "Determining the true value in money is an issue of fact for the STC." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008).

The State Tax Commission utilizes the "Rushmore Method" to estimate the TVM of hotels. *Yogijikrupa Hospitality-C LLC, v. Assessor, Taney County, Mo.*, Appeal No. 19-89506, 2021 WL 4977443, at *5 (Mo. St. Tax Comm'n 2021) (noting "[t]he STC has long recognized the Rushmore Method under the income approach for the valuation of hotel

properties").¹ The Rushmore Method enables a valuation of hotel real estate by deducting the value of a franchise affiliation and the FF&E required to operate a hotel.

The Rushmore Method deducts the contributory value of the FF&E by estimating both the replacement cost and the return generated by the FF&E. The replacement cost is typically reflected in a reserve for replacement. The return on the FF&E is typically estimated by (1) using the market value of the personal property as shown on the assessment rolls; (2) an appraisal of the personal property; or (3) using the depreciated book value of the personal property. *Prestige Hotels v. Cox*, Appeal No. 20-79023 (Mo. St. Tax Comm'n, Feb. 25, 2022).

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). "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo.*

¹ The Rushmore Method is also widely accepted by courts across the country. *Glenpointe Assoc. et al. v. Township of Teaneck*, 31 N.J. Tax 596, 645 (2020) (holding the Rushmore method is generally used to value hotels); *Wisconsin & Milwaukee Hotel, LLC v. City of Milwaukee*, 936 N.W.2d 403 (Wis. App. 2019) (holding the "Rushmore approach to value hotels" complied with state law); *CHH Cap. Hotel Partners, LP v. D.C.*, 152 A.3d 591, 597 (D.C. 2017) (the Rushmore method is a "well-established and broadly accepted" method "well-conceived to yield a fair and accurate estimate of market value"); *RRI Acquisition Co. v. Supervisor of Assessments of Howard Cty.*, 2006 WL 925212, at *5 (Md. Tax Feb. 10, 2006) (applying Rushmore and holding a deduction for return on FF & E from income is required); *Marriott Corp. v. Bd. of Cty. Comm'rs of Johnson Cty.*, 972 P.2d 793, 796 (Kan. App. 1999) (holding the Rushmore method was the appropriate method to value a hotel and noting it "has been accepted in a number of litigated matters and rejected in none that have been brought to our attention"); *In re J.F.K. Acquisitions Group*, 166 B.R. 207, 209 (Bankr.E.D.N.Y.1994) (utilizing the Rushmore method and noting the appraiser who developed the method is an "eminent expert in the field of hotel appraisers.")

Church of Scientology v. State Tax Comm'n, 560 S.W.2d 837, 839 (Mo. banc 1977).

3. Complainant's Burden of Proof. The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's valuation is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *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 v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (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").

4. Section 137.115.1. In pertinent part, Section 137.115.1 provides:

The true value in money of any possessory interest in real property in subclass (3), where such real property is on or lies within the ultimate airport boundary as shown by a federal airport layout plan, as defined by 14 CFR 151.5, of a commercial airport having a FAR Part 139 certification and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real property completed after

January 1, 2008, and which are included in the above-mentioned possessory interest, regardless of the year in which such costs were incurred or whether such costs were considered in any prior year.

The subject real property is located within the boundaries of the Kansas City International Airport. Section 137.115.1 therefore requires deducting the "total dollar amount of costs" paid by Complainant "towards any new construction or improvements" on the subject property completed after January 1, 2008. Respondent testified the total amount of new construction and improvements was \$1,200,000. (Resp. WDT at paragraph 9) Respondent's Exhibit B likewise indicates Complainant made \$1,200,000 in improvements to the subject property. No evidence persuasively contradicts Respondent's testimony or Exhibit B. Section 137.115.1 requires a \$1,200,000 deduction from value of the subject property.

Respondent asserts a central issue is whether Section 137.115.1 can be applied "without violating the Missouri Constitution." (Resp. Br. at 2). The constitutionality of Section 137.115.1 is not at issue in this contested case proceeding. "The declaration of the validity or invalidity of statutes ... is purely a judicial function." *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 75 (Mo. banc 1982). Consequently, "[a]dministrative agencies lack the jurisdiction to determine the constitutionality of statutory enactments." *Duncan v. Missouri Bd. for Architects, Pro. Engineers & Land*

Surveyors, 744 S.W.2d 524, 531 (Mo. App. E.D. 1988).² Section 137.115.1 applies and requires the deduction of \$1,200,000 for new construction and improvements.

5. Complainant Produced Substantial and Persuasive Evidence of Overvaluation.

On remand, the court of appeals mandated that the STC consider the \$8,500,000 purchase price as evidence of fair market value. Consistent with the court's mandate, Complainant emphasizes the fact the subject sold in 2015 for \$8,500,000.

A property's sale price is not necessarily conclusive as to its TVM. *Stein v. State Tax Comm'n*, 379 S.W.2d 495, 498 (Mo. 1964). While not conclusive, a recent, arms-length sale of a subject property is nonetheless relevant to establishing value as of the assessment date. *St. Joe Mins. Corp. v. State Tax Comm'n*, 854 S.W.2d 526, 529 (Mo. App. E.D. 1993). The probative value of a prior sale depends on the extent of market changes since the sale and whether the sale was a voluntary transaction, with both the buyer and seller "capable and desirous of protecting his interest." *State ex rel. State Hwy. Comm'n v. Rauscher Chevrolet Co.*, 291 S.W.2d 89, 92 (Mo. 1956) *see also St. Joe Mins. Corp.*, 854 S.W.2d at 529 (noting evidence of a recent sale is admissible to prove value if the sale was a "voluntary purchase not too remote in time").

² The holding in *Duncan* is sound, but subsequent cases have emphasized an agency's exercise of statutory authority "should not be equated to the subject matter jurisdiction constitutionally granted to courts." *Cass Cnty. v. Dir. of Revenue*, 550 S.W.3d 70, 74 (Mo. banc 2018); *see also McCracken v. Wal-Mart Stores E.*, 298 S.W.3d 473, 478 (Mo. banc 2009) (noting "sloppy references" to the exercise of "jurisdiction" by administrative agencies). The distinction is not merely semantic, as the courts' exercise of constitutionally vested jurisdiction to declare the law is fundamentally different than an agency's limited statutory authority to apply existing law to facts determined by the agency. *See State Tax Comm'n*, 641 S.W.2d at 75-77.

While the 2015 sale of the subject property is not conclusive, it is, on this record, the most persuasive starting point. The substantial and persuasive evidence in this case shows the 2015 sale involved sophisticated parties who executed an arms-length transaction less than one year prior to the January 1, 2016, assessment date. The substantial and persuasive evidence in the record further shows the \$8,500,000 purchase price included personal property and intangible business value. There is also substantial and persuasive evidence showing Complainant is statutorily entitled to a \$1,200,000 deduction for new construction and improvements. The net result is that the \$13,447,000 BOE value, which is the same value listed on Respondent's unpersuasive, two-page valuation analysis, has been rebutted by substantial and persuasive evidence.

Determining the value of the subject's real property requires deducting the value of personal property and intangible business value from the \$8,500,000 purchase price. The substantial and persuasive evidence in the records shows Respondent's valued the subject's personal property at \$1,160,495. (Resp. Ex. A) Respondent therefore effectively concedes, as a factual matter, that a deduction of \$1,160,495 is required. *See Empire Dist. Elec. Co. v. Coverdell*, 344 S.W.3d 842, 852 (Mo. App. S.D. 2011) (holding a factual admission is "conclusive"); *Norris v. Barnes*, 957 S.W.2d 524, 529 (Mo. App. W.D. 1997) (holding a defendant's statement that the plaintiff's medical bills were \$28,000 was a "conclusive" admission). Deducting the \$1,200,000 in new construction and improvements as required by Section 137.115.1 yields a January 1, 2016, TVM of

\$6,139,505.³

Complainant asserts the record also includes substantial and persuasive evidence for an additional business value deduction under the Rushmore Method. In his review appraisal, Slack stated the entire hotel enterprise could be valued at \$12,500,000 by adding Respondent's \$4,000,000 land value to the \$8,500,000 purchase price. Slack asserted the Rushmore Method allocates 60% of a total hotel enterprise value to the real property, resulting in a real property valuation of \$7,500,000 ($\$12,500,000 \times 0.60 = \$7,500,000$). Complainant asserts subtracting Respondent's land value (\$4,000,000) and the Section 137.115.1 deduction for new construction and improvements (\$1,200,000) shows the TVM of the improvements was \$2,300,000 as of January 1, 2016. Complainant's lower proposed value is not supported by substantial and persuasive evidence.

Complainant's proposed \$2,300,000 value is premised on an assumption the Rushmore Method typically allocates 60% of the total hotel enterprise value to the real property. (Compl. Reply Br. at 6) This assumption is based solely on Slack's explanation of a New Jersey Tax Court case in which Stephen Rushmore – the progenitor of the Rushmore Method – testified the real estate value of the hotel property at issue in that case was 60% the total hotel value. (Ex. L at 7) Rushmore's testimony regarding a hotel in New Jersey does not establish a universally accepted 60% real estate allocation for all hotels, in all markets, at all times. Rather than relying on rules of thumb, the Rushmore Method is a market-based adaptation of the income approach utilizing data reflecting the market

³ $\$8,500,000 - \$1,160,495 - \$1,200,000 = \$6,139,505$

realities of specific hotel properties as of particular valuation date. On this record, Complainant's proposed 60% real estate allocation is speculative and unpersuasive. The substantial and persuasive evidence in the record supports Complainant's proposed TVM of \$6,139,505.

CONCLUSION AND ORDER

The BOE's decision finding the assessed value of the subject property was \$13,447,000 as of on January 1, 2016, is set aside. The TVM as of January 1, 2016, was \$6,139,505.

Application for Review

A party may file 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 of Missouri, 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 Platte County, and 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 the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED July 15, 2022.

Eric S. Peterson
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 July 15, 2022, 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