



STATE TAX COMMISSION OF MISSOURI

MENARD INC,) Appeal No. 21-89501
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)
Complainant(s),)
)
v.)
)
SUSAN CHAPMAN, ASSESSOR,)
TANEY COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Menard Inc. (Complainant) appeals the Taney County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$17,700,000. Complainant claims the subject property is overvalued and proposes a TVM of \$14,350,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.¹

Complainant was represented by counsels Chris Mattix and Kevin Mason. Respondent was represented by counsel, Travis Elliot. The evidentiary hearing was conducted on November 15, 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 property is located at 801 Birch St., Hollister, Taney County, Missouri. The parcel/locator number is 17-4.0-17-000-000-005.000. The property is operated as Menards and is an owner-occupied big box retail store that has 173,224 square-feet of gross building area and sits on approximately 30.81 acres of land. Within the building there is an additional 22,821 square-foot mezzanine. Attached to the primary structure is a 25,510 square-foot garden center. Adjacent to the primary structure is a detached lumber shed / storage building containing 46,780 square-feet. All building improvements were constructed in 2016. The subject property also contains approximately 6.13 acres of land that is planned and currently marketed as developable retail / commercial pad sites.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was \$17,700,000. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$17,700,000.

3. Complainant's Evidence. Complainant's testimony and evidence submitted a TVM for the subject property on January 1, 2021, of \$14,350,000. Complainant submitted the following exhibits:

Exhibit	Description	Ruling
A	Written Direct Testimony of Dan Michlig	Admitted
B	Menards Title Sheet	Admitted
C	Menards Overall Floor Plan	Admitted
D	Menards Site Plan	Admitted
E	Menards Settlement Statement	Admitted

F	Menards Special Warranty Deed	Admitted
G	Menards Construction Cost Summary	Admitted
H	WDT of Brock Heyde	Admitted
I.1 and I.2	Appraisal of Mr. Heyde	Admitted

Dan Michlig is employed by Complainant as the manager of tax and audit. Mr. Michlig testified to the specifics of the improvements on the subject property. Mr. Michlig testified to the settlement statement, dated May 16, 2014, identifying the purchase price Menard Inc. paid to acquire the land of \$1,500,000. (WDT at 3 and Exhibit E) Total construction costs paid were \$15,268,282, including \$983,664 for additional land costs and the store was opened on October 24, 2016. (WDT at 4 and Exhibit H)

Brock Heyde is an MAI certified and Missouri Licensed real estate appraiser. Mr. Heyde utilized all three approaches to value: the cost approach, the sales comparison approach, and the income capitalization approach. Mr. Heyde testified he reconciled the three approaches and because the subject is owner occupied, and because there is an active market and sufficient quantity of comparable sales data, the sales comparison approach was given the greatest weight in the value conclusion. (WDT at 12) Mr. Heyde testified the cost approach was given secondary weight “as it does not directly reflect market behavior” and the income capitalization approach was given secondary weight “because this property is not an income producing property and it does not represent the primary analysis undertaken by the typical owner-user in a fee simple transaction.” (WDT)

Mr. Heyde calculated the gross building area square footage, but excluded the mezzanine, the garden center, and the lumber shed. (WDT at 2-3) The mezzanine area is

22,821 square-feet. He gave various reasons for the mezzanine's exclusion: "minimal finish and reduces the clearance height and functional utility of the main floor retail space", there is "ample storage areas in the rear of the building", "mezzanines are not typically featured or considered necessary for comparable big box retail" and "market participants don't typically include or report mezzanine areas when reporting gross building or net leasable areas". (WDT at 2-3) The garden center, 25,510 square-feet, was also excluded because "its southern and eastern walls are comprised of different building materials, primarily metal siding" and the "northern end of the garden center is open to the elements with drive-in access". (WDT at 2-3) The lumber shed, 46,780 square-feet, was excluded due to the "lower quality Class D" finishes; "wood frame with metal siding, metal roof, and concrete floors" and is not "fully enclosed on all sides and lacks heating and cooling". (WDT at 3-4)

For his sales comparison approach, Mr. Heyde developed two values, which he combined to arrive at a TVM. The first was for the developable vacant land and the second was for the land containing the improvements. Mr. Heyde used one set of four comparable sales transactions for what he described as "the primary lot" containing the improvements and a separate set of four comparable sales transactions for what he described as the "smaller pad site lots" or the vacant and developable land. (WDT) Mr. Heyde considered the four pad sites excess land because he testified they are not necessary to serve or support the primary lot. He made adjustments to the market comparables including adjustments for market conditions, location, access, size, and topography. He found the TVM for the

primary lot was \$2,960,000 (rounded), and the TVM of the vacant and developable land was \$2,480,000 (rounded). (WDT)

For the improvements, Mr. Heyde used five comparables in the sales comparison approach. He made adjustments for differences in property rights, market conditions, location, access, size, building quality, age/condition, and additional covered storage. He concluded a range of adjusted comparable sales prices and concluded a \$67.00 per square-foot value. (WDT) Mr. Heyde testified three of the five comparables were vacant at the time of the sale, two were not. (WDT at 9) He testified “all five comparables were purchased for continued retail use, thus, these comparables maintained the same highest and best use as the subject, and none of the five comparables involved a distressed seller”. (WDT at 9-10) Adjustments were made for market conditions and additional covered storage, but the square-footage used, 173,224, does not include mezzanine, garden and lumber shed. TVM calculated as follows:

Indicated Value per SF	\$67.00
Subject Square Feet	173,224
Indicated Value	\$11,606,008
Adjustments	
Excess Land	\$2,480,000
Total Adjustments	\$2,480,000
Indicated Value	\$14,086,008
Rounded	\$14,090,000 (Exhibit I at 153).

Mr. Heyde used six rent comparables for the income capitalization approach. He made adjustments for conditions of lease terms, market conditions, location, access/exposure, size, building quality, age/condition and additional covered storage. (WDT at 6) Mr. Heyde developed a market lease rate of \$6.15 per square-foot and applied the NOI to a loaded capitalization rate of 7.84%, to find a TVM of \$14,710,000. (WDT at 11-12) He utilized 173,224 square-foot in his calculations for NOI and EGI. (Exhibit I at 166, 172)

In the cost approach, Mr. Heyde took into account differences in size and building features to classify the building components and to determine replacement cost new using Marshall Valuation Services (MVS). His cost approach combines the land value with the depreciated replacement cost of the improvements and made adjustments for external obsolescence. The total replacement cost – new before entrepreneurial incentive was found to be \$14,794,755. Mr. Heyde compared that amount to the construction costs provided from Complainant, adjusted with an inflation multiplier, and noted that any differences between these two cost figures were attributable to the building being constructed exclusively for the occupancy and operation of Menards, with ownership likely giving minimal consideration to its excessive construction costs related to the cost of the superadequacies. (WDT) His testimony summarizes “observed superadequacies at the subject include the mezzanine, which is atypical in most warehouse discount stores, a large free standing lumber storage shed that significantly exceeds the size and quality of what is typically found in the market (over 10,000 sf), and other site features unique to Menards

including a 16-ft tall fence and entrance canopy.” (WDT at 7) He did not account for these supradequacies in functional obsolescence, but through an adjustment to the price per square-foot. He either utilized zero, by excluding the area from a replacement cost estimate (mezzanine and lumber canopy) or utilized an adjusted amount based on the superadequacy theory, (garden center and lumber shed). (Exhibit I at 126-130). His justification regarding exclusion or adjustments of such building features is that these features are “not commonly found in the marketplace, even for home improvement stores. As such, a subsequent owner/user would likely place little to no value on this additional feature. Therefore, this feature is considered an over-improvement and would not provide any additional utility or value. Based on the preceding, the cost related to this building component is not included in our replacement cost estimate” (Exhibit I at 130).

4. Respondent's Evidence. Respondent submitted Exhibits 1-3 and the WDT of Susan Chapman. Exhibit 1 is the Property Record Card, Work Index and Sketch for the subject property. Exhibit 2 is the Property Assessment Appeal Form of Complainant. Exhibit 3 is the BOE decision letter. Respondent’s exhibits are admitted into evidence and will be given the weight deemed appropriate.

Ms. Chapman testified she has been the Assessor of Taney County since September 2020. Ms. Chapman testified she is a real estate broker and has experience in commercial real estate. (WDT) She testified she utilized the Honeycutt mass appraisal system to arrive at a TVM of the subject property as of January 1, 2021, of \$17,700,000.

5. Value. The TVM of the subject property on January 1, 2021, was \$17,700,000.

6. 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. These three approaches are 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 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*, 156 S.W.3d at 341, 347.

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. Complainant Did Not Prove Overvaluation.

Although Complainant presented substantial evidence to support its opinion of value, Complainant's evidence was not both substantial and persuasive to rebut the BOE's value and to establish the TVM of the subject property on January 1, 2021.

The evidence established that Complainant's Appraiser gave the most weight to a sales comparison approach. Complainant's Appraiser's analysis drew a conclusion that the TVM must be calculated without a portion of the square footage of the subject property.

Complainant's witnesses testified that the subject property was much larger than and was customized in a manner different from typical big-box retail stores, which impacted the subject property's TVM. However, in his testimony, Mr. Heyde justified the exclusion of said customized square footage in order to calculate his TVM. Evidence was presented that Complainant currently uses the areas, so to conclude that a potential investor would not consider this a rentable or usable area is not supported by evidence. And then to exclude such area from any calculations is speculative and does not provide a reliable TVM for the subject property. In calculating a TVM without using the actual square footage of the properties, Complainant's valuation under each approach is not persuasive. 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 and persuasive evidence to support Complainant's TVM under the sales comparison approach.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$17,700,000.

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 Taney 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