



STATE TAX COMMISSION OF MISSOURI

MENARD, INC.,) Appeal No. 21-79015
) Parcel No. 19-3.0-05-400-001-011.000
)
 Complainant(s),)
)
 v.)
)
 DAVID COX, ASSESSOR,)
 PLATTE COUNTY, MISSOURI,)
 Respondent.)

DECISION AND ORDER

Menard, Inc., (Complainant) appeals the Platte County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$17,040,810. Complainant claims the subject property is overvalued and proposes a TVM of \$13,720,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.¹

Complainant was represented by counsel Chris Mattix. Respondent was represented by counsel, Stephen Magers. The evidentiary hearing was conducted on July 21, 2022, via WebEx before Senior Hearing Officer Erica M. Gage. This matter was assigned to Senior

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.

Hearing Officer Todd D. Wilson for Decision and Order on July 22, 2024.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 3701 NW 90th St., Kansas City, Platte County, Missouri. The parcel/locator number is 19-3.0-05-400-001-011.000. The property is operated as Menards and is an owner-occupied big box retail store that has approximately 172,224 square-feet of gross building area, consisting of 22,821 of Mezzanine area, 25,510 of garden center, and 46,780 of lumber shed/storage. The improvements sit on approximately 16.35 acres of land. All building improvements were constructed in 2017.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was \$17,040,810. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$17,040,810.

3. Complainant's Evidence. Complainant's testimony and evidence submitted a TVM for the subject property on January 1, 2021, of \$13,720,000. Complainant submitted the following exhibits which were admitted without objection:

Exhibit	Description	Ruling
A	Written Direct Testimony of Dan Michling	Admitted
B	Title Sheet	Admitted
C	Floor Plan	Admitted
D	Landscape Site Plan	Admitted
E	Settlement Statement	Admitted
F	Special Warranty Deed	Admitted
G	Final Plat	Admitted
H	Construction Costs	Admitted
I	Building Grounds Expenses	Admitted

J	Written Direct Testimony of Brock Heyde	Admitted
K	Appraisal Report of Brock Heyde	Admitted

Dan Michlig is the Tax and Audit Manager of Menard, Inc. Mr. Michlig testified regarding the cost of the land and improvements of the subject property. Mr. Michlig further testified about the use of the improvements by Complainant.

Brock Heyde works for Integra Realty Resources as an appraiser. Mr. Heyde is an MAI certified and Missouri Licensed real estate appraiser. Mr. Heyde utilized the cost approach, the comparable sales approach, and the income capitalization approach to value the property.

In his approaches to value, Mr. Heyde gave no value to the 22,821 square feet of Mezzanine area and valued only 10,000 square feet of the 46,780 square feet of covered lumber shed. He explained that, in his opinion, these represented super-adequacies that could also be considered functional obsolescence for any potential buyer of the property and would not represent any additional value to a potential buyer.

Mr. Heyde valued the fee simple interest in the subject real property rather than a leased fee interest. In accordance with his understanding of this definition, the five comparable sales that Mr. Heyde used were all vacant, formerly occupied big box retail properties. Mr. Heyde explained that this is in accordance with articles published in *The Appraisal Journal* which are attached to his appraisal report. The articles stressed that even though courts may hold that leased fee or value in use methodology is appropriate, the authors of the article did not agree with this methodology and that appraisers should use

vacant, formerly occupied big box retail stores to value owner occupied big box retail stores such as the subject property. Mr. Heyde determined that it would be improper to use build to suit or value in use values as they create difficulty in isolating the value of the lease or value of the use of the property from the value of the property and improvements.

From the Cost approach, Mr. Heyde arrived at a value of \$3,200,000 for the land and a depreciated value of the buildings of \$10,510,000 for a total value of \$13,710,000.

Mr. Heyde used five vacant properties for the sales comparison approach. During cross examination, Respondent moved to Strike the Sales Comparison Approach of Mr. Heyde's Appraisal Report, Exhibit K. Respondent stated that the Motion to Strike was based on two factors, the first being that some of the sales were not of the same highest and best use, and the second that Mr. Heyde's interpretation that all the comparable sales had to be vacant properties was not in accordance with Missouri law. Respondent cited *Menard Inc. v. City of Escanaba*, 891 N.W.2d 1, Michigan Court of Appeals, (2016) as illustrative but not controlling precedent. In *City of Escanaba*, the Michigan Court was presented with an appeal of ad valorem property tax assessment. Menard presented an appraisal report in which the Comparable Sales method presented eight sales that were purported to be comparable to the subject property. The Court found that four of the sales had use restrictions, one was not a freestanding unit but had multiple storefronts, and one was a foreclosure sale. The other two sales, with no use restrictions, had the highest selling price per square foot, yet the appraiser opined that no adjustment was necessary to account for the use restrictions on the property. The Court found that the Sales Comparison Approach

was not properly completed and therefore, was not competent, material, and substantial evidence. Id. at 6

In the present case, Respondent showed that some of the sales that Mr. Heyde relied upon, (Sales 3 and possibly 5) had use restrictions on them when transferred; therefore, they were not similar sales as the highest and best use of the properties were limited by the use restrictions. However, it does not appear that the majority of the comparable sales had use restrictions, nor was there evidence that the use restrictions had a negative impact upon the sales prices of the properties. Respondent's second point goes to the weight to be given to Mr. Heyde's appraisal report not its admissibility and shall be considered appropriately. The Motion to Strike is overruled. My Heyde found that the Sales Comparison approach resulted in a value of \$13,680,000 for the subject property.

Mr. Heyde also completed the income capitalization approach. In his selection of leases to use to derive rent, he excluded any leases that were structured on a build-to-suit basis. In this approach, he determined that the 25,510 square feet of garden center and 10,000 square feet of the lumber storage should be considered additional covered storage area. He gave no value to the remaining 36,780 square feet of the lumber shed. While Mr. Heyde's appraisal report does not specifically list the 22,821 square feet of mezzanine area in the income capitalization approach analysis, it appears that no value was given to it. (Exhibit K, pages 109-119). Mr. Heyde arrived at a value of \$13,840,000 for the subject property using the income capitalization approach. Mr. Heyde then reconciled all three methods to arrive at a final value of \$13,720,000. (Exhibit K, page 120).

4. Respondent's Evidence. Respondent submitted Exhibits 1 through 4 prior to the hearing and Exhibits 5 through 11 during the course of cross examination of Mr. Heyde. The Exhibits are as follows:

Exhibit	Description	Ruling
1	Written Direct Testimony of Robin Marx	Admitted
2	Appraisal Report	Admitted
3	Deed of Subject Property	Admitted
4	Complainant's Responses and Objections to Respondent's First Request for Admissions	Admitted
5	Article on Portage Store	Refused
6	Article on Gander Outdoors	Refused
7	Article on Gander Outdoors closing	Refused
8	Warranty Deed from Polk County, Iowa	Admitted
9	Sale and Leasing Restriction	Refused
10	Article on Dick's Sporting Goods	Refused
11	Article on Going, Going, Gone	Refused

Exhibits 1 through 4 and Exhibit 8 were received without objection. Complainant objected to Exhibits 5, 6, 7, 9, 10, and 11 for lack of foundation. Respondent cited Federal Rule of Civil Procedure 9.02(6); *Heck v. City of Pacific*, 616 S.W.3d 387, (Mo. App. 2020); and *Wessel v. Wessel*, 953 S.W.2d 630 (Mo. App. 1997) in support of his position that the exhibits are self-authenticating.

Evidence. "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). The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly 8 v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). Administrative Hearings before the STC are heard in accordance with the

Missouri Rules of Civil Procedure rather than the Federal Rules. The Federal Rules may be illustrative but are not controlling.

Respondent cited *Wessel v. Wessel*, *infra*, to support his position that newspaper articles may be received into evidence without the usual procedure of providing foundation for the article. In *Wessel v. Wessel*, the husband was attempting to introduce help wanted articles that he had found in a local newspaper in a divorce proceeding to show that his wife could earn more than minimum wage. The Court in *Wessel* found that the articles were hearsay and did not admit them. *Id* at 631. Respondent's reliance upon this case is misplaced.

Respondent further cited *Heck v. City of Pacific*, *infra*, to support his position that the exhibits should be admitted. In that case, there was a major flooding event that occurred which resulted in damage to trailer houses. The witness who propounded reports was a civil engineer who testified at length on not only his personal qualifications, but also on how the data were collected and how reports were generated by a computer system. The witness was personally at the site, supervised the collection of data, entered the data and completed the offered reports. *Id* at 393. In the present case, Respondent was attempting to offer newspaper articles through the testimony of Complainant's Appraiser who testified that he was not familiar with the articles. Respondent's reliance upon this case is misplaced. Exhibits 5, 6, 7, 9, 10, and 11 are not received into evidence.

Exhibit 2 is the Appraisal Report of Robin Marx, MAI. Mr. Marx completed three methods of valuation of the subject property and testified at length regarding his appraisal

report. Mr. Marx testified he defined fee simple differently than Mr. Heyde did. Mr. Marx derived a value of the property as of January 1, 2021 of \$17,350,000.

5. Value. The TVM of the subject property on January 1, 2021, was \$17,040,810.

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

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d

345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. These three approaches are the cost approach, the comparable sales approach, and the income approach (also known as income capitalization). *Id.* at 346-48; *Missouri Baptist Children's Home v. State Tax Comm'n* ("MBCH"), 867 S.W.2d 510, 511 n.3 (Mo. banc 1993).

The cost approach may be based on either reproduction cost or replacement cost. While reproduction cost is the best indicator of value for newer properties where the actual costs of construction are available, replacement cost may be more appropriate for older properties. *Snider*, 156 S.W.3d at 341, 347.

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id.* at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id.* at 348.

The income approach "is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. "The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id.* "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use." *Id.* (internal quotation omitted). "When applying the income approach to valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered." *Id.*

2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be

based solely upon his inquiry and any evidence presented by the parties or based solely upon evidence presented by the parties. *Id.*

3. Complainant's Burden of Proof

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

4. Complainant Did Not Prove Overvaluation.

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

Mr. Heyde testified that he gave no value to the 22,821 square feet of mezzanine area and only valued 10,000 square feet of the 46,780 square feet of the covered lumber shed. Complainant's comparable sales consist completely of vacant properties and excluded built-to-suit or sale leaseback. His analysis excluded these categories, but in so doing, he did not develop an accurate measure for the market value. When the appraiser determines dollar adjustments are warranted for property rights, financing terms, conditions of sale, or market conditions, those adjustments are to be made and should be reflected in the appraisal report. Complainant presented no substantial and persuasive evidence indicating the property rights cannot be adjusted properly under USPAP standards or appraisal practice as to each of the subject properties. The theory that a leased property is encumbered, and therefore not a preferable comparable, is unpersuasive, is speculative, and not a methodology utilized by Missouri Courts to value property. Courts have addressed a leasehold's non-impact on the transferability of a fee simple estate, stating, "Cases and treatises frequently describe a conveyance of real estate subject to a leasehold estate as a conveyance of a 'remainder' interest, *notwithstanding that fee simple title is what is conveyed.*" *Cooper v. Ratley*, 916 S. W.2d 868, 870 n. 3 (Mo. App. 1996) (emphasis added). The STC recently decided *St. Louis BOA Plaza, LLC, et al. v. Stephen Conway, Assessor, City of St. Louis*, 17-20066, 17-20067, and 17-20068 (2019) and the Commission, in affirming the decision of the hearing officer, stated:

"The assessor values property in fee simple interest. An estate in fee simple is ownership of all the rights in a property. A lease conveys property rights to another. The tenant receives a leasehold interest that allows the tenant the right to use and occupy the property under conditions. *The fee ownership remains with the owner of*

the property. For ad valorem purposes, the property to be assessed consists of the land and improvements and the possessory interests in the property. Section 137.115.1 RSMo. In most cases, the value of the leased fee and the value of the leasehold should approximate the value of the fee simple unencumbered by a lease.” (emphasis added).

“While the Commission has some discretion in deciding which approach best estimates the value of a particular property,” the Commission's choice of valuation approach “must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors.” *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). To assume that a vacant property is the best or most accurate measure for a value of the subject properties doesn't equate to the evidence. The present record contains no evidence to support Complainant's theory. The record indicates a lack of sufficient comparable sales for the subject properties.

Complainant failed to provide substantial and persuasive evidence, therefore, the presumption that the BOE determination was correct has not been overcome and Respondent's evidence of value need not be considered.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$17,040,810.

Application for Review

A party may file with the Commission an application for review of this decision

within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

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

Disputed Taxes

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

SO ORDERED July 26, 2024.
STATE TAX COMMISSION OF MISSOURI

Todd D. Wilson
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 July 26, 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