



STATE TAX COMMISSION OF MISSOURI

LOWES HOME CENTERS LLC,) Appeal No. 21-34006
) Parcel No. 18-1.0-12.0-0-007-001
)
 Complainant(s),)
)
v.)
)
ROBERT BOYER, ASSESSOR,)
JEFFERSON COUNTY, MISSOURI,)
 Respondent.)

DECISION AND ORDER

Lowes Home Centers, LLC, (Complainant) appeals the Jefferson County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$10,500,000. Complainant claims the subject property is overvalued and proposes TVM of \$4,260,000. 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. Respondent was represented by counsel, Floyd Norrick. The evidentiary hearing was conducted on June 12, 2023, via WebEx before Senior Hearing Officer Erica M. Gage.

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.

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 is located at 1111 Bradley Street, Festus, Jefferson County, Missouri. The parcel/locator number is 18-1.0-12.0-0-007-001. The property is operated as Lowes and is an owner-occupied big box retail store that has approximately 134,087 square-feet of gross building area and sits on approximately 15.23 acres of land. All building improvements were constructed in 2003-2004.

2. Respondent and BOE. Respondent classified the subject properties as commercial and determined the TVM on January 1, 2021 was \$10,500,000. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021 was \$10,500,000.

3. Complainant's Evidence. Complainant's testimony and evidence submitted a TVM for the subject properties on January 1, 2021, of \$4,260,000. Complainant submitted Exhibit A, an Appraisal Report of the property, completed by Laurence Allen and his Written Direct Testimony (WDT). 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.

Respondent filed written objection to various parts of the WDT of Mr. Allen for various reasons. Complainant responded to the objections in writing. 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. Exhibit A and the WDT are admitted and given the weight due.

Mr. Allen developed the comparable sales approach, the cost approach and the income approach to value. The cost approach was relied upon the least 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. (WDT at 127).

Mr. Allen valued the fee simple interest in the subject real property rather than a leased fee interest. Mr. Allen defined a Fee Simple as: absolute ownership unencumbered by other interest or estate and subject to the limitations of the foregoing government. (WDT at 4). "In a fee simple interest, a property is valued as if it is available to be leased or available to be occupied." (WDT at 7). In accordance with this definition, the six comparable sales that Mr. Allen used were all vacant, formerly occupied big box retail properties in which the sale prices ranged from \$11.82 to \$48.10 per square foot. (WDT at 9-10). Mr. Allen explained that there is a much higher demand for leased properties and much higher prices than for vacant properties as there is value in the lease because it represents an income stream. According to a study that Mr. Allen referenced, a leased fee transaction will sell at roughly three times a fee simple transaction. (WDT at 11). Mr. Allen's sales comparison approach indicated a value of \$32 per square foot or \$4,290,000 for the property.

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. Even though the property in this appeal is occupied, Mr. Allen believed it would be more appropriate to use the non-build to suit lease rates which ranged from \$2.86 to \$6.00 per square foot. Mr. Allen then established the rental rate of the subject property of \$3.75 per square foot; with a vacancy and credit loss factor of 5.0%. Based upon these calculations, Mr. Allen derived a net operating income of \$421,801. Mr. Allen derived a loaded capitalization rate of 8.5940% for the property. Mr. Allen then deducted for leasing commissions and for lost income to reach a final value of \$4,180,000 (rounded).

Mr. Allen developed the Cost Approach for the property of \$4,330,000 but stated in the reconciliation that it was relied upon the least due to the age of the property and the depreciation and obsolescence of the property.

Mr. Allen then reconciled the sales comparison value of \$4,290,000; the income value of \$4,160,000 and the Cost Approach value of \$4,330,000 to a final value of \$4,260,000.

4. Respondent's Evidence. Respondent submitted Exhibit 1, an appraisal of the property completed by Jeffrey M. Johnson, MAI, and the Written Direct Testimony (WDT) of Mr. Johnson. Complainant filed a written objection to various parts of the WDT and to the Appraisal in its entirety. The Exhibit was received by the Hearing Officer with

the decision on the objection to be set out in the Decision. The objections are overruled. Exhibit 1 and the WDT are admitted and given the weight due. Respondent further submitted Exhibit 2, a Stipulation of Assessed Value in Appeal 19-34000, Rebuttal Testimony of Mr. Johnson and Surrebuttal Testimony of Mr. Johnson. Exhibit 2 and the Rebuttal and Surrebuttal Testimony were received without objection.

Mr. Johnson testified upon cross examination that he agreed with the definition of Fee Simple that Mr. Allen had used, however, he found that the final value of the property was \$11,360,000. Mr. Johnson disagreed with the methodology of Mr. Allen when considering rentals for the income approach because it is not uncommon for Lowes to sell the property to an investor and take back a long-term lease.

5. Value. The TVM of the subject property on January 1, 2021, was \$10,500,000.

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). The parties' basis for excluding the exhibits and WDT is offset because the facts are determined by an administrative hearing officer rather than a jury. Cf. *State v. Sladek*, 835 S.W.2d 308, 313 (Mo. banc 1992) (noting that in matter not tried to a jury, "a certain amount of latitude in the admission of evidence is allowed, and [...] the rules of exclusion are less strictly enforced"). "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.

Complainants' definition of "fee simple" is based on an industry-specific dictionary, not Missouri law. Missouri law defines "fee simple absolute" as "the entire title; it is the most extensive interest one may have in property, comprehends an absolute estate in perpetuity, and is potentially infinite." *Vaughan v. Compton*, S.W.2d 328, 331 (Mo. 1950); *see also Kimberling N., Inc. v. Pope*, 100 S.W.3d 863, 873 (Mo. App. S.D. 2003) (noting fee simple defines a legal "estate without end or limitations" and which is "the largest estate a person can possibly have"). A fundamental aspect of the fee simple estate is the "absolute power and right to sell, use or otherwise dispose of said property[.]" *Vaughan*, 235 S.W.2d at 331. When an owner exercises the "absolute power and right" to

lease real property, the owner retains the fee simple interest and grants a temporary possessory interest to the lessee. See *Santa Fe Trail Neighborhood Redevelopment Corp. v. W.F. Coehn & Co.*, 154 S.W.3d 432, 440 (Mo. App. W.D. 2005) (holding that a written agreement created a lease and the owners "held a fee simple interest in the [p]roperty, while [the lessee] was granted a possessory interest therein for only a limited term). The power to encumber real property with a lease is therefore both a fundamental aspect of the fee simple interest, *Vaughan*, 235 S.W.2d at 331, and a principal way of realizing the value of real property. *Mo. Baptist Children's Home*, 867 S.W.2d at 513. Complainants cite no law requiring real property to be valued on the hypothetical assumption it is "unencumbered" or vacant. Missouri law instead utilizes a "realistic approach" requiring consideration of "economic realities" when estimating the TVM of real property for purposes of ad valorem taxation. *Id.* at 512-513. Chief among these economic realities is that the TVM of real property is in part a function of the income it generates. *Id.* at 513.

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. 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 and has not been overcome. As the presumption was not overcome, Respondent's evidence need not be addressed.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$10,500,000.

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 Jefferson 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