



STATE TAX COMMISSION OF MISSOURI

CLASSIC PROPERTIES LSL 7,) Appeal No. 20-32548
Complainant(s),)
) Parcel/locator No(s): A964000274
v.)
)
TRAVIS WELGE¹, ASSESSOR,)
ST. CHARLES COUNTY, MISSOURI,)
Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON
APPLICATION FOR REVIEW
HOLDING

On September 22, 2023, State Tax Commission (STC) Hearing Officer Benjamin Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the St. Charles County Board of Equalization’s (BOE) decision regarding the classification and valuation of the subject property as of January 1, 2020. The BOE had affirmed the classification and valuation of the subject property as determined by the Assessor of St. Charles County, Missouri, (Respondent). Classic Properties LSL 7 (Complainant) timely filed an Application for Review of the Decision and Order of the Hearing Officer.

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.

¹ Scott Shipman was the previous Assessor of St. Charles County at the time of the assessment valuation date at issue, January 1, 2020.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The subject property is Hawk Ridge Business Park and Golf Course Lot 7 located at 0 Hawk Ridge Circle, Lake St. Louis, Missouri. The property consists of a vacant unimproved 12.69 lot of vacant land. The majority of the parcel is pasture, but a tree line lies on the north and east sides of the property. No improvements are on the property.

According to the evidence in the record, from 2000 until 2019, the subject property had been classified as agricultural by Respondent.

Complainant's evidence established that, from 2012 to 2019, the individual who maintained the subject property for Complainant cut and baled the grass on the property and sold it as hay to a horse breeder. Complainant never notified Respondent that this activity was occurring. After the hay was cut and baled each year, Complainant did not plant new seed or cultivate the land for next year's harvest. In 2019, because the horse rancher was no longer in business, no hay was harvested or sold. Complainant admitted that in 2019 no hay or other crop was harvested, and no other agricultural activity occurred on the subject property. Complainant admitted that the subject property was not under any type of managed cultivation on January 1, 2020. Once Complainant learned that it had lost the agricultural classification for assessment purposes, Complainant arranged for a local farmer to plant soybeans on the subject property. The soybean crop was planted on June 8, 2020. Complainant contacted Respondent's office both before and after the planting to inform Respondent of the soybean crop.

Respondent's evidence established that Respondent's employees visited the subject property and started keeping track of whether there was agricultural activity in 2018. Site

visits were performed in 2018, 2019, and March of 2020. Photographs were taken during the site visits. No agricultural activity was observed at the subject property preceding the assessment date of January 1, 2020. Respondent's employees observed either tall weeds on the property or grass that appeared to be cut by a professional mower and not by a tractor cutting for baling hay. One employee testified that, on September 16, 2020, he first observed agricultural activity on the property: a soybean crop, which was shown in Respondent's Exhibit 1, p. 13. Respondent's evidence also established that the subject property was considered an "interim piece of property" as of January 1, 2020, because no agricultural use was identified. Respondent determined that the subject property should be classified as residential for both 2019 and 2020 because its highest and best use was based on the surrounding area, mostly mixed use of residential and commercial. Respondent's evidence established that when the subject property was listed for sale in 2021, it was not marketed for agricultural use.

At the evidentiary hearing, both parties were represented by counsel and presented testimony and exhibits. The Hearing Officer subsequently entered the Decision affirming the decision of the BOE. Complainant subsequently filed his application for review. Respondent filed a response.

CONCLUSIONS OF LAW

Complainant's Points on Review

In its Application for Review, Complainant asserts that the Hearing Officer's Decision was erroneous because it ignores the uncontradicted evidence relating to communications between Complainant and Respondent's office in 2019 in which

Respondent told Complainant to “plant a crop” but failed to state the crop needed to be planted prior to January 1, 2020, in order for the agricultural classification to be restored. Complainant alleges that Respondent’s statement misled Complainant and should result in the reversal of the Hearing Officer’s Decision.

In his response, Respondent argues that Complainant does not meaningfully challenge the Hearing Officer’s finding’s that Complainant failed to meet the burden of proof and admits the subject property was not being used for an agricultural purpose as of January 1, 2020. Respondent further argues that he did not mislead Complainant regarding the classification of the property as agricultural versus residential and that Respondent had no binding legal duty to explain the timeline by which a crop must be planted so that property could regain classification as agricultural given that the Revised Statutes of Missouri are publicly available, and ignorance of the law is not a valid reason for allowing reclassification of property.

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).

Commission's Ruling

We find that Complainant's point on review is without merit.

We agree with the Hearing Officer's finding that the classification of the subject property as residential was properly made in 2020 given that there was no agricultural use of the property as of January 1, 2020. Specifically, the Hearing Officer found:

The SHO finds that Complainant abandoned its agricultural use of the property in 2019 and that it failed to prove that on January 1, 2020, that the subject property was devoted primarily to the raising and harvesting of crops. The SHO also finds that Complainant failed to prove that the immediate most suitable economic use of the subject property as vacant land was agricultural as of January 1, 2020.

...

The evidence in this case shows that at one time hay was cut on the property consistently for a few years starting in 2012, but that this activity ceased in 2019. For all of 2019 and most importantly on January 1, 2020, no agricultural activity was taking place on the subject property. In June 2020 agricultural activity resumed with the planting and cultivation of soybeans. Therefore, Complainant did not meet its burden to show that it was using the property predominantly for agricultural purposes on January 1, 2020.

With regard to Complainant's claim that Respondent misled Complainant or had a legal duty to inform Complainant of a timeline for planting a crop in order to regain the agricultural classification, we find that this claim is not cognizable in an appeal under

Chapter 137 and Chapter 138 of the Revised Statutes of Missouri before the STC.

The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision and the application for review of Complainant and Respondent's response, affirms the Hearing Officer's Decision. 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). The Hearing Officer did not err in affirming the BOE's determination of value and finding the TVM of the subject property based upon the substantial and persuasive evidence in the record.

ORDER

The Decision of the Hearing Officer is AFFIRMED. Segments of the Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, may be incorporated herein, 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 decision 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 decision and order is deemed final and the Collector of St. Charles 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 April 30th, 2024.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Debbi McGinnis, Commissioner

Greg Razer, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 3rd day of May, 2024, 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

CLASSIC PROPERTIES LSL 7,) Appeal No. 20-32548
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TRAVIS WELGE², ASSESSOR,)
ST. CHARLES COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Classic Properties LSL 7 (Complainant) appeals the St. Charles County Board of Equalization's (BOE) decision classifying the subject property as residential real property and finding that the true value in money (TVM) of the property on January 1, 2020, was \$1,269,000.³ Complainant claims overvaluation, misgraded agricultural land, and misclassification as grounds for appeal, asserting the subject property should be classified entirely as agricultural. Complainant proposes a value of \$7,000 for the subject property as of the January 1, 2020 valuation date. Complainant did not produce substantial and

² Scott Shipman was the previous Assessor of St. Charles County at the time of the assessment valuation date at issue, January 1, 2020.

³ 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.

persuasive evidence proving its claims. The BOE's decision is therefore affirmed.

The evidentiary hearing was held on September 16, 2021 in the County Executive Building in St. Charles, Missouri.⁴ Complainant was represented by counsel Ryan J. Mason. Respondent was represented by counsels Amanda Jennings and Michael Mueth.

FINDINGS OF FACT

1. Subject Property. The subject property is Hawk Ridge Business Park and Golf Course Lot 7 located at 0 Hawk Ridge Circle, Lake St. Louis, Missouri, and its parcel number is 4-0060-7378-00-0007.0000000. The property consists of a vacant unimproved 12.69 lot of vacant land. The majority of the parcel is pasture but there is also a tree line on the north and east sides of the property.

2. Respondent and BOE. Respondent classified the subject property as residential and determined the TVM on January 1, 2020, was \$1,269,000. The BOE classified the subject property as residential and independently also determined that the TVM on January 1, 2020, was \$1,269,000.

3. Complainant's Evidence. Complainant submitted the following exhibits:

Exhibit	Description	Status
	WDT of Thomas Longeway	Admitted
	WDT of John Donald O'Shea	Admitted
1	Property Assessment Appeal Documentation for BOE	Respondent objected on hearsay and lack of foundation grounds for several portions of Exhibit 1. The SHO overruled the objections and admitted

⁴ The evidentiary hearing was conducted by a former STC hearing officer. The appeal was reassigned to the undersigned hearing officer for a decision and order. Section 138.431.2

		Exhibit 1 to be given the weight appropriate in light of all the evidence
2	Board Decision Letter with Appraised and Assessed value of subject of property for 2020	Admitted
3	Email exchange between Mr. Prouhet and Mr. O'Shea regarding soybean crop	Respondent objected on hearsay and lack of foundation grounds. The SHO overruled the objections and admitted Exhibit 3 to be given the weight appropriate in light of all the evidence
4	Property Record Card of Subject Property Printed 12/11/2020	Admitted
5	6-15-2020 Letter from Mr. O'Shea to Gary Morrison	Admitted
6	Email from Brenda Hinton	Not offered

Complainant's first witness was Thomas Longeway, the managing partner of Complainant. Mr. Longeway has been familiar with the subject property for 20 years and last visited it sometime 2016 or 2017. He testified that there are no houses, structures, or any other type of improvements on the property. He testified that until 2019 the property had long been classified as agricultural by Respondent, since at least 2000. Around 2012, the individual who maintained the subject property by cutting the grass indicated to Complainant that he would like to let the grass grow longer and cut, bale, and sell it as silage to a horse breeder. Mr. Longeway testified that every year since 2012 this was done until 2019, but Complainant never notified Respondent that it was occurring. After the hay⁵

⁵ Mr. Longeway in his WDT uses the term "silage" but throughout his live testimony used the term "hay."

was cut and baled each year, Complainant did not plant new seed or cultivate the land for next year's harvest. In 2019, because the horse rancher was no longer in business, no hay was harvested or sold. Mr. Longeway admitted on cross examination that in 2019 no hay or other crop was harvested, and no other agricultural activity occurred on the subject property. Mr. Longeway admitted that the subject property was not under any type of managed cultivation on January 1, 2020.

In April 2020, a neighbor in the adjacent subdivision contacted Mr. Longeway and sent him a check for harvesting about five to ten seedlings that had grown on the subject property. Emails between Mr. Longeway and the neighbor memorializing their agreement were submitted by Complainant. (Exhibit 1, p. 19) While these trees were sold in 2020, Mr. Longeway admitted on cross examination that at no other time were trees harvested from the subject property. Mr. Longeway also stated that he did not notify Respondent as to the selling of the trees. Mr. Longeway also stated that Complainant did not have a plan for systematic planting of trees for timber stand improvement on the subject property, nor did it engage in cooperative efforts with the State of Missouri or private foresters to market timber for sale from the subject property.

Mr. Longeway testified that having lost the agricultural classification he arranged for a local farmer to plant soybeans on the subject property which were indeed planted on June 8, 2020. Mr. Longeway contacted Respondent's office both before and after planting to inform them of the soybean crop. An invoice for \$5,200 for land clearing and preparation associated with the planting of the soybean crop was submitted as Complainant's Exhibit 3. The farmer's invoice was paid by COS Partnership, the mortgage holder of the subject

property that held the promissory note and deed of trust on the subject property.

John O'Shea also testified for Complainant. Mr. O'Shea is a licensed attorney and former judge. Mr. O'Shea is the managing partner of COS Partnership. O'Shea testified that due to Complainant being without necessary funds, COS Partnership paid the 2019 and 2020 taxes on the subject property. For 2020, the taxes due for the subject property were \$15,862.63 to St. Charles County and \$2,335.39 to the City of Saint Louis. (Exhibit 1, pp. 21-23)

Mr. O'Shea testified that due to an oversight, Complainant failed to appeal the 2019 assessment issued by Respondent. However, in 2019 upon receiving the tax bill and upon payment of the taxes, Mr. O'Shea contacted Respondent's office to ask why the classification of the subject property had changed to residential and how Complainant could regain an agricultural classification for the subject property. After speaking with the Respondent's office, Mr. O'Shea testified that his understanding was that Complainant would have to plant a crop to regain the classification. Mr. O'Shea testified that a Gary Morrison from Respondent's office informed him of this requirement.⁶ Mr. O'Shea testified that later on after the crop had been planted in June of 2020 he learned by speaking with Respondent's office that the crop had to have been planted before January 1, 2020, to have regained agricultural classification for 2020. Mr. O'Shea testified that for January 1,

⁶ Respondent objected to this testimony on hearsay grounds and asserted a running objection to all alleged statements made by Mr. Morrison. The SHO overruled the objections and allowed Mr. O'Shea to testify as to what Mr. Morrison told him, but the SHO also indicated that she would not consider impermissible hearsay in making a decision in this appeal. Tr. at 72:30.

2021, due to the ongoing soybean crop harvesting, Respondent reclassified the property once again as agricultural. Last, Mr. O’Shea testified that on the Monday before the evidentiary hearing, Complainant sold the subject property to Jacob Mirowitz for a sales price of \$1,050,000.

4. Respondent's Evidence. Respondent introduced the following Exhibits, all of which were all admitted without objection.

	WDT of Ron Hunter	Admitted
	WDT of Scott Shipman	Admitted
1	Photographs of subject property	Admitted
2	Property Record Card of Subject Property printed 06/18/2021	Admitted
3	Photographs of subject property	Admitted

Ron Hunter testified first on behalf of Respondent. Mr. Hunter is a field appraiser with the St. Charles County Assessor’s Office and has worked in that position for seven years. Mr. Hunter’s duties include permit work, collecting occupancy rates for apartments, and performing site visits of properties four times a year that are in areas zoned as commercial. During the site visits, Mr. Hunter observes whether agricultural activity is taking place on these properties and also take photographs to put into Respondent’s real estate database. Mr. Hunter testified that this database is accessible to anyone in Respondent’s office.

Mr. Hunter testified that he has visited the subject property during site visits and started keeping track of whether there was agricultural activity there in 2018. While Mr. Hunter could not recall exactly what dates he visited the property, he did testify that site visits were performed in 2018, 2019, and March of 2020 by either himself or his supervisor

and colleague Keith Hodges. Mr. Hunter testified that Mr. Hodges makes the decision for Respondent as to classification of a property, but that his data collection on the property and recommendation for classification is usually determinative.

Based on his visits and the photographs taken by himself at the property (Respondent's Exhibit 1), Mr. Hunter testified that did not observe any agricultural activity at the subject property preceding the assessment date of January 1, 2020. Mr. Hunter testified that in his observations there were either tall weeds on the property or the grass appeared to be cut by a professional mower and not by a tractor cutting for hay baling. Mr. Hunter testified that on September 16, 2020 he first observed agricultural activity on the property, a soybean crop evidenced by Respondent's Exhibit 1, p. 13. Mr. Hunter admitted that baling hay is considered an agricultural activity, but he did not observe any evidence of cutting or baling hay as of January 1, 2020.

Respondent also testified on behalf of Respondent. Respondent has been the Assessor of St. Charles County since 2002 but has worked in the Assessor's office since 1983. Respondent testified that in classifying property as agricultural, he generally looks to the property's predominant use to see whether it is being actively farmed. Respondent testified that in 2019 the classification of the subject property was changed from agricultural to residential because there his office had not observed any farming activity on the property in 2019. Mr. Shipman described the subject property on January 1, 2020 as an "interim piece of property" because no agricultural use was identified. He testified that residential was selected for the 2019 and 2020 classification because he evaluates land according to its highest and best use based on the surrounding area. Mr. Shipman testified

that the area around the subject property is mostly mixed use of residential and commercial. He did not recall how the subject property was zoned. He also noted that when the subject property was listed for sale in 2021, he observed that it was not marketed for agricultural use. Mr. Shipman admitted that cultivating hay on a property is an agricultural use, but that here there was no evidence of planting and cultivating hay as of January 1, 2020. Mr. Shipman testified that generally his office will keep a classification of agricultural for a property unless, as he maintains here, the use of the property has changed, especially if the surrounding area is not predominantly agricultural.

5. Classification and Value. The subject property is residential and the TVM of the subject property on January 1, 2020, was \$1,269,000, with an assessed value of \$241,110.

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. Agricultural real property is assessed at 12% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(b). Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). "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 taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was misclassified or overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's classification of the subject property is presumptively correct. *Rinehart v. Bateman*, 363 S.W.3d 357, 367 (Mo. App. W.D. 2012). The BOE's valuation is also presumptively correct. *Tibbs*, 599 S.W.3d at 7 (Mo. App. S.D. 2020). The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *Id.* 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. January 1, 2020 Operative Date.

The parties filed post-hearing briefs solely on the issue of which operative date controls for purposes of the appeal. Complainant argues that January 1, 2019, is the operative date because that was the odd-numbered year of reassessment, citing Section 137.115.1 and Missouri Code of State Regulations 30-3.001(1). Complainant's Brief, pp. 1-2. Complainant admits it did not appeal Respondent's 2019 assessment and that there is no way for Complainant to receive a refund for taxes in that year. *Id.* at 4. However, it asserts that because there were no improvements or changes in the property from 2019 to 2020 requiring reassessment in 2020, that in determining the value and classification of the subject property for January 1, 2020, the agricultural activity occurring in 2018 is what should be examined in determining classification for 2020. *Id.* at p. 4.

Respondent argues that Sections 137.017.3 and 137.021.3 require Respondent to assess agricultural property each year by either maintaining the existing classification or

reclassifying the property depending on its actual use. Respondent’s Brief at 2. Therefore, Respondent argues that while the assessed value on January 1st of the odd-numbered year (here 2019) remains the value for the following even-numbered year, that the assessment as to classification is evaluated on a yearly basis depending on actual use and here the proper operative date is January 1, 2020. *Id.* at 4

Respondent is correct. Unlike the valuation made in the odd-numbered year of 2019, an independent assessment of classification was made in 2020. The 2019 classification of the subject is not at issue and how the property was immediately used before January 1, 2019 is not determinative. “An assessment requires consideration of three components: classification, valuation and tax rate. Classification is merely the starting point.” *Gershman v. St. Louis County*, 963 S.W.2d 290, 293 (Mo. Ct. App. 1997).

Section 137.115.1 provides that an assessor “shall annually assess all real property, including any new construction and improvements to real property, and possessory interests in real property at the percent of its true value in money set in subsection 5 of this section.” Emphasis added.

Section 137.016 defines the classification of real property in Missouri—residential, agricultural, or commercial.

Section 137.017.3 provides:

Continuance of valuation and assessment for general property taxation under the provisions of Sections 137.017 to 137.021 shall depend upon continuance of the land being used as agricultural and horticultural property, as defined in Section 137.016, and compliance with the other requirements of Sections 137.017 to 137.021 and not upon continuance in the same owner of title to the land.

Section 137.021.3 provides:

When land that is agricultural and horticultural property, as defined in section 137.016, and is being valued and assessed for general property tax purposes pursuant to the provisions of sections 137.017 to 137.021 becomes property other than agricultural and horticultural property, as defined in section 137.016, it *shall be reassessed as of the following January first.*

Emphasis added.

The effect of these provisions is that Respondent's assessment of classification for the subject property for the 2020 tax year is not carried over from the 2019 assessment but is independent of it. In other words, the statutes authorize Respondent to monitor use of the property each year for determining classification in his annual assessment. Unlike assessment of value which except for new construction and property improvements is determined on a two year cycle in the odd-numbered year⁷, classification is determined yearly based on the use of the property. Respondent presented evidence that he visited the subject parcel in 2019 to evaluate use for the 2020 assessment. Finding no agricultural activity in 2019, a determination was made to classify the property as residential in 2020. The operative date is January 1, 2020, and Complainant must prove that Respondent's classification as of that date is in error.

5. Complainant Did Not Produce Substantial and Persuasive Evidence of Misclassification.

The SHO finds that Complainant abandoned its agricultural use of the property in

⁷ Section 137.115.1.

2019 and that it failed to prove that on January 1, 2020, that the subject property was devoted primarily to the raising and harvesting of crops. The SHO also finds that Complainant failed to prove that the immediate most suitable economic use of the subject property as vacant land was agricultural as of January 1, 2020.

Section 137.016, RSMo, provides that property is classified as agricultural when “real property [is] used for agricultural purposes and *devoted primarily* to the raising and harvesting of crops . . .” (emphasis added). The determination of whether or not a property is being used for agricultural purposes does not turn upon the profitability of the endeavor but upon whether the property is primarily devoted to the raising and harvesting of an agricultural crop. *Rinehart v. Bateman*, 363 S.W.3d 357 (Mo. App. W.D. 2012).

Section 137.017.3 provides:

Continuance of valuation and assessment for general property taxation under the provisions of Sections 137.017 to 137.021 shall depend upon continuance of the land being used as agricultural and horticultural property, as defined in Section 137.016, and compliance with the other requirements of Sections 137.017 to 137.021 and not upon continuance in the same owner of title to the land.

The evidence in this case shows that at one time hay was cut on the property consistently for a few years starting in 2012, but that this activity ceased in 2019. For all of 2019 and most importantly on January 1, 2020, no agricultural activity was taking place on the subject property. In June 2020 agricultural activity resumed with the planting and cultivation of soybeans. Therefore, Complainant did not meet its burden to show that it was using the property predominantly for agricultural purposes on January 1, 2020.

Section 137.016.5 provides

All real property which is vacant, unused, or held for future use; which is used for a private club, a not-for-profit or other nonexempt lodge, club, business, trade, service organization, or similar entity; or for which a determination as to its classification cannot be made under the definitions set out in subsection 1 of this section, shall be classified according to its immediate most suitable economic use, which use shall be determined after consideration of:

(1) Immediate prior use, if any, of such property;

(2) Location of such property;

(3) Zoning classification of such property; except that, such zoning classification shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property;

(4) Other legal restrictions on the use of such property;

(5) Availability of water, electricity, gas, sewers, street lighting, and other public services for such property;

(6) Size of such property;

(7) Access of such property to public thoroughfares; and

(8) Any other factors relevant to a determination of the immediate most suitable economic use of such property.

On January 1, 2020, the evidence shows that the subject property was a 12.69 acre vacant parcel of property with no improvements. While Complainant's witnesses testified that the property has access to major thoroughfares and that another vacant parcel of property was to the east of the subject, such facts do not necessarily prove that the correct classification is agricultural. Complainant offered no evidence to show that the property's most suitable economic use as of January 1, 2020, was agricultural. No evidence on the

eight factors in 137.016.5 was offered. Complainant's witnesses did testify that hay had been harvested from the property in the past, but no evidence of the economic value of such a crop as of January 1, 2020, was established with substantial and persuasive evidence.

5. Complainant Did Not Produce Substantial and Persuasive Evidence of Misgraded Agricultural Land.

Complainant did not produce substantial and persuasive evidence to support its claim of misgraded agricultural land. Complainant failed to prove misclassification and prove that the subject property was agricultural land as of the valuation date. Although Complainant chose misgraded agricultural land as one of its grounds for appeal in its Complainant for Review, Complainant at hearing did not specifically indicate with testimony or evidence why it believes the land is misgraded, nor did it offer any evidence supporting what it believes to be the proper grade for the subject property.

By Commission Rule, there are eight established Agricultural Land Productive Values for the assessment of agricultural and horticultural land. Missouri Code of State Regulations 12 CSR 30-4.010. Complainant did not present any evidence to establish in what productive grade the subject property should be placed based upon the specific factors detailed in the Rule. When taxpayers are the "moving parties seeking affirmative relief," they bear "the burden of proving the vital elements of their case." *Reeves v. Snider*, 115 S.W.3d 375, 379 (Mo. App. S.D. 2003). Complainant did not meet its burden of proving misgraded agricultural land.

6. Complainant Did Not Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant's opinion of value for the subject property is \$7,000. Complainant's opinion is based on its position that the subject property was agricultural property as opposed to residential property. As noted above, Complainant failed to prove an agricultural classification for January 1, 2020. Complainant offered no evidence as to valuation at the hearing. Because its valuation opinion was based upon its primary allegation of misclassification, Complainant did not offer any comparable sale data for consideration to establish value for a residential classification. Even if Complainant had proved an agricultural classification, Complainant offered no evidence of the land grading of the subject property or its productivity value to establish value for an agricultural classification.⁸

In other words, even if Complainant had rebutted the presumption of correct valuation by the BOE, Complainant has not proven that the TVM of the subject property was \$7,000 as of January 1, 2020. The lack of evidence relating to a recognized valuation method renders Complainant's proposed value speculative and unpersuasive. *See Cohen*, 251 S.W.3d at 349 (holding an opinion of value loses probative value when based on an improper foundation). Complainant did not produce substantial and persuasive evidence showing the BOE overvalued the subject property and "the value that should have been placed on the property." *Tibbs*, 599 S.W.3d at 7. When taxpayers are the "moving parties seeking affirmative relief," they bear "the burden of proving the vital elements of their case." *Reeves v. Snider*, 115 S.W.3d 375, 379 (Mo. App. S.D. 2003). Complainant did not

⁸ Agricultural property is typically valued according to land grades and productive values established by STC regulations. *See* Section 137.021.1 and 12 CSR 30-4.010.

meet its burden of proving its claim of overvaluation.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2020, was \$1,269,000 classified as residential, with a total assessed value of \$241,110.

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 St. Charles County, and 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

Benjamin C. Slawson
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