



STATE TAX COMMISSION OF MISSOURI

LAKE SHERWOOD ESTATES)
ASSOCIATION,)
) Appeal No. 19-91004
) 19-91005
) 19-91006
 Complainant,)
)
 v.)
)
 KATIE SMITH, ASSESSOR,)
WARREN COUNTY, MISSOURI,)
)
 Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On January 29, 2021, a State Tax Commission (STC) Senior Hearing Officer (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the Warren County Board of Equalization (BOE) as to appeals 19-91004 and 19-91005 and setting aside the decision of the BOE as to appeal 19-91006. The issues addressed in the Decision were the classification, valuation, and exemption of the subject properties as of

January 1, 2019¹. Lake Sherwood Estates Association (Complainant) subsequently timely filed an Application for Review of the Decision of the Hearing Officer. Katie Smith², Assessor, Warren County, Missouri, (Respondent) subsequently timely filed a 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

The subject properties are identified as follows:

Parcel Number	Parcel Description
12-12.0-1-01-003.000.000	Administrative Building Parcel
12-12.0-1-02-001.000.000	Maintenance Building Parcel
12-12.0-2-02-001.000.000	Unimproved Parcel

Complainant appealed on the grounds of misclassification, exemption, and overvaluation. The subject properties’ true value in money (TVM) and classification as set by Respondent, the BOE, and Robert Norris’ (Respondent’s Appraiser) were:

Appeal Number	Parcel Number and Parcel Description	Respondent TVM	BOE TVM	Respondent’s Appraiser	Classification

¹ Missouri operates on a two-year reassessment cycle for valuing real property. See Section 137.115.1. Accordingly, absent new construction or improvements to a parcel of real property, the assessed value as of January 1 of the odd year remains the assessed value as of January 1 of the following even year. *Id.*

² The appeals were initiated during the term of the former assessor. The current Assessor of Warren County is Katie Smith.

19-91004	12-12.0-1-01-003.000.000 Administrative Building Parcel	\$253,180	\$253,180	\$275,000	Commercial
19-91005	12-12.0-1-02-001.000.000 Maintenance Building Parcel	\$164,500	\$164,500	\$175,000	Commercial
19-91006	12-13.0-2-02-001.000.000	\$5,000	\$5,000	\$3,200	Residential

Appeal 19-91004 (Parcel 12-12.0-1-01-003.000.000) referred to as the Administrative Building parcel, was improved with a building that serves as an administrative office building with offices, conference/meeting rooms, restrooms, and storage space, for Complainant’s employees, such as managers/supervisors, accountants and bookkeepers, human resources, collections, and security staff, and a paved parking lot. (Exhibit AAA at 7-8 and Exhibit 1 at 3-5) The parcel also had a separate building for public works, a security gate, and a bridle path. (Exhibit AAA 7- 8 and Exhibit 1 at 3-5)

Appeal 19-91005 (Parcel 12-12.0-1-02-001.000.000) referred to as the Maintenance Building parcel, was improved by three buildings and paved for vehicle access. (Exhibit AAA at 8-9 and Exhibit 1 at 17, 20-21) Two of the three buildings served as a maintenance shop and storage facility for Complainant. (Exhibit AAA at 8-9 and Exhibit 1 at 20-22) The remaining third building served as a community space with a post office and mailroom, bus stop shelter, and restrooms; the basement contained the office for Complainant’s public works department. (Exhibit AAA at 8-9 and Exhibit 1 at

20-21)

Appeal 19-91006 (Parcel 12-13.0-2-02-001.000.000) referred to as the vacant parcel, was unimproved real estate. (Exhibit AAA at 9-10 and Exhibit 1 at 25-26)

CONCLUSIONS OF LAW

Complainant's Points on Review

Complainant asserts the Hearing Officer's Decision is in error in that:

1. the Hearing Officer should have allowed Complainant to amend its Complaint for Review of Assessment to include a claim of discrimination;
2. the subject properties are exempt or have zero value;
3. the assessment of the subject properties results in double taxation and is a deviation from assessment of other common ground in Warren County, and is, therefore an unconstitutional discriminatory assessment.

In her response, Respondent counter argues that:

1. the Hearing Officer properly denied Complainant's motion for leave to amend its Complaint and disallowing a separate discrimination claim against Respondent two months prior to the Evidentiary Hearing because Complainant never raised the discrimination claim before the BOE and did not raise the claim until more than eight months had elapsed after filing its Complaint with the STC;
2. Complainant did not prove the subject property was exempt from taxation as real property is presumed taxable under Missouri law;
3. the Hearing Officer did not err in his determination of the subject properties' TVM; and
4. the subject properties were properly classified by the BOE.

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).

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.

Commission's Ruling

For the reasons that follow, the Commission finds Complainant's arguments to be unpersuasive. The Commission, having reviewed the whole record and having considered the Hearing Officer's Decision, the Application for Review of Complainant, and the Response of Respondent, affirms the Hearing Officer's Decision.

First, in these appeals, the Hearing Officer acted within his discretion in denying Complainant's request to amend its complaint where the ground asserted had not been appealed to and decided by the local BOE first. The denial of leave to amend a petition

is reviewed for abuse of discretion. *Metro Fill Development, LLC v. St. Charles County*, 614 S.W.3d 582, 595 (Mo. App. E.D. 2020). Although a court, and, by extension, an administrative tribunal, has broad discretion whether to grant a party leave to amend, it is an abuse of discretion to deny such leave when justice so requires. *Metro Fill*, 614 S.W.3d at 595. The administrative tribunal must consider guiding factors, including: hardship to the moving party if leave to amend is denied; reasons for any failure to include the new matters in previous pleadings; timeliness of the application to amend; whether an amendment could cure any defects in the pleading; and injustice to the party opposing the request to amend. *Id.*

It is undisputed that Complainant did not bring a claim of discrimination before the BOE, and no previous record of evidence regarding a claim of discrimination had been established. The STC's role as an administrative tribunal is to hear and decide cases in the context of appeals following decisions by the BOE. It is well settled that the STC's jurisdiction is derivative of the BOE's jurisdiction. The STC, an administrative tribunal, has only such powers and jurisdiction as is specified in the applicable statutes. *See Armstrong-Trotwood, LLC v. State Tax Commission*, 516 S.W.3d 830, 837 (Mo. banc 2017) Given that nearly a year had passed between the filing of the complaint and Complainant's request to amend the complaint and that the Evidentiary Hearing was drawing near, Respondent would have been prejudiced if the Hearing Officer had allowed the complaint to be amended because a claim of discrimination in assessment before the

STC requires the retention of experts, lengthy and laborious statistical analyses, and potential additional discovery. However, the denial of Complainant's request to amend the complaint did not result in precluding Complainant's claims as pleaded, i.e., classification, valuation, and exemption. Moreover, the Hearing Officer reviewed Complainant's claim of discrimination as presented and found no evidence to support the claim and that Complainant failed to meet the necessary first element of a discrimination claim – proving TVM of the subject properties.

Second, Complainant's claims of "double taxation," zero value, and exemption are somewhat intertwined; therefore, we address them together.

At the Evidentiary Hearing, Complainant argued the subject properties had been "double taxed" because the value of lots within the homeowners' association was increased by virtue of their recorded interests in the subject properties. Complainant offered evidence in an attempt to show the subject properties had zero value because they were considered "common ground" for the homeowner's association and no market existed for their sale independent of the lots within the homeowners' association. Complainant's appraiser referred to Complainant's homeowners' association declarations and by-laws and a general provision that Complainant cannot sell the subject properties without a two-thirds vote of the members of the homeowners' association. The Hearing Officer was not persuaded that any recorded document sufficiently restricted the sale of the subject properties to warrant a valuation of \$0. The Hearing Officer specifically concluded:

Complainant points to its Declaration and By-laws for the argument that the subject parcels cannot be sold because they have been considered "common ground," and thus, they are so legally restricted as to warrant zero valuation. However, this argument was considered and rejected by the STC when these same Declarations and By-laws were submitted to the STC in Complainant's 2017 appeals of the same subject properties. The only difference between the 2017 appeals and the instant appeal is that, in the instant appeal, Complainant's Appraiser testified that he believed the Declaration and By-laws sufficiently restrict the subject parcels. Given that Complainant's Declarations and By-laws do not establish that a zero value should be placed upon the subject properties, Complainant's opinion based upon his review of the Declarations and By-laws is not persuasive.

We agree with the Hearing Officer's conclusion.

Similarly, Complainant's evidence failed to establish that the subject properties were exempt from taxation. Article X, Section 6, of the Missouri Constitution sets forth property exempt from *ad valorem* property taxation. It states, in part:

All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state who is a former prisoner of war, as defined by law, and who has a total service-connected disability, shall be exempt from taxation; all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and horticultural societies, or for veterans' organizations may be exempted from taxation by general law.

(Emphasis added.)

The Constitution authorizes the legislature to enact exemptions from taxation.

Section 137.100 expressly lists properties qualifying for exemptions from taxation for state, county or local purposes. Taxation of property is the rule and exemption from taxation is the exception. *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 799 (Mo. banc 1990). Tax exemptions are not favored in the law and statutes granting exemptions are to be strictly, yet reasonably, construed against the one claiming the exemption. *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837, 844 (Mo. banc 1987); *State ex rel. Union Electric Co. v. Goldberg*, 578 S.W.2d 921, 923 (Mo. banc 1979). A property owner who claims the exemption bears a substantial burden to prove that his property falls within the exempted class. *United Cerebral Palsy Ass'n of Greater Kansas City*, 789 S.W.2d at 799.

In this case, the subject properties are not listed as those qualifying for exemptions from taxation under Section 137.100; consequently, the subject properties are not exempt from taxation.

Third, Respondent presented substantial and persuasive evidence to establish the TVM of the subject properties. Respondent's evidence supported the BOE's valuations in appeal numbers 19- 91004 and 19-91005. Respondent's evidence rebutted the presumption of correctness in appeal 19-91006 and established the correct value for the property as of January 1, 2019, to be \$3,200. Respondent's Appraiser developed an opinion of value relying upon an established and recognized approach for the valuation of real property, the sales comparison approach. The adjustments made by Respondent's

appraiser were consistent with generally accepted guidelines for the appraisal of property of the subject's type. The adjustments properly accounted for the various differences between the subject and each comparable.

Finally, although Complainant's Application for Review did not raise a claim of error regarding the classifications of the subject properties, we find that the Hearing Officer did not err in affirming the BOE's determinations of the classifications of the subject properties.

The record supports the Hearing Officer's findings. The Commission finds 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).

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 Warren 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 December 15, 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 December 15, 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

LAKE SHERWOOD ESTATES ASSOCIATION)	Appeal Nos. 19-91004
)	19-91005
)	19-91006
)	
Complainants)	
)	
v.)	
)	
KATIE SMITH ³ , ASSESSOR)	
WARREN COUNTY, MISSOURI,)	
)	
Respondent.)	

DECISION AND ORDER

HOLDING

The decisions of the Warren County Board of Equalization (BOE) are AFFIRMED as to appeals 19-91004 and 19-91005 and SET ASIDE as to appeal 19-91006. The evidence presented by Lake Sherwood Estates Association (Complainant) was not substantial and persuasive evidence to rebut the presumption of correct assessment by the BOE. The evidence of Katie Smith, Assessor of Warren County, (Respondent) was

³ At the time the appeal was filed, Wendy Nordwald was the Assessor of Warren County.

substantial and persuasive evidence to rebut the presumption of correct assessment by the BOE for appeal 19-91006.⁴

Complainant appeared by counsel Benjamin Wesselschmidt and Todd Billy.

Respondent appeared by counsel Jennifer Wu.

ISSUE

Complainant appealed on the grounds of misclassification, exemption, and overvaluation. The parcels' true value in money (TVM) and classification as set by the Respondent, the BOE, and Robert Norris' (Respondent's Appraiser) were:

Appeal Number	Parcel Number	Respondent TVM	BOE TVM	Respondent's Appraiser	Classification
19-91004	12-12.0-1-02-001.000.000	\$164,500	\$164,500	\$175,000	Commercial
19-91005	12-12.0-1-01-003.000.000	\$253,180	\$253,180	\$275,000	Commercial
19-91006	12-13.0-2-02-001.000.000	\$5,000	\$5,000	\$3,200	Residential

The State Tax Commission (STC) takes these appeals to determine the proper classification of the subject properties as of January 1, 2019, and whether the parcels had no value for ad valorem taxation purposes.

The Hearing Officer, having considered all of the competent evidence upon the

⁴ 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, § 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

whole record, enters the following Decision and Order.

FINDINGS OF FACT

1. **Authority.** Authority over this appeal is proper. Complainant timely appealed to the State Tax Commission.

2. **Evidentiary Hearing.** An evidentiary hearing was held on August 5, 2020, via Webex.

3. **Identification of Subject Properties.** The subject properties are real property and are identified by parcel/locator numbers 12-12.0-1-02-001.000.000 (Appeal 19-91004), 12-12.0-1-01-003.000.000 (Appeal 19-91005) and Parcel 12-13.0-2-02-001.000.000 (19-91006). All of the properties are located in Warren County, Missouri. (Complaints for Review of Assessment).

4. **Owner.** Complainant is the owner of the subject properties. Complainant was formerly known as Lake Sherwood Estates Homeowners Association. Members of the Complainant are property owners within Lake Sherwood, and they benefit from Complainant's ownership of the subject properties.

5. **Description of Subject Properties.**

a. Appeal 19-91004 (Parcel 12-12.0-1-02-001.000.000) referred to as the Maintenance Building parcel, was improved by three buildings and paved for vehicle access. (Exhibit AAA at 8-9 and Exhibit 1 at 17, 20-21) Two of the three buildings served as a maintenance shop and storage facility for Complainant. (Exhibit AAA at 8-9

and Exhibit 1 at 20-22) The remaining third building served as a community space with a post office and mailroom, bus stop shelter, and restrooms; the basement contained the office for Complainant’s public works department. (Exhibit AAA at 8-9 and Exhibit 1 at 20-21)

b. Appeal 19-91005 (Parcel 12-12.0-1-01-003.000.000) referred to as the Administrative Building parcel, was improved with a building that serves as an administrative office building with offices, conference/meeting rooms, restrooms, and storage space, for Complainant’s employees, such as managers/supervisors, accountants and bookkeepers, human resources, collections, and security staff, and a paved parking lot. (Exhibit AAA at 7-8 and Exhibit 1 at 3-5) The parcel also had a separate building for public works, a security gate, and a bridle path. (Exhibit AAA 7- 8 and Exhibit 1 at 3-5)

c. Appeal 19-91006 (Parcel 12-13.0-2-02-001.000.000) referred to as the vacant parcel, was unimproved real estate. (Exhibit AAA at 9-10 and Exhibit 1 at 25-26)

6. *Assessment of the Properties.* The BOE valued and classified the properties as follows:

Appeal Number	Parcel Number	Respondent TVM	BOE TVM	Classification
19-91004	12-12.0-1-02-001.000.000	\$164,500	\$164,500	Commercial
19-91005	12-12.0-1-01-003.000.000	\$253,180	\$253,180	Commercial
19-91006	12-13.0-2-02-001.000.000	\$5,000	\$5,000	Residential

7. ***Complainant's Evidence.*** Complainant offered into evidence the following:

Exhibit	Description	Ruling
Exhibit A	Appraisal Report of Edward Dinan	Admitted w/o Objection
Exhibit AA	Trotters Ridge Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit B	Declarations and Amendments	Admitted w/o Objection
Exhibit BB	Budget Homes Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit C	Lake Sherwood Plat 1	Admitted w/o Objection
Exhibit CC	Luddecke Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit D	Lake Sherwood Plat 18	Admitted w/o Objection
Exhibit DD	Country Meadows Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit E	Lake Sherwood Plat 30	Objection Sustained but preserved pursuant to Section 536.070
Exhibit EE	Meadows of Walnut Hollow Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit F	Articles of Incorporation	Admitted w/o Objection
Exhibit FF	Market Street Villas Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit G	Association Regulations	Admitted w/o Objection
Exhibit GG	J & M Meyeres Construction LLC Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit H	Random Sampling of Lake Sherwood Property Record Cards	Objection Sustained but preserved pursuant to Section

		536.070
Exhibit HH	Arlington Condos Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit I	Assessors Listing of Zero Assessment Parcels	Objection Sustained but preserved pursuant to Section 536.070
Exhibit II	Bennington Place Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit J	Assessor's Zero Assessment List Refined to Owners Associations	Objection Sustained but preserved pursuant to Section 536.070
Exhibit JJ	Trustees of Pine Crest Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit K	Lake Sherwood "Exempt" Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit KK	Board of Trustee of Country Living Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit L	Innsbrook "Exempt" Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit LL	Brune Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit M	Hunter Saak Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit MM	GSB Investments LLC Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
No Exhibits N, NN, O, or OO	N/A	N/A
Exhibit P	TS Bannze Property Record Cards	Objection Sustained but preserved pursuant to Section

		536.070
Exhibit PP	Warrior Ridge Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit Q	Incline Village Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit QQ	Melton Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit R	Hickory Trails Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit RR=	Marks Crossing Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit S	Spring Lakes Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit SS	Trustees of Woodridge Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit T	Forest Lake Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit TT	Lake Chateau Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit U	Carter Canyon Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit UU	Ben Beckenmeyer Construction Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit V	Bell Investment Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit VV	Single Family Homes at Forest Ridge Property Record Cards	Objection Sustained but preserved pursuant to Section

		536.070
No Exhibits W or WW	N/A	N/A
Exhibit X	Cannon Builders Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit XX	Whispering Pine Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit Y	Falcons Crest Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit YY	Trower Oaks Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit Z	LK Properties Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit ZZ	St. Charles Assessment of LSEA Parcels Property Record Cards	Objection Sustained but preserved pursuant to Section 536.070
Exhibit AAA	Written Direct Testimony of Edward Dinan	Admitted w/o Objection
Designation	Deposition Designations of Wendy Nordwald	Admitted to Be Given Weight Deemed Appropriate

Edward W. Dinan (Complainant’s Appraiser) opined that the subject properties had zero value because they were considered “common ground” for the homeowner’s association and no market existed for their sale. (Exhibit AAA at 3-4) In support, Complainant’s Appraiser referred to Complainant’s Declarations and By-laws, and the general provision that Complainant cannot sell any property without a two-thirds vote of the members. (Exhibit AAA at 6-7) Neither Complainant’s Appraiser nor Complainant proffered any evidence to demonstrate that there had been any recorded document that

sufficiently restricted the sale of these parcels as necessary to warrant the placement of a zero market valuation.

8. ***Respondent's Evidence.*** Respondent offered into evidence the following:

Exhibit	Description	Ruling
Exhibit 1	Written Direct Testimony of Robert Norris	Admitted w/o Objection
Exhibit 2	Appraisal of Administrative Building Parcel	Admitted w/o Objection
Exhibit 3	Appraisal of Maintenance Building Parcel	Admitted w/o Objection
Exhibit 4	Appraisal of Vacant Lot	Admitted w/o Objection
Exhibit 5	Respondent's Response to First Request for Admissions	Admitted w/o Objection
Exhibit 6	Financial Statements for Year Ending December 31, 2017	Admitted w/o Objection
Exhibit 7	Financial Statements for Year Ending December 31, 2018	Admitted w/o Objection
Exhibit 8	Certified Title Deeds	Admitted w/o Objection
Exhibit 9	Affidavit of Katie Smith	Admitted w/o Objection

Robert Norris (Respondent's Appraiser) authored three appraisals, one for each of the subject properties.

For the maintenance building parcel, Respondent's Appraiser developed both the cost approach and the sales comparison approach to value. Under the cost approach, he opined a TVM of \$187,000. Under the sales comparison approach, he utilized three comparable properties and made market-based adjustment for the difference between the comparable properties and the subject property. Respondent's Appraiser opined a TVM of \$170,700 under this approach. He opined a reconciled opinion of TVM of \$175,000.

For the administrative building parcel, Respondent's Appraiser developed the cost approach and sales comparison approach to value. Under the cost approach, he opined a TVM of \$305,000. Under the sales comparison approach, he utilized five comparable properties and made market-based adjustment for the difference between the comparable properties and the subject property. He opined a TVM between \$244,500 and \$287,700 under this approach. He opined a reconciled opinion of TVM of \$275,000.

For the vacant lot parcel, Respondent's Appraiser developed the sales comparison approach to value. He utilized six comparable properties and made market-based adjustments for the difference between the comparable properties and the subject property. He opined a TVM of \$3,200 under this approach.

9. ***Rebuttable Presumption of Correct Assessment.*** Complainant's evidence was not substantial and persuasive to rebut the presumption of correct assessment by the BOE for Appeal Nos. 19-91004, 19-91005, or 19-91006. However, Respondent's evidence was substantial and persuasive evidence to rebut the presumption of correct assessment by the BOE for appeal 19-91006.

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. Residential and Commercial real property are respectively assessed at 19% and 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a) and 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 the 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. Official and Judicial Notice

Agencies shall take official notice of all matters of which the courts take judicial notice. Section 536.070(6). Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke*, 129 S.W.2d 866, 869 (1939); *Barth v. Kansas City Elevated Railway Company*, 44 S.W. 788, 781 (1898).

In addition, courts may take judicial notice of records in earlier cases when justice requires or when it is necessary for a full understanding of the instant appeal. *Burton v. Moulder*, 245 S.W.2d 844, 846 (Mo. 1952); *Knorp v. Thompson*, 175 S.W.2d 889, 894 (1943); *Bushman v. Barlow*, 15 S.W.2d 329, 332 (Mo. banc 1929); *State ex rel St. Louis Public Service Company v. Public Service Commission*, 291 S.W.2d 95, 97 (Mo. banc 1956).

5. Discrimination

In order to obtain a reduction in assessed value based upon discrimination, the Complainants must (1) prove the TVM of their property on January 1, 2019; and (2) show an intentional plan of discrimination by the assessing officials resulting in an assessment of that property at a greater percentage of value than other property, generally, within the same class within the same taxing jurisdiction. *Koplar v. State Tax*

Commission, 321 S.W.2d 686, 690, 695 (Mo. 1959). Evidence of value and assessments of a few properties does not prove discrimination. Substantial evidence must show that all other property in the same class, generally, is actually undervalued. *State ex rel. Plantz v. State Tax Commission*, 384 S.W.2d 565, 568 (Mo. 1964). The difference in the assessment ratio of the subject property the average assessment ratio in the subject county must be shown to be grossly excessive. *Savage*, 722 S.W.2d at 79 (Mo. banc 1986). No other methodology is sufficient to establish discrimination. *Cupples-Hesse*, 329 S.W.2d at 702.

6. Complainant Fails To Prove Discrimination

Where there is a claim of discrimination based upon a lack of valuation consistency, Complainant has the burden to prove the level of assessment for the subject property in 2019. This is done by independently determining the market value of the subject property and dividing the market value into the assessed value of the property as determined by the assessor's office.

Complainant must then prove the average level of assessment for residential property in Warren County for 2019. This is done by (a) independently determining the market value of a representative sample of residential properties in Warren County; (b) determining the assessed value placed on the property by the assessor's office for the relevant year; (c) dividing the assessed value by the market value to determine the level of assessment for each property in the sample, and (d) determining the mean and median

of the results.

The difference between the actual assessment level of the subject property and the average level of assessment for all residential property, taken from a sufficient representative sample in Warren County must demonstrate a disparity that is grossly excessive. *Savage*, 722 S.W.2d at 79.

Complainant's discrimination claim fails because it failed to establish the market value of its property. Without establishing its market value, it cannot establish its assessment ratio. Without establishing its ratio, it cannot establish that it is being assessed at a higher percentage of market value than any other property.

However, even if Complainant had established its market values, its discrimination claim would still fail because it has not demonstrated that a statistically significant number of other residential properties within Warren County are being assessed at a lower ratio of market value than its property.

Because Complainant has failed to establish the market value of its property and has failed to establish that it is being assessed at a higher percentage of market value than a statistically significant number of other properties in Warren County, it has failed to establish discrimination.

7. Double Taxation

Complainant claims the assessment of the subject properties is being double-taxed as the values of the subject properties are implicitly included in the value of the

properties owned by members of the Lake Sherwood Estates Association. Complainant argues the circumstances of the property warrant a zero market value.

Real property includes land itself, building, structures, improvements, and all rights and privileges belonging or appertaining thereto. *Green County v. Hermel, Inc*, 511 S.W.2d 762, 770 (Mo. 1974). An easement is an interest in land which is limited to the right to use the property and that right may be enforced. An easement is appurtenant when in its creation it is attached to a piece of land and benefits the owner of such land in his use and enjoyment thereof. The parcel of land that benefits from the easement is the dominant tenement. The servient tenement is the parcel of land that provides the easement. The grant of easements and the imposition of restrictions may deprive a servient estate of whatever value it might otherwise have held. In other words, a servient estate may be so restricted that a buyer could only obtain a naked legal title with none of the advantages usually enjoyed by owners of real property. The buyer would hold title to property from which he can derive no benefit or enjoyment, but which would be devoted entirely to the enjoyment and use of the surrounding property owners who possess the rights to the dominant estates. In these situations, the TVM of the servient estate is lessened, and the TVM of the dominant estate is increased. The rights and easements appurtenant to the servient estate are relevant factors affecting value that must be taken into consideration for *ad valorem* taxation.

In *Lakewood Village Property Owners' Association v. Savage*, 1981 WL 11960

(Mo.St.Tax.Com.), the STC held that the value of the servient property was to the benefit of the owner-members' properties and should be reflected in the value of the owner-members' properties and a zero market value should be placed on the servient property. The servient property in Lakewood Village consisted of five recreational green areas, swimming pool, tennis courts, and a recreational building. The owners of the lots in Lakewood Village became members of Lakewood Village Property Owners Association upon conveyance of their lot. Lakewood Village Property Owners Association owned the property subject to the appeal. A Declaration of Covenants, Conditions, and Restrictions (Declaration) was filed with the recorder of deeds. The subject property was designated and defined as "common area" in the Declaration. The Declaration set forth that each owner-member of the Association had a right and easement of enjoyment in and to the common areas and pass with title to every lot or property interest. The Declaration also set forth that the Association may only sell the property to a government agency or utility and that if the Association dissolved the property must be donated to another non-profit. Based upon those facts, the STC found that the property was so encumbered it had no practical value and that the assessor failed to take into account the substantial depreciating effect of the easements. The value of the "common area" must find expression in the values and assessments of the lots in the subdivision which benefit from the existence of the "common area."

Placement of a zero market valuation on real property is an exceptional

circumstance. Complainant failed to present substantial and persuasive evidence that the value of the subject property has been included in the values of the surrounding residential lots. Complainant failed to prove the TVM of the subject property on the tax day and presented no other relevant valuation evidence.

8. Complainant Fails to Prove Incorrect TVM but Respondent Proves TVM in Appeal 19-91006

Respondent presented substantial and persuasive evidence to establish a TVM regarding the subject property in appeal 19-91006, as of January 1, 2019, to be \$3,200. Respondent's Appraiser developed an opinion of value relying upon an established and recognized approach for the valuation of real property, the sales comparison approach. The adjustments made by Respondent's Appraiser were consistent with generally accepted guidelines for the appraisal of property of the subject's type. The adjustments properly accounted for the various differences between the subject and each comparable.

Complainant did not offer substantial and persuasive evidence that the other properties were improperly assessed and should be assessed at \$0. As provided by the State Tax Commission in its *Order Setting Aside Hearing Officer Decision Upon Application for Review* in Complainant's appeals of the same subject parcels for tax year 2017, "placement of a zero market valuation on real property is an exceptional circumstance." *Lake Sherwood Estates Association v. Nordwald*, Appeals 17-91002 through 17-91004 (Mo.St.Tax.Com. October 30, 2018).

Complainant points to its Declaration and By-laws for the argument that the subject parcels cannot be sold because they have been considered "common ground," and thus, they are so legally restricted as to warrant zero valuation. However, this argument was considered and rejected by the STC when these same Declarations and By-laws were submitted to the STC in Complainant's 2017 appeals of the same subject properties. The only difference between the 2017 appeals and the instant appeal is that, in the instant appeal, Complainant's Appraiser testified that he believed the Declaration and By-laws sufficiently restrict the subject parcels. Given that Complainant's Declarations and By-laws do not establish that a zero value should be placed upon the subject properties, Complainant's opinion based upon his review of the Declarations and By-laws is not persuasive.

ORDER

The assessed valuations for the subject properties as determined by Respondent and sustained by the BOE in appeals 19-91004 and 19-91005 are AFFIRMED.

The assessed valuation for the subject property as determined by Respondent and sustained by the BOE in appeal 19-91006 for the subject tax day is SET ASIDE. The assessed value for the subject property in appeal 19-91006 (Parcel No. 12-12.0-1-01.003.000.000) for tax years 2019 and 2020 is set at \$608 residential (\$3,200 TVM).

Application for Review

A party may file with the STC 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 facts or law as grounds upon which it is claimed the decision is erroneous. An application for review must be in writing addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, and a copy of said application must be sent to each person at the address 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 Warren 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 139.031.8.

Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED this 29th day of January, 2021.

STATE TAX COMMISSION OF MISSOURI

John J. Treu⁵
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on January 29, 2021, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Elaina McKee
Legal Coordinator

⁵ The Hearing Officer heard the appeal and drafted this Decision and Order prior to his departure from employment with the STC.