



STATE TAX COMMISSION OF MISSOURI

CHIPPEWA CENTER LLC,)	Appeal No. 21-15725
)	
)	
Complainant,)	
)	Parcel No. 23J240112
v.)	
)	
JAKE ZIMMERMAN, ASSESSOR,)	
ST. LOUIS COUNTY, MISSOURI,)	
)	
Respondent.)	

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On September 29, 2023, State Tax Commission (STC) Senior Hearing Officer Erica M. Gage (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the St. Louis County Board of Equalization (BOE) value of \$5,130,000. Complainant subsequently timely filed an Application for Review of the Decision.

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

The improvements on the property include an existing attached-wall, three-tenant, shopping center complex including buildings and paved parking area, located at 7005, 7057, 7059 through 7077 Chippewa, which straddles the city limits of the suburban city of Shrewsbury (in St. Louis County) and the City of St. Louis (a city not within any county). 77.6769% of the land area is within St. Louis County and subject to this appeal. This shopping center complex includes three adjacent land sites of approximately 5.48 acres of land (on the west, and in St. Louis County) and approximately 7.99 total acres of land on the east and southeast (and inside the City of St. Louis, a separate taxing and assessment jurisdiction). The attached-wall retail complex was built in about 1960-1961, with several more recent, but variable interior and exterior (main front fascia) renovations. As of January 1, 2021, the retail center was 100% leased by Value City Furniture, approximately 70,920 square-feet on the west, Dollar Tree Store, approximately 11,700 square-feet in the middle, a sub-tenant of Value City, and Schnuck's grocery leasing approximately 77,292 square-feet on the east side of the structure.

Complainant presented the testimony of Jeffrey Johnson and an appraisal report that Mr. Johnson had completed for January 1, 2019 on the subject property. Mr. Johnson then opined on the value of the property for January 1, 2021. Respondent objected to Mr. Johnson's verbal appraisal report as it had not been submitted to Respondent prior to the hearing in accordance with the scheduling order. Mr. Johnson was allowed to testify. No supplemental written appraisal report was submitted. Mr. Johnson testified that the value of the property in 2021 was less than it had been in 2019 based upon an anticipated vacancy of the Schnucks grocery store as of June 2021. There was

no written or oral evidence submitted of the calculations for the percentages and allocations used by Mr. Johnson, nor how Mr. Johnson calculated a True Value in Money from those calculations.

The BOE determined a TVM of \$5,130,000. Complainant's valuation opined a TVM of \$3,133,000. The Hearing Officer determined that the Complainant failed to produce substantial evidence to rebut the BOE presumption.

CONCLUSIONS OF LAW

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

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).

Complainant's Points on Review

Complainant asserts the Hearing Officer's Decision should be set aside because Complainant presented the testimony of a licensed appraiser regarding the TVM of the property and that should have been recognized as substantial and persuasive evidence.

Commission's Ruling

We find that all of Complainant's points on review are without merit.

The Hearing Officer found Complainant's appraisal to not be substantial and persuasive as to the value of the property. Complainant's appraisal relied upon a 2019 appraisal with no written or oral evidence submitted regarding the use of 2019 numbers to arrive at the 2021 TVM. The Hearing Officer found that his testimony was not substantial and persuasive regarding the TVM of the property.

The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision and the application for review of Respondent, 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 her determination of value and finding the TVM of the subject property.

ORDER

The Decision of the Hearing Officer is AFFIRMED. Segments of the Decision and Order of the Hearing Officer, including 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 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 St. Louis 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 July 9, 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 July 12, 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

CHIPPEWA CENTER LLC,)
) Appeal No. 21-15725
Complainant,) Locator Nos. 23J240112
v.)
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)
JAKE ZIMMERMAN, ASSESSOR)
ST. LOUIS COUNTY, MISSOURI)
)
Respondent.)

DECISION AND ORDER

Chippewa Center LLC (Complainant) appeals the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$5,130,000. Complainant claims the property is overvalued and proposes a value of \$3,133,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is AFFIRMED.¹

Complainant was represented by counsel, Sean Elam. Respondent was represented by counsel, Steve Robson. The evidentiary hearing was conducted on May 10, 2023.

¹ Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

FINDINGS OF FACT

1. Subject Property. The parcel/locator number is 23J240112. The improvements include an existing attached-wall, three-tenant, shopping center complex, located at 7005, 7057, 7059 through 7077 Chippewa, which straddles the city limits of the suburban city of Shrewsbury (in St. Louis County) and the City of St. Louis (an independent city), Missouri. 77.6769% of the land area is within St. Louis County and subject to this appeal. This shopping center complex includes three adjacent land sites of approximately 5.48 acres of land (on the west, and in St. Louis County) and approximately 7.99 total acres of land on the east and southeast (and inside the City of St. Louis, a separate taxing and assessment jurisdiction). The attached-wall retail complex was built in about 1960-1961, with several more recent, but variable interior and exterior (main front fascia) renovations. As of January 1, 2021, the retail center was 100% leased by Value City Furniture, approximately 70,920 square-feet on the west, Dollar Tree Store, approximately 11,700 square-feet in the middle, a sub-tenant of Value City, and Schnuck's, approximately 77,292 square-feet on the east side of the structure.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was \$6,087,100. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$5,130,000.

3. Complainant's Evidence. Complainant testified the TVM of the subject property on January 1, 2021, was \$3,133,000. Complainant submitted Written Direct Testimony (WDT) of Jeffrey Johnson and the following exhibits:

Exhibit	Description	Ruling
A	Appraisal Report for 2019	Admitted
B	Proposal	Not Admitted
C	Lease Modification for Schnucks	Not Admitted

“Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable.” *Mo. Church of Scientology v. State Tax Comm’n*, 560 S.W.2d 837, 839 (Mo. banc 1977). Respondent timely objected to Complainant's Exhibit C as inadmissible hearsay and outside the scope. The exhibit at issue consisted of a lease modification for one of the tenants in the year 2021. Exhibit C is not hearsay because it was offered by a competent witness who could testify to its contents. Exhibit C is outside the scope of the hearing, as it pertains to information that is past the date of valuation, January 1, 2021. Complainants’ Exhibit C is inadmissible. Exhibit B was not offered at the hearing, nor admitted.

Respondent objected to the testimony of Complainant’s appraiser regarding any verbal appraisal report for the 2021 valuation and allocation of that valuation as hearsay and outside the scope of the 2019 appraisal. Mr. Johnson’s testimony regarding his expert opinion and the work he conducted is admitted. The weight of his testimony and any resulting verbal appraisal will be given the appropriate consideration.

Complainant's appraiser, Mr. Johnson, developed the cost and income approaches. He testified he has been a commercial real estate appraiser since 1983 and is MAI certified. Mr. Johnson testified he used Marshall and Swift valuation services for the cost approach. Mr. Johnson testified he only utilized the 2019 appraisal (Exhibit A) to compare with his cost approach to conduct his appraisal for 2021. He testified his oral appraisal developed the income and cost approaches and was developed on the same date he conducted his WDT. He testified 67% of the valuation was based on the cost approach and the 33% based on the income approach. Sales Comparison was not developed.

For the cost approach, he relied on his 2019 valuations, but lowered his valuation between January 1, 2019 and January 1, 2021. He explains this was because the departure of Schnucks grocery store accounts for approximately 52% of the total shopping center occupancy to "where a minimum two year rent loss formula is reasonably anticipated." (WDT at 7) He testified he relied less on the income approach. He testified his decision to lower the value between 2019 and 2021 was because the income decreased. He explains in his WDT "income from the subject property has decreased significantly since Schnucks announced they were vacating the premises June 2021." (WDT at 6-7) He further testified he conducted a fee simple approach to value the property.

Exhibit A contained the following regarding Mr. Johnson's valuation by allocation:

Allocation of Improved Building Area, Structures Split by City-County Boundary: For purposes of our appraisal and valuation, and consistent with a previous earlier "stipulation" with the St. Louis (City) Assessor, regarding incorrect square footage on the city assessment, exactly 33,081 SF of the eastern 77,272 SF Schnuck's Grocery store part of the collective party-wall building is allocated to the

St. Louis (City) portion of the collective structure. The remaining 44,191 SF portion of the Schnuck's Grocery store portion (77,272 SF on total) is allocated to St. Louis County, along with the entire 70,920 SF western part of the combined structure, so that 115,111 SF (**about 77.6769%**) of the combined 148,192 SF combined structure is recognized as being physically located in St. Louis County (and in Shrewsbury). As such the St. Louis (City) allocation is **about 22.3230%** of the total Gross Building Area. It should be noted that St. Louis County records show a larger 64,954 SF portion of the Schnuck's Store in St. Louis County, rather than the stipulated 44,191 SF shown in the St. Louis (City) records (as stipulated in recent years). (Exhibit A at 62) (*emphasis added*)

There was no written or oral evidence submitted of the calculations for the percentages and allocations nor how Mr. Johnson calculated a TVM from them in relation to the 2019 figures. Mr. Johnson testified the TVM of the St. Louis County portion of the property as of January 1, 2021, was \$3,133,000.

4. Respondent's Evidence. Respondent submitted Exhibit 1. Exhibit 1 is the BOE decision concluding the TVM of the subject property on January 1, 2021, was \$5,130,000.

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

6. Value. The TVM of the subject property on January 1, 2021, was \$5,130,000.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo.

Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48; *see also St. Louis Cty. v. Sec. Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977).

The 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.*

The cost approach is most appropriate when the property being valued has been recently improved with structures that conform to the highest and best use of the property or when the property has unique or specialized improvements for which there are no comparables in the market. While reproduction cost is the best indicator of value for newer properties where the actual costs of construction are available, replacement cost may be more appropriate for older properties. *Snider*, 156 S.W.3d at 341, 347.

2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to

the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id.*

3. Complainant's Burden of Proof

The BOE's valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage*, 722 S.W.2d at 77 (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

4. Complainant Did Not Prove Overvaluation.

Complainant utilized the cost and income approaches to find a TVM for 100% of the parcels, including those in the City of St. Louis and in St. Louis County. Complainant's Appraiser's methodology is not utilized under any recognized standards to value multi-county properties combined by one owner. Such properties are typically valued by finding the TVM of the portion that physically lies within each county. Complainant's finding the total value of the subject property and then allocation by percentage (77.6769% of land in County and 22.3230% of land in City) is not a method recognized to value such properties and lacks credibility. Such property could have more valuable improvements in one county and less valuable improvements in the other county. An appraisal which values the entire property and does not consider the specific issues for each parcel in each county is speculative; hence, any valuation derived from such an appraisal is speculation. The TVM proposed by Complainant is not substantial and persuasive evidence of value.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$5,130,000.

Application for Review

A party may file with the Commission an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or

emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED September 29, 2023.
STATE TAX COMMISSION OF MISSOURI

Erica M. Gage
Senior Hearing Officer
State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on September 29, 2023, to:

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

Stacy M. Ingle
Legal Assistant