

**STATE TAX COMMISSION OF MISSOURI**

Westgate GV at the Woods LLC,	)	
	)	
Complainant(s),	)	
	)	
v.	)	Appeal Nos. 21-89508 thru 21-89514
	)	
SUSAN CHAPMAN, ASSESSOR,	)	
TANEY COUNTY, MISSOURI,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

Westgate GV at the Woods LLC (Complainant) appeals the Taney County Board of Equalization's (BOE) decision finding the true value in money (TVM) and Assessed Values of the subject properties on January 1, 2021, which were as follows:

Appeal #	Parcel #	BOE Residential Value	% Residential	BOE Commercial Value	Total Assessed Value
21-89508	07-7.0-36-002-001-002.300	\$6,724,700	100 %	0	\$1,399,720
21-89509	07-7.0-36-002-001-003.002	\$3,155,260	68%	\$1,484,070	\$1,074,640
21-89510	07-7.0-35-003-001-023.001	\$809,680	50%	\$809,680	\$412,940
21-89511	18-7.0-35-003-001-023.002	\$1,619,370	100%	0	\$307,680
21-89512	18-7.0-35-003-001-023.003	\$1,619,370	100%	0	\$307,680
21-89513	18-7.0-35-003-001-023.004	\$1,619,370	100%	0	\$307,680
21-89514	18-7.0-35-003-001-023.005	\$1,444,260	100%	0	\$274,410

Complainant claims the properties are overvalued. Complainant proposes values as set out herein. Complainant further provided appraisals on each of the subject properties prepared by Hayden K. Harrison, Certified General Appraiser of the Hospitality Valuation Group with the values also set forth in the following table. Complainant did not challenge the classification of the properties or the division of the valuation of the properties that are valued as partially residential and partially commercial.

Appeal #	Parcel #	Complainant's Proposed Value	Appraiser's Value
21-89508	07-7.0-36-002-001-002.300	\$4,601,309	\$5,460,000
21-89509	07-7.0-36-002-001-003.002	\$2,843,668	\$3,600,000
21-89510	07-7.0-35-003-001-023.001	\$675,743	\$865,000
21-89511	18-7.0-35-003-001-023.002	\$675,743	\$945,000
21-89512	18-7.0-35-003-001-023.003	\$675,743	\$1,030,000
21-89513	18-7.0-35-003-001-023.004	\$675,743	\$1,030,000
21-89514	18-7.0-35-003-001-023.005	\$675,743	\$1,110,000

Complainant was represented by Austin Fax. Respondent was present in person and represented by Travis Elliott. The evidentiary hearing was conducted on May 12, 2023 before Erica M. Gage, Senior Hearing Officer. This matter was assigned to Senior Hearing Officer Todd D. Wilson for decision pursuant to Section 138.431.5 RSMo. on April 24, 2024. Complainant produced substantial and persuasive evidence establishing overvaluation. The BOE's decision is set aside.

### **FINDINGS OF FACT**

**1. Subject Property.** The subject properties consist of 8 condominium buildings, 1 motel, asphalt and concrete parking areas and numerous light poles. The properties are part of a large condominium resort which is used as a timeshare and condominium outside of Branson, Taney County, Missouri.

**2. Respondent and BOE.** Respondent and Complainant reached agreement as to the classifications of the subject properties. The classifications of the properties were adopted by the BOE as set out previously. The BOE also determined the TVM of the properties on January 1, 2021, as set out previously.

**3. Complainant's Evidence.** Complainant presented written direct testimony prior to the hearing that was admitted without objection and made part of the record. Complainant also presented the following exhibits for each of the properties:

Exhibit A: Appraisal of the subject property

Exhibit B: Notes and documents for comparable property for sales of acreages

Exhibit C: Notes and documents for comparable "pad site" sales

Exhibit D: Transmitting cover letter for the appraisal

Respondent objected to Exhibits B & C as they were not documents provided prior to the Evidentiary Hearing. In response, Complainant withdrew the second page of the exhibits which was a map. The Hearing Officer took the objection under advisement.

**4. Respondent's Evidence.** Respondent submitted several Exhibits in each appeal.

Appeal Number	Exhibit Number	Description of Exhibit
23-89508	1	Taney County Work Card
23-89508	2	Valuation Change Sheet
23-89508	3	BOE Decision Letter
23-89508	4	Complaint for Review
23-89508	5	2021 RE Value Change Notice
23-89508	6	Previous Values Extended
23-89509	1	Taney County Work Card
23-89509	2	Valuation Change Notice
23-89509	3	BOE Decision Letter
23-89509	4	BOE Property Assessment Appeal Form
23-89509	5	Valuation Change Notice
23-89509	6	Previous Values Extended
23-89510	1	Taney County Work Card
23-89510	2	Valuation Change Notice
23-89510	3	BOE Decision Letter
23-89510	4	2021 Value Change Sheet
23-89510	5	Photo
23-89510	6	BOE Property Assessment Appeal Form
23-89510	7	Previous Values Extended
23-89511	1	Taney County Work Card
23-89511	2	Valuation Change Notice

23-89511	3	BOE Decision Letter
23-89511	4	2021 Value Change Sheet
23-89511	5	Photo
23-89511	6	BOE Property Assessment Appeal Form
23-89511	7	Previous Values Extended
23-89512	1	Taney County Work Card
23-89512	2	Valuation Change Notice
23-89512	3	BOE Decision Letter
23-89512	4	2021 Value Change Sheet
23-89512	5	Photo
23-89512	6	BOE Property Assessment Appeal Form
23-89512	7	Previous Values Extended
23-89513	1	Taney County Work Card
23-89513	2	Valuation Change Notice
23-89513	3	BOE Decision Letter
23-89513	4	2021 Value Change Sheet
23-89513	5	Photo
23-89513	6	BOE Property Assessment Appeal Form
23-89513	7	Previous Values Extended
23-89514	1	Taney County Work Card
23-89514	2	Valuation Change Notice
23-89514	3	BOE Decision Letter
23-89514	4	BOE Property Assessment Appeal Form
23-89514	5	Previous Values Extended

Respondent had submitted written direct testimony prior to the hearing. Complainant objected to Respondent's written direct testimony and all of Respondent's exhibits for two reasons. The first reason for the objection was that the basis for Respondent's testimony and the exhibits was the Hunnicutt valuation system. The second reason for the objection was that the Assessor appeared to Complainant to be requesting that the classifications of the properties be changed. After clarification and agreement of the parties, it was determined that the Assessor was not requesting changes in the classification of the various properties, so the second reason for the objection became moot and was withdrawn. The Hearing Officer took the objection under advisement.

**5. Value.** The TVM of the subject property on January 1, 2021 is as follows:

Appeal #	Parcel #	Value
21-89508	07-7.0-36-002-001-002.300	\$5,460,000
21-89509	07-7.0-36-002-001-003.002	\$3,600,000
21-89510	07-7.0-35-003-001-023.001	\$865,000
21-89511	18-7.0-35-003-001-023.002	\$945,000
21-89512	18-7.0-35-003-001-023.003	\$1,030,000
21-89513	18-7.0-35-003-001-023.004	\$1,030,000
21-89514	18-7.0-35-003-001-023.005	\$1,110,000

The Classifications of the property are as determined by the BOE and in the proportion determined by the BOE for those properties with mixed classifications.

### CONCLUSIONS OF LAW

**1. Respondent's Objection to Exhibits B and C.** Complainant did not provide Exhibits B and C to Respondent in accordance with the Order of the STC. While this action is not favored by the STC, it is not determinative. The appraisals, Exhibit A in each appeal at Page 50, state: "The land value is based upon a survey of other sites developed within condominium resort properties." This gave notice that the Appraiser used information of comparable sales to form his opinion. This was done in accordance with accepted principles of appraisal regarding the Cost approach to valuation.

Like the sales comparison and income capitalization approaches, the cost approach is based on market comparisons. . . . The land value is then added, usually based on comparison with sales of comparable sites. The sum of the value of the land and the improvements is adjusted for the rights included with the subject property again based on market comparisons. *The Appraisal of Real Estate*, 14<sup>th</sup> Edition, 2013, p. 561.

The objections to Complainant's Exhibits B & C are overruled. Exhibits B & C of each appeal, with the second page (the map) withdrawn, are received and given the weight due.

## **2. Complainant's Objection to Respondent's Written Direct Testimony and**

**Exhibits.** Complainant objected to the receipt of Respondent's Written Direct Testimony and Exhibits because they were based upon the Hunnicutt appraisal system. The Hunnicutt appraisal system is a recognized system to estimate the true value of money for subject properties. *Main Street Market Company v. Gary Rector*, Mo. St. Tax Com., Appeal No. 20-48500, (July 30, 2021). The objection is overruled; the written direct testimony and the exhibits are received and given the weight due.

**3. 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. Residential/Commercial real property is assessed at 19% / 32% of its TVM as of January 1 of each odd-numbered year, respectively. Section 137.115.5(1)(a) / 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 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.*

**4. 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).

**5. Complainant Proved Overvaluation.** Through the testimony of Hayden K. Harrison, Certified General Appraiser of the Hospitality Valuation Group, Complainant provided substantial and persuasive evidence to find the value of the properties as set out previously in accordance with the appraisals. The appraiser explained that because the properties were part of a larger resort property controlled by the property ownership and management, there was no feasible way to isolate income and expense operations of solely these properties to the exclusion of the remaining portions of the resort. Also because of the nature of the ownership of the property and its use, the comparable sales method of valuation was not feasible. This left the appraiser with only the cost method to use to derive the value of the properties. Even though the appraisals used only one method for valuation of the properties, the explanation for the use of that method and exclusion of the other methods was sufficient to make the evidence substantial and persuasive.

## **CONCLUSION AND ORDER**

The BOE decision is set aside. The TVM of the subject property as of January 1, 2021, is as set out in the table previously. The classification of the properties and the proportion of that classification shall not change and are as determined by the BOE.



### **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 Taney 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 August 8, 2024.

STATE TAX COMMISSION OF MISSOURI

Todd D. Wilson  
Senior Hearing Officer

### 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 9<sup>th</sup>, 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