



STATE TAX COMMISSION OF MISSOURI

TIFFANY SQUARE, INC.,)
Complainant(s),)
)
v.)
)
)
DAVID COX, ASSESSOR,)
PLATTE COUNTY, MISSOURI,)
Respondent.)

Appeal No. 21-79058
through 21-79065
Parcel/locator No(s): See Appendix A
(attached)

DECISION AND ORDER

Tiffany Square, Inc. (Complainant) appeals the Platte County Board of Equalization's (BOE) decisions finding the true values in money (TVMs) of the subject properties on January 1, 2021, was \$4,980,698 (total for seven lots collectively known as the "Outparcels") and \$309,982 (one lot known as the "Ambassador Parcel"). Complainant claims the property is overvalued and proposes values of \$1,609,200 (Outparcels) and \$193,600 (Ambassador Parcel) as of January 1, 2021. Complainant produced substantial and persuasive evidence establishing overvaluation. The BOE's decisions are 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, Peter Corsale. Respondent was represented by counsel, Bob Shaw. The evidentiary hearing was conducted on September 14, 2022. The parties submitted post hearing briefs that were incorporated into the record.

FINDINGS OF FACT

1. Subject Property. The subject consists of eight vacant lots of land located in Kansas City, Platte County, Missouri. Seven of the lots, known as the Outparcels, were intended to be pad sites, i.e., outparcels, to a Sam's Club based upon a 2013 development plan. The Outparcels range in size from .96 to 2.89 acres of land, totaling 10.55 acres of land. The eighth lot is the Ambassador parcel. It is 1.78 acres of land, irregularly shaped as the north and south ends are shallow and similar to a triangle. The parcel/locator numbers are 17-7.0-36-000-015-012, 19.3.0-06-000-000-009, 19-3.0-06-000-000-010, 19-3.0-06-000-000-011, 19-3.0-06-000-000-012, 19-3.0-06-000-000-013, 19-3.0-06-000-000-014, and 19-3.0-06-000-000-016.

2. Respondent and BOE. Respondent classified the subject properties as commercial and determined the TVMs on January 1, 2021, as follows: \$309,982 for the Ambassador Parcel and \$4,980,698 for the other 8 parcels. They were individually valued at \$785,009 (Lot 2), \$1,262,476 (Lot 3), \$774,513 (Lot 4), \$518,852 (Lot 5), \$928,407 (Lot 6), \$503,284 (Lot 7), and \$208,157 (Lot 9). The BOE classified the subject properties as commercial and independently determined the TVMs on January 1, 2021, as follows: \$309,982 for the Ambassador Parcel and \$4,980,698 for the other 8 parcels. They were individually valued at \$785,009 (Lot 2), \$1,262,476 (Lot 3), \$774,513 (Lot 4), \$518,852 (Lot 5), \$928,407 (Lot 6), \$503,284 (Lot 7), and \$208,157 (Lot 9).

3. Complainant's Evidence. Complainant submitted Exhibit A, Appraisal Report, and Exhibit B, the written direct testimony (WDT) of Kenneth Jagers. Complainant presented testimony from two witnesses at the hearing, Mr. Jagers and Jon Fogerty.

Mr. Jagers is the Managing Director for JLL Valuation Advisory in Kansas City, Missouri, is a member of the Appraisal Institute, and is a MAI certified appraiser. Utilizing the sales comparison approach, Mr. Jagers valued the subject properties as follows: \$3.50 per square-foot for the Outparcels, totaling \$1,609,200, and \$2.50 per square-foot for the Ambassador Parcel, totaling \$193,600. The income and cost approaches were not utilized.

Mr. Jagers concluded in his report that the market area around the subject properties is in the growth stage of its life cycle as it experienced recent employment growth, moderate construction activity and a pending KCI airport terminal completion. (Ex. A at 28) Mr. Jagers concluded in his report that the highest and best use for the subject properties was speculation. (Ex. A) Mr. Jagers notes in his report that all of the parcels subject to this appeal have been on the market for many years. (Exhibit A)

Mr. Jagers explained the physical location of the subject properties in his testimony and how access to them is vital to their individual TVMs. He testified the ingress and egress points to the Outparcels were through Sam's Club, an 18.74 acre lot, not owned by Complainant. (Tr. 10:11-12:6) Mr. Jagers testified that the Outparcels and Sam's Club were platted in 2013 in accordance with a "joint development plan", with Sam's acting as an "anchor tenant". (Tr. 12:10 -13:9) He testified that the "joint development plan" was terminated when Sam's Club abandoned the project and sought to sell their vacant land. (Tr. 10:11-12:6) He further testified that without that anchor, the development plan became

obsolete and essentially acted as a barrier to the sale of the Outparcels. (Id.) Mr. Jagers testified that as of January 1, 2021, no legally permissible or approved ingress or egress access points existed to enter the Outparcels from the main road. (Tr. 37:17-38:9)

Under the sales comparison approach, Mr. Jagers found four recent comparable sales less than 4 miles away from the subject properties and in the immediate market area of Kansas City. For the Outparcels, Mr. Jagers testified the comparables were all similar to the subject properties in that they were raw land that needed utilities, ingress and egress, and new site approval. (Tr. 14:24-15:6; Tr. 41:3-17) The price per square-foot for the four sales analyzed ranged from \$1.90 to \$5.00. (Ex. A at 54) The adjusted range per square-foot was \$2.50 to \$4.95, after Mr. Jagger made adjustments for location, access, exposure, shape and topography, and condition(s) of sale. (Ex. A at 54) Mr. Jagers concluded that the TVM of each Outparcel on a per square-foot basis was \$3.50. (Ex. A at 56)

For the Ambassador parcel, which is located in a less active market area and has been on the market for some time, Mr. Jagers also utilized a price per square-foot range from \$1.90 to \$5.00. (Ex. A at 47) The adjusted range per square-foot was to \$1.88 to \$3.38, after Mr. Jagger made adjustments for location, access, exposure, shape and topography, and condition(s) of sale. (Ex. A at 47) Consequently, Mr. Jagers concluded the TVM of the Ambassador parcel on a per square-foot basis was \$2.50. (Ex. A at 49) His report also concludes that Ambassador has no legal access as of January 1, 2021. (Ex. A at 32) In its current platting, being an irregular shape and located on a roundabout, there is no apparent use of Ambassador without grouping with the nearby adjoining tracts, which Mr. Jagers testified are also for sale. (Ex. A at 36)

Mr. Jagers testified to a March 2021 letter of intent (LOI) for all of the Outparcels, including Lot 8 which is not subject to this appeal, where the potential buyer offered \$1,918,850 or \$3.53 per square-foot for the Outparcels. The sale did not occur, but Mr. Jagers testified that in his opinion, the LOI is still a “good indicator of the potential market of the Outparcels and how the market views the plots”. (Tr. 41:3-17)

Jon Forgey is the Senior Vice-President at Security Bank and Secretary/Treasurer of Tiffany Square, Inc. At the hearing, Counsel for Respondent objected to Mr. Forgey’s testimony as inadmissible due to the failure of Complainant to list him as a potential witness. Counsel for Complainant argued that Mr. Forgey should be allowed to testify as his testimony is relevant to the content of Mr. Marx’s testimony, of which they were unaware of until the hearing, and as his WDT was prefiled, but did not contain the information brought up in the hearing and Mr. Forgey’s testimony was being offered as rebuttal to Mr. Marx only. The Senior Hearing Officer issued an interlocutory order allowing Mr. Forgey to testify and a ruling on the testimony’s admittance was taken with the case.

In their brief, Complainant argued, the content of Mr. Forgey’s testimony “was fully disclosed to Respondent prior to the hearing. Square, Inc. Tr. 101:1-4” (Comp. Brief at 21) Respondent’s Objection is hereby overruled. Mr. Forgey’s testimony is admitted into the record and given the weight deemed appropriate. Respondent’s questions regarding covenants and marketing are allowed over Complainant’s continuing objection that this is outside the scope of cross examination. The testimony and cross examination is admitted in its entirety.

In his testimony, Mr. Forgey explained the subject properties have been marketed since at least the mid-1990's. Mr. Forgey testified Sam's Club's "abandonment has stalled any progress on development of the parcels as currently platted". (Tr. 102:21-105:21) He also clarified there have been several LOIs, all of which have failed, because of Sam's Club's full-scale abandonment and refusal to allow the interior access roads on its property. (Tr. 102:21-107:20)

4. Respondent's Evidence. Respondent submitted Exhibit 1, 2 and Rebuttal Exhibit 14, which are admitted into evidence. Exhibit 1 is the WDT of Robin Marx. Exhibit 2 is the appraisal report. Exhibit 14, used for impeachment, is a prior STC case where Mr. Jagers conducted the appraisal. Complainant objected to its inclusion as irrelevant. Respondent argued it was relevant for credibility.

Exhibit 2 utilizes the sales comparison approach to estimate the market value of the subject properties from recent sales of nine comparable properties. Focusing on six sales of active developments, Mr. Marx valued the Subject Properties totaling \$4,345,000 for the Outparcels and \$410,000 for the Ambassador parcel. Mr. Marx valued the subject property as if each parcel would be bought separately and utilizing sales involving active developments. (Ex. 2, p. 29) Mr Marx testified he valued each of the outparcels as individual lots and his value conclusions were \$590,000 (\$9.00 per square-foot) (Lot 2), \$1,400,000 (\$11.00 per square-foot) (Lot 3), \$520,000 (\$11.00 per square-foot) (Lot 4), \$475,000 (\$11.00 per square-foot) (Lot 5), \$775,000 (\$10.00 per square-foot) (Lot 6), \$460,000 (\$11.00 per square-foot) (Lot 7), and \$125,000 (\$3.00 per square-foot) (Lot 9).

The comparable properties differ from the subject property with respect to use. Mr. Marx's value conclusions, when added, are lower than the BOE's decisions.

5. 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.

6. Value. The TVMs of the subject properties on January 1, 2021, were as follows:

Appeal Number	Parcel Number	TVM
21-79508	17-7.0-36-000-015-012	\$193,600
21-79059	19.3.0-06-000-000-009 (Lot 2)	\$229,000
21-79060	19-3.0-06-000-000-010 (Lot 3)	\$439,800
21-79061	19-3.0-06-000-000-011 (Lot 4)	\$225,900
21-79062	19-3.0-06-000-000-012 (Lot 5)	\$151,400
21-79063	19-3.0-06-000-000-013 (Lot 6)	\$270,500
21-79064	19-3.0-06-000-000-014 (Lot 7)	\$147,000
21-79065	19-3.0-06-000-000-016 (Lot 9)	\$145,600

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.

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 Proved Overvaluation.

Complainant produced substantial and persuasive evidence of overvaluation. In his valuation, Mr. Jagers focused on the economic realities of the subject properties and any potential future market transactions by utilizing an approved methodology in the state of Missouri. The analysis of Complainant's appraiser is supported by the sales comparison 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). Complainant used sufficient comparables of similar properties. Complainant's comparable sales are reasonably related in time and distance and involve land comparable in character (vacant land, no utilities, and/or no access). Although Respondent utilized more comparables, many of them are not persuasive of value, as the usage of active developments increases the marketability much above the current parcels within this appeal. Mr. Marx testified he made adjustments to the sale prices per square-foot in each comparable to account for the active developments;

however, these adjustments amount to speculation when they are so unlike the current subject properties. (Exhibit 2) Further, there is no reason to include those comparables when Mr. Marx had other comparables which were more similar to the subject properties. Respondent's comparables are not persuasive as to TVM.

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. *Aspenhof Corp. v. State Tax Commission*, 789 S.W. 2d 867, 869 (Mo. App. 1990). Both parties' appraisers concluded the highest and best use for the properties is speculation. (Exhibit A and 2) It is true that property can only be valued according to a use to which the property is readily available. But this does not mean that in order for a specific use to be the highest and best use for calculating the property's true value in money that particular use must be available to anyone deciding to purchase the property. . . .A determination of the true value in money cannot reject the property's highest and best use and value the property at a lesser economic use of the property. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W. 3d, 341, 348-349 (Mo. 2005). Therefore, to compare the parcels in this appeal to sales of active developments is not a proper comparable as it rejects the highest and best use. In fact, Complainant's comparables all mirror the highest and best use of the subject property.

Complainant explains the importance of choosing comparables with the proper use in their brief, "in the case of the Outparcels, the detrimental effect of the failed and abandoned development plan and an adjoining landowner who has refused to allow access

through its land as outlined in the plat map.” (Comp. Brief at 2) Complainant further explains this factor in relation to market value, as follows:

“The 2013 joint development plan contemplated ingress and egress through portions of Lot 1, which was owned by Sam’s and was to house the anchor tenant. Tr. 10:11-12:6. The amended covenants and restrictions entered by and between Sam’s and Complainant outlined how this would be executed. Id. With the amended covenant and restrictions terminated and Sam’s abandoning the project, new plans would have to be submitted to provide ingress and egress. Id; Tr. 22:1-22. And if each parcel as platted would be granted such access, *which is not guaranteed and therefore purely speculative*, then the usable space for each lot is further diminished. Tr. 10:11—12:6; Tr. 22:1-22. Consequently, the parcels, as configured, are essentially raw land with no utilities to the individual sites, no current ingress or egress, and would require the submission of a new site plan. Tr. 13:10-14:15.” (Comp.’s Brief at 3) (emphasis added)

Complainant’s argument is well taken. The evidence regarding market conditions, combined with the factual reality that the subject properties are unable to be developed as previously intended, lead to a reasonable conclusion that the value of the Outparcels has decreased, not increased. Ambassador suffers its own issues as an irregularly shaped parcel with no legal access points as of January 1, 2021. The record supports the TVMs submitted by Complainant.

CONCLUSION AND ORDER

The BOE decision is set aside. The TVM of the subject property as of January 1, 2021 were as follows:

Appeal Number	Parcel Number	TVM
21-79508	17-7.0-36-000-015-012	\$193,600
21-79059	19.3.0-06-000-000-009 (Lot 2)	\$229,000
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21-79065	19-3.0-06-000-000-016 (Lot 9)	\$145,600

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 Platte 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

Appeal No.	Complainant	Parcel Locator No.
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21-79059	Tiffany Square Inc	19-3.0-06-000-000-009.000
21-79060	Tiffany Square Inc	19-3.0-06-000-000-010.000
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21-79062	Tiffany Square Inc	19-3.0-06-000-000-012.000
21-79063	Tiffany Square Inc	19-3.0-06-000-000-013.000
21-79064	Tiffany Square Inc	19-3.0-06-000-000-014.000
21-79065	Tiffany Square Inc	19-3.0-06-000-000-016.000

APPENDIX A