



STATE TAX COMMISSION OF MISSOURI

GIDDY UP LLC et al.,) Appeal No. 21-30039 and 21-30040
) Parcel/locator No(s): 52-500-01-28-00-0-00-
) 000 and 48-510-09-14-00-0-00-000
)
)
Complainant(s),)
)
v.)
)
GAIL MCCANN BEATTY, ASSESSOR,)
JACKSON COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Giddy Up LLC and 9425 Holmes LLC (Complainants) appeal the Jackson County Board of Equalization's (BOE) decisions finding the true value in money (TVMs) of the subject properties on January 1, 2021. Complainants claim the properties are overvalued. Complainants did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.¹

Complainants was represented by counsel, Michael LeVota. Respondent was represented by counsel, Jennifer Ware. The evidentiary hearing was conducted on October 5, 2022, via WebEx.

¹ 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.

FINDINGS OF FACT

1. Subject Property. The subject properties are located in Jackson County, Missouri. The parcel/locator numbers are 52-500-01-28-00-0-00-000 and 48-510-09-14-00-0-00-000.

Giddy Up LLC - The subject property's address is 2151 NE Independence Ave, Lee's Summit, Missouri. The parcel is 4.7 acres of land with approximately 12,623 square-feet of improvements built in 2013, currently operated as a car dealership.²

9425 Holmes LLC - The subject property's address is 9425 Holmes Rd., Kansas City, Missouri. The parcel is 5.65 acres of land with 27,099 square-feet of improvements built in 1974, currently operated as an auto body shop.

2. Respondent and BOE. Respondent classified the subject properties as commercial and determined the TVMs on January 1, 2021, were \$2,145,000 and \$1,585,000. The BOE classified the subject property as commercial and independently determined the TVMs on January 1, 2021, were \$1,950,000 and \$1,585,000.

3. Complainants' Evidence. Complainants submitted the TVMs of the subject properties on January 1, 2021, were \$975,000 and \$750,000. Complainant submitted the testimony of Missouri State Certified General Real Estate Appraiser, Julie Molendorp. Ms. Molendorp testified she developed the sales comparison and income approaches to

² There was testimony regarding the actual square footage of the property. Mr. Everly testified the County records list a square footage of 15,059 and CoStar listed a square footage of 14,960. Ms. Molendorp testified the figure utilized was from Complainants, who were involved in construction and therefore, their figure is reliable.

value, and considered the cost approach, but did not develop it for either property.

Complainant submitted the following exhibits:

Exhibit	Description	Ruling
A	WDT of Julie Molendorp	Admitted
B	Appraisal of Giddy Up LLC	Admitted
A	WDT of Julie Molendorp	Admitted
B	Appraisal of 9425 Holmes LLC	Admitted

Giddy Up LLC - Ms. Molendorp testified the sales comparison approach was given primary weight because the property is owner occupied. (WDT and Exhibit B at 14) Exhibit B utilizes the sales comparison approach to estimate the market value of the subject property from recent sales of five comparable properties. Ms. Molendorp concluded “after an extensive search of auto sales buildings, none were found within the search parameters. Therefore, retail buildings within the same criteria were used for valuation.” (Exhibit B at 10) She found a mean value of \$77 per square-foot as an “appropriate measure of the subject’s value” and calculated a TVM of \$972,000 (rounded). (Exhibit B)

For her income approach, Ms. Molendorp used estimates for rents, vacancy and expenses based on current market data to develop a proforma income approach. (WDT and Exhibit B) She testified at the hearing that her income approach was not relied on because of the owner occupied nature of the property.

Her reconciled TVM under all approaches, on January 1, 2021, was \$975,000.

9425 Holmes LLC - Ms. Molendorp testified the income approach was given primary weight, with the sales comparison approach a secondary measure of value. For her income approach, Ms. Molendorp used estimates for rents, vacancy and expenses based on current market data to develop a proforma income approach. (WDT and Exhibit B) She

testified she utilized the capitalization rate of 9.5% derived from Jackson County CoStar. She testified she used a rate of \$6 per square-foot in the proforma income approach. Her report concluded, “after applying the 25% vacancy rate and an estimated 40% in expenses, the Net Operating Income (NOI) was shown to be \$73,168. [...] After the application of the capitalization rate of 9.5%, this results in a value calculation of \$770,200, or \$770,000 rounded.” (Exhibit B at 8)

Exhibit B also utilizes the sales comparison approach to estimate the market value of the subject property from recent sales of three comparable properties. All sales are located in the Kansas City metro area. Ms. Molendorp found “based on the prices per square-foot of the sales as presented, a weighted mean value of \$27 per square-foot is considered an appropriate measure of the subject’s value. Therefore, a value of \$27.00 times the subject’s 27,099 square feet yields a value of \$731,673 or \$730,000 (rounded).” (Exhibit B at 10-11)

Her reconciled TVM under all approaches, on January 1, 2021, was \$750,000.

4. Respondent's Evidence. Respondent submitted Exhibit 1 and 2 for each property. Exhibits 1 are the appraisal reports concluding the TVMs of the subject properties on January 1, 2021 were \$3,162,000.00 and \$1,822,133. Exhibits 2 are the WDT of Brian Everly, an employee of the Jackson County Assessor’s Office, who specializes in commercial mass appraisal. Mr. Everly testified the sales comparison approach was developed for the subject properties and the income and cost approaches were not developed.

Giddy Up LLC – Exhibit 1 utilizes the sales comparison approach to estimate the market value of the subject property from recent sales. Mr. Everly used three comparables with a range of sales from \$160-\$223 per square-foot. These comparable sales mid-range for a sales comparison approach yields \$210 per square-foot for the subject. (Exhibit 1)

9425 Holmes LLC - Exhibit 1 utilizes the sales comparison approach to estimate the market value of the subject property from recent sales of four comparable properties. Mr Everly testified the sales comparison approach was utilized for the greater Kansas City market area. His report concludes sale 1 is the subject itself and the “best sale”, as the evidence in the record showing the subject was purchased in April 2020 for \$1,822,133. (Exhibit 1 at 1 and 6) Mr. Everly developed a range of price per square-foot from the comparables of “\$49 per SF to \$98 per SF, with the subject's sale being in the lower mid-range of sales (sale of \$60 per SF is realistic estimate of value of subject)”. (Exhibit 1 at 6)

5. Value. The TVMs on January 1, 2021, were \$1,950,000 and \$1,585,000.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. 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 evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

4. Complainants Did Not Prove Overvaluation.

Income Approach

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. The initial step in applying the income approach is to find comparable rentals and make adjustments for any differences. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W. 3d, 341, 347

(Mo. 2005). (citations omitted). Complainant did not utilize comparable rentals or make adjustments to them for either of the subject properties. Complainant's use of estimated information rather than actual income information is not a method utilized by Missouri to calculate a TVM. "While the Commission has some discretion in deciding which approach best estimates the value of a particular property," the Commission's choice of valuation approach "must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors." *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). The Complainants' findings of value are ultimately not persuasive due to the lack of comparables to develop the subject properties' potential incomes.

Further, evidence was presented that Complainants did not supply its appraisers with income and expenses from which the subject property's actual NOI could be calculated. This preference to use hypothetical information over actual information for the subject properties to establish a TVM diminishes the credibility of the Complainants' income approach. While a property owner's opinion of value is generally admissible, the opinion "is without probative value where it is shown to have been based upon improper elements or an improper foundation." *Shelby Cty. R-IV Sch. Dist. v. Herman*, 392 S.W.2d 609, 613 (Mo. 1965); *see also Cohen v. Bushmeyer*, 251 S.W.3d 345, 349 (Mo. App. W.D. 2008) (noting a property owner's opinion of value loses probative value when it rests on an improper foundation). There was no substantial or persuasive evidence to support Complainants' opinions of TVMs under the income approach.

Comparable Sales Approach

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. Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character. This approach is most appropriate when there is an active market for the type of property at issue such that sufficient data is available to make a comparative analysis. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W. 3d, 341, 347 (Mo. 2005). (citations omitted). The record indicates a lack of sufficient adjustments to the comparable sales. Complainants' comparables were reviewed for six objective criteria and one subjective criterion: sale date, sale price, land area, building area, year built, price per square-foot, and general comments regarding condition. However, the analysis of the comparable properties in Exhibits B did not demonstrate any quantitative market-based dollar adjustments to account for the potential significant similarities or significant differences between the comparable properties and the subject property. Instead, Complainant's Appraiser's analysis drew a conclusion that the subject property's price per square-foot fell in the middle average or median range of the comparable properties' sale prices based on general qualitative comments. In *Giddy-Up LLC*, Complainant's Appraiser testified that her comparable sales analysis was limited by the lack of available comparable sales data, which was demonstrated by the fact that the subject property was significantly newer than the comparables. (Exhibit B at 10). Consequently, one would be forced to engage in speculation to conclude that the presumption of correct assessment was rebutted using Complainant's comparable sales

analysis. The Hearing Officer will not engage in such speculation. There was no substantial or persuasive evidence to support Complainants' TVMs under the sales comparison approach.

In an STC hearing, Respondent "shall not advocate nor present evidence advocating a valuation higher than that value finally determined by the assessor or the value determined by the BOE, whichever is higher, for that assessment period." Section 138.060.1. If Respondent introduces "evidence indicating a higher value than the value finally determined by the assessor or the value determined by the board of equalization ... such evidence will only be received for the purpose of sustaining the assessor's or board's valuation, and not for increasing the valuation of the property under appeal." 12 CSR 30-3.075(1). Respondent's Exhibits 1 conclude the market value of the subject properties as higher than the value determined by the Respondent or the BOE. Exhibits 1 are admissible as evidence for sustaining the value assigned by the BOE. 12 CSR 30-3.075(1).

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVMs of the subject properties as of January 1, 2021, were \$1,950,000 and \$1,585,000.

Application for Review

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

emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

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

Disputed Taxes

The Collector of Jackson 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 September 22, 2023.
STATE TAX COMMISSION OF MISSOURI

ERICA M. GAGE
Senior Hearing Officer
State Tax Commission

Certificate of Service

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