



STATE TAX COMMISSION OF MISSOURI

LOWES HOME CENTERS LLC,) Appeal No. 21-33017 & 21-33019
) Parcel No. 1908202303 & 1303112052
)
 Complainant(s),)
)
v.)
)
BRENT JOHNSON, ASSESSOR,)
GREENE COUNTY, MISSOURI,)
 Respondent.)

DECISION AND ORDER

Lowes Home Centers, LLC, (Complainant) appeals the Greene County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject properties on January 1, 2021, was \$7,212,100 for 21-33017 and \$7,644,700 for 21-33019. Complainant claims the subject property is overvalued and proposes TVM of \$4,100,000 and \$5,200,000 respectively. The appeals were combined for evidentiary hearing and decision. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.¹

Complainant was represented by counsel Benjamin Blair and May Hershewe.

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.

Respondent was represented by counsel, Austin Fax. The evidentiary hearing was conducted on March 8, 2023, via WebEx before Senior Hearing Officer Erica M. Gage. This matter was assigned to Senior Hearing Officer Todd D. Wilson for Decision and Order on July 25, 2024.

FINDINGS OF FACT

1. Subject Property. The subject property in appeal 21-33017 is located at 1850 E Primrose, Springfield, Greene County, Missouri. The parcel/locator number is 1908202303. The property is operated as Lowes and is an owner-occupied big box retail store that has approximately 111,724 square-feet of gross building area and sits on approximately 12.67 acres of land. All building improvements were constructed in 1993.

The subject property in appeal 21-33019 is located at 170 W. Norton, Springfield, Greene County, Missouri. The parcel/locator number is 1303112052. The property is operated as Lowes and is an owner-occupied big box retail store that has approximately 136,629 square-feet of gross building area and sits on approximately 26.79 acres of land. All building improvements were constructed in 1999.

2. Respondent and BOE. Respondent classified the subject properties as commercial and determined the TVM on January 1, 2021, was \$7,212,100 and \$7,644,700 respectively. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$7,212,100 and \$7,644,700 respectively.

3. Complainant's Evidence. Complainant's testimony and evidence submitted a TVM for the subject properties on January 1, 2021, of \$4,100,000 and \$5,200,000,

respectively. Complainant submitted the following exhibits:

Exhibit	Description	Ruling
A	Appraisal Report for 21-33017 and WDT	Admitted
B	Appraisal Report for 21-33019 and WDT	Admitted
C	Reference materials	Admitted

Respondent filed written objection to parts of exhibit A and exhibit B for the reason that the appraisal methodology is not in accordance with Missouri law and, therefore, creates a separate subclass of property that is not recognized by the Constitution of the State of Missouri. Complainant responded to the objections in writing and orally. The exhibits were received by the Hearing Officer with the decision on the objection to be set out in the decision. The objections are overruled. Exhibits A & B are admitted and given the weight due.

During cross examination, Respondent moved to strike the testimony of Mr. Allen and moved to exclude exhibits A and B and the Written Direct Testimony of Mr. Allen under Section 490.065 R.S.Mo. which sets out the standards for expert testimony. Complainant responded to the motion. The Hearing Officer took the motion under advisement with the ruling to be set out in the Order. The motion is overruled.

Laurence Allen is employed by Allen & Associates as its President and chief appraiser. Mr. Allen is an MAI certified and Missouri licensed real estate appraiser. Mr. Allen developed the comparable sales approach, the cost approach and the income approach to value. The cost approach was not relied upon due to significant amount of depreciation and obsolescence associated with the subject building improvements. Mr.

Allen testified he reconciled the comparable sales and income approaches and gave the sales comparison approach primary weight in the value conclusion. (Exhibit A at 124 and Exhibit B at 127)

Mr. Allen valued the fee simple interest in the subject real property rather than a leased fee interest. He testified that, “In a fee simple interest, a property is valued as if it is available to be leased or available to be occupied.” (WDT at 8). In accordance with this definition, the six comparable sales that Mr. Allen used were all vacant, formerly occupied big box retail properties. Mr. Allen explained that there is a much higher demand for leased properties at much higher prices than vacant properties as there is value in the lease because it represents an income stream. (WDT at 8). According to a study that Mr. Allen referenced, a leased fee transaction will sell at roughly 3x a fee simple transaction. (WDT at 12). The sales comparison approach indicated a value of \$35 per square foot or \$3,910,000 for the property in 21-33017 and \$35 per square foot or \$5,240,000 for the property in 21-33019.

Mr. Allen discussed two different types of rental rates for the income approach, those being the rental rate of existing buildings and built-to-suit rental rates for properties that had not been built yet. Mr. Allen found that built-to-suit rates are generally higher than market rates for existing buildings with an average rate of \$9.96 per square foot, and non-build to suit leases with an average rate of \$4.60 per square foot. Even though the properties in these appeals are occupied, Mr. Allen believed it would be more appropriate to use the non-build to suit lease rates. Mr. Allen then established the rental rate of the

subject property of \$4.25 per square foot for the property in 21-33017 and \$4.00 per square foot for the property in 21-33019; with a vacancy and credit loss factor of 5.0%. Based upon these calculations, Mr. Allen derived a net operating income of \$402,930 and \$461,273, respectively. Mr. Allen derived a loaded capitalization rate of 8.6040% for both properties. Mr. Allen then deducted for leasing commissions and for lost income to reach final values of \$4,000,000 and \$5,020,000 (rounded).

Mr. Allen developed the Cost Approach for both properties but stated in the reconciliation that it was not relied upon due to the age of the properties and the depreciation and obsolescence of the properties.

Mr. Allen then reconciled the sales comparison values of \$3,910,000 and \$5,240,000, respectively and the income values of \$4,000,000 and \$5,020,000 to final values of \$4,100,000 and \$5,160,000 respectively.

4. Official Notice Request by Respondent. Respondent requested the Senior Hearing Officer take Official Notice of the STC decision in *601 Metropolitan Square, LLC v. Michael Dauphin*, Appeal No. 19-20159. 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). The prior decision is hereby noticed and given the appropriate weight due.

5. Respondent's Evidence. Respondent had submitted an exhibit 1 for each appeal, but did not offer it at the hearing and the exhibits were not received. Respondent

did not present any other evidence.

5. Value. The TVM of the subject properties on January 1, 2021, were \$7,212,100 and \$7,644,700 respectively.

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

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of

property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

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

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

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

The income approach "is most appropriate in valuing investment-type properties

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

2. Evidence

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

upon evidence presented by the parties. *Id.*

3. Complainant's Burden of Proof

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

4. Complainant Did Not Prove Overvaluation.

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

The evidence established that Complainant's Appraiser gave the most weight to a

sales comparison approach. Complainant's comparables consist completely of vacant properties and excluded built-to-suit or sale leaseback. Mr. Allen testified that sales leased at the time of purchase sell at around three times the price of vacant properties. 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 has 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 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.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The TVM of the subject properties as of January 1, 2021, were \$7,212,100 and \$7,644,700, respectively.

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 Greene 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 on August 8, 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 August 9th, 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