



STATE TAX COMMISSION OF MISSOURI

NEW PRIME INC,) Appeal No. 21-33012, 21-33014 - 21-33016
) Parcel/locator No(s): 1204104001,
) 1204205024, 1204401026, 1204402005
)
)
Complainant(s),)
)
v.)
)
BRENT JOHNSON, ASSESSOR,)
GREENE COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

New Prime Inc. (Complainant) appeals the Greene County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject properties on January 1, 2021, were \$9,441,000, \$7,585,700, \$8,325,600, and \$5,982,300. Complainant claims the property is overvalued and for all parcels alleges a total TVM of \$21,300,000 as of January 1, 2021. Complainant produced substantial and persuasive evidence establishing overvaluation. The BOE's decision is SET ASIDE.¹

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.

Complainant was represented by counsel, Apollo Carey. Respondent was represented by counsel, Aaron Klusmeyer. The evidentiary hearing was conducted on August 4, 2022, via WebEx.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 2740 North Mayfair Ave, Springfield, Greene County, Missouri. The parcel/locator numbers are 1204104001, 1204402005, 1204401026, and 1204205024. The subject property is a Class C, light industrial property with improvements, located in the Northeast submarket. The improvements consist of 349,403 square-feet of gross building area on 182.14 acres of land. The property consists of nine buildings of various construction types and various construction dates. The buildings include a Main Office, Z building, Tractor Shop, Trailer Rebuild, Millennium Office, Urbana Building, Plaza building, Truck Wash, and a Paint and Detail. Descriptions of each building are included in Exhibit A on pages 38 and 39. The subject provides 9,504 off-street, surface parking spaces.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM of each parcel on January 1, 2021, was \$9,441,000, \$7,585,700, \$8,325,600 and \$5,982,300. The BOE classified the subject property as commercial and independently determined the TVM of the four parcels on January 1, 2021, was a total of \$31,334,600 (\$9,441,000, \$7,585,700, \$8,325,600 and \$5,982,300).

3. Official Notice Request by Respondent. Respondent requests the State Tax Commission take official notice of *In Re Marriage of Patrick*, 201 SW3d 591 (Mo. App. S.D. 2006) (regarding the Court's opinion that appraisers shall not use listings as

comparables). Agencies shall take official notice of all matters of which the courts take judicial notice. *Section 536.070(6)*. Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts. *In re Murphy*, 732 S.W.2d 895, 902 (Mo. banc 1987); *State v. Gilmore*, 681 S.W.2d 934, 940 (Mo. banc 1984); *State v. Keeble*, 399 S.W.2d 118, 122 (Mo. 1966).

4. Complainant's Evidence. Complainant submitted Exhibit A, Complainant's Appraisal, and Exhibit B (amended), the Written Direct Testimony (WDT) of Appraiser, Robert Becker. Complainant submitted a proposed TVM of the subject property on January 1, 2021, of \$21,300,000. Respondent's written objections are overruled. Complainant's exhibits are admitted, to be given the weight deemed appropriate.

Complainant presented testimony from expert witness Robert Becker, a MAI designated commercial real estate appraiser licensed in Missouri. Mr. Becker testified he developed the sales comparison and cost approaches to value the subject property. Mr. Becker did not develop the income approach. In an explanation as to why the income approach is not appropriate, his report concludes "the subject is an owner/user facility {...} a search found limited support for rental data that would support a similar project as the subject". (Exhibit A at 54) Mr. Becker valued four parcels as combined into one appraisal, with one ultimate TVM. Mr. Becker composed one appraisal report for Complainant and determined the sales comparison approach was a reliable indicator of value and given primary weight, with support from the cost approach. (Exhibit A)

Exhibit A concludes a land value totaling \$7,300,000 (rounded), based on three listings and two recent sales. Mr. Becker's report explains how the comparables were selected as follows:

“A thorough search was made for similar land sales in the area. The parameters of the survey were highest and best use, zoning, proximity to the subject, size, and date of sale. In selecting comparables, emphasis was placed on confirming recent sales of sites that are similar to the subject property in terms of location and physical characteristics. Overall, the sales used represent the best comparables available for this analysis.” (Exhibit A at 55)

The overall unadjusted value ranged from \$11,521 per acre of land to \$61,011 per acre of land, and averaged \$36,480 per acre of land. (Exhibit A at 56-59) The land valuation includes a table with the qualitative adjustments made for location and physical characteristics such as size, location quality, access, exposure, etc. (Exhibit A at 56-59) These adjustments were used to find a value of \$40,000 per acre of land. (Exhibit A at 56-59)

Mr. Becker testified his sales comparison approach used six sales from Kansas, Illinois, Colorado, Minnesota, and Georgia and finding no comparables in Missouri. He testified he used quantitative percentage adjustments to the comparables based on age, quality, size (by square-foot), condition, functional utility, office buildout and others. (Exhibit A at 68-69) His appraisal considered adjustments property rights, financing terms, conditions of sale, expenditures after sale and market conditions and found 0% adjustment was necessary for all comparables when adjusting to the subject property. (Exhibit A at 68-69) Mr. Becker found a price per square-foot of \$40 multiplied by 349,403 and arrived at an indicated value of the improvements of \$14,000,000 (rounded). When Mr. Becker added

the land value of \$7,300,000, his final conclusion of TVM under the sales comparison approach was \$21,300,000.

Mr. Becker developed the cost approach to support the sales comparison approach. Mr. Becker used Marshall Valuation Services (MVS) for replacement cost new with two methods for depreciation, age/life and extraction. He found the weighted age of the subject to be 20 years. Mr. Becker concludes his cost approach using depreciation by age-life method supports a value of \$22,100,000 and using depreciation by extraction supports a value of \$20,100,000. He found that cost depreciation by extraction “provides the most supportable market-based approach and deserves primary weight in the final reconciliation”. (Exhibit A at 67)

5. Respondent's Evidence. Respondent submitted no evidence.

6. Value. The TVM of the subject property on January 1, 2021, was \$21,300,000 for the four parcels.

7. No Evidence of New Construction & Improvement. There was no evidence of new construction and improvement from January 1, 2021, to January 1, 2022, therefore the assessed value for 2021 remains the assessed value for 2022. Section 137.115.1.

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 cost approach may be based on either reproduction cost or replacement cost. While reproduction cost is the best indicator of value for newer properties where the actual costs of construction are available, replacement cost may be more appropriate for older properties. *Snider* at 341, 347.

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. Complainant's Land Valuation Was Supported by Comparable Sales.

In Complainant's land valuation, five comparables were used, two sales and three listings. Missouri law is clear that sales must be utilized for a proper sales comparison. In taking Official Notice of *In Re Marriage of Patrick*, 201 SW3d 591 (Mo. App. S.D. 2006), the STC recognizes that in that case, a residential appraisal was conducted using only listings rather than recent sales. The Court found that the appraiser's methodology was improper and found that only from "market sales" can an appraiser find a TVM.² However,

² The plural usage of the word "sales" indicates the Court meant for appraisers to use more than one sale, but no guidance is given as to how many sales are appropriate. Rather the appraiser is to make an expert analysis based on market data.

Complainant's appraisal is distinguishable in that the land valuation derived by Mr. Becker in the present case was based on two sales in addition to listings. Proper adjustments were made and a value was found based on the methods approved in Missouri.

Further, the Court in *Patrick* was discussing the utilization of listings for a residential sales comparison appraisal. This case is a commercial appraisal that utilizes sales comparison and cost approaches, but the listings are used by Mr. Becker in the site valuation "as though vacant" portion of an entire appraisal. The Appraisal of Real Estate (14th Ed.) provides guidance on how the site valuations are to be conducted. Appraisers are to present "market data [...] along with an analysis of the data and reasoning that lead to the land value opinion [...] in a clear and concise manner". (668) Generally, when sales comparison methods are used in land (or site) valuation, the appraiser may look at listings, and although sales are preferred, there is no mention as to how many sales should be considered; rather, just an analysis of sales from which an appraiser can arrive at an opinion of value and then explain that opinion in a clear and concise manner. (*Id.* at 364-366) Here, Complainant had two verified sales, to which proper adjustments were made. The use of listings was a portion of the overall market data, and appropriate to be used in such a manner. Clearly, the use of only listings would be a cause to question the valuation, but ultimately, the land valuation in this appraisal was comprised of sales and listings, which is an appropriate appraisal practice. Therefore, there was substantial and persuasive evidence to support Complainant's land valuation.

5. Complainant Did Prove Overvaluation.

For property tax purposes, real property is generally valued using "one or more of

three generally accepted approaches.” *Snider*, 156 S.W.3d at 346. These three approaches include the cost approach, the comparable sales approach, and the income approach (also known as income capitalization). *Id.* at 346-48; *Missouri Baptist Children's Home v. State Tax Comm'n* (“*MBCH*”), 867 S.W.2d 510, 511 n.3 (Mo. banc 1993). The comparable sales approach “is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis.” *Snider*, 156 S.W.3d at 348. “The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties.” *Id.* at 347-48 (internal quotation omitted). “Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character.” *Id.* at 348. Complainant found six sales reasonably related in time and distance, and made adjustments to those sales. Complainant’s comparables are so similar to the subject property that minor adjustments were needed. The use of similar comparables with adjustments to compare to the subject property presented by Complainant constituted substantial and persuasive evidence to support Complainant’s TVM under the sales comparison approach.

The cost approach was also developed as a support to the sales comparison approach. The cost approach is most appropriate when the property being valued has been recently improved with structures that conform to the highest and best use of the property or when the property has unique or specialized improvements for which there are no comparables in the market. While reproduction cost is the best indicator of value for newer properties where the actual costs of construction are available, replacement cost may be

more appropriate for older properties. *Snider* at 341, 347 (citations omitted). Mr. Becker utilized replacement cost new of the improvements using Marshall and Swift cost manuals and derived two opinions of value, which supported his sales approach.

The three principal methods for estimating depreciation are (1) the market extraction method; (2) the age-life method; and (3) the breakdown method. Mr. Becker used market extraction and age-life calculations to estimate the total depreciation of the improvements for the subject property. (See Exhibit A at 62, 65 – 67) His estimations are found to be reasonable and as a support for the sales comparison approach, constitute substantial and persuasive evidence of the TVM presented in the appraisal.

CONCLUSION AND ORDER

The BOE decision is SET ASIDE. The total TVM of the subject property on January 1, 2021, was \$21,300,000 for the four parcels.

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 Greene 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 29, 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 29, 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