



STATE TAX COMMISSION OF MISSOURI

SPIRIT ENERGY LLC,)
)
 Complainant,)
) Appeal No. 22-32506
 v.) Parcel No. 570240A000
)
 TRAVIS WELGE, ASSESSOR,)
 ST. CHARLES COUNTY,)
 MISSOURI,)
)
 Respondent.)

DECISION AND ORDER

Spirit Energy, LLC (Complainant) appeals the St. Charles County Board of Equalization's (BOE) decision finding the subject property's market value was \$1,170,000 with an assessed value of \$374,400 as of January 1, 2021. Complainant is represented by counsel, Shawn Elam. Respondent is represented by counsel, Michael Mueth, Assistant County Counselor. An Evidentiary Hearing was held in this matter on May 23, 2023 before Erica M. Gage, Senior Hearing Officer. This matter was assigned to Senior Hearing Officer Todd D. Wilson on March 4, 2024 for decision pursuant to Section 138.431.5 RSMo. Complainant failed to produce substantial and persuasive evidence of overvaluation. The BOE decision is Affirmed. The true value in money (TVM) of the subject real property as of January 1, 2021, was \$1,170,000.

Factual Background

1. The Subject Property. This appeal involves a commercial property located at 5950 South Missouri Highway 94, Weldon Spring, St. Charles County, Missouri. The improvements on the property were built in 1996 as a gas station/convenience store with a McDonalds restaurant attached. The square footage of the improvements is in dispute, however, approximately 2/3 of the improvements was the restaurant and the remaining 1/3 being the gas station/convenience store. The gas station/convenience store is a “Circle K” brand and is currently operating. The traffic patterns in the area have changed dramatically since 1996, in response to the development of the area, making highway 94 less traveled. The restaurant closed several years prior to January 1, 2021 and that area of the building has been vacant since then. There is a single stall car wash located on the property but is not functioning and neither party assigned more than a minimal value to it.

2. Assessment and Valuation. The BOE classified the subject property as Commercial with a fair market value of \$1,170,000 and Assessed value of \$374,400 as of January 1, 2021.

3. Complainant's Evidence. Complainant introduced Exhibits A and B. Exhibit A is an appraisal report prepared by Jeffrey M. Johnson, MAI, on behalf of Johnson Commercial Real Estate & Advisory Services. Exhibit B is Johnson’s written direct testimony. Exhibits A and B were received without objection.

In his appraisal, Johnson developed all three approaches to valuation for the property and emphasized the value of the restaurant portion of the building as it comprises the majority of the square footage of the improvements. He stated that he gave the most

weight (50%) to the cost approach, with the income and sales comparison approaches weighted at 25% each in the final reconciliation.

Cost Approach

On page 73 of Johnson's appraisal report, he states that the cost approach is most applicable on new or relatively new structures located in markets with available land for development or redevelopment. The improvements on the subject property were built in 1996 and have not been renovated. Johnson further states that "A small two-tenant retail commercial building with significant accumulated depreciation from all sources, located on a large corner land parcel, is a somewhat more unique property well supported by application of the cost approach. He reconciles these two statements with an explanation that there is a difference of opinion as to whether the cost approach is appropriate for use on commercial buildings that are not new or relatively new if they are somewhat unique.

There are two components of the cost approach, the first is valuation of the underlying land, the second is determining the value of the improvements. These two components are then added together to reach the final value of the property. Johnson valued the underlying land at \$620,000, (Exhibit A, Page 88). Johnson found that the cost of the improvements, after all sources of depreciation was \$130,386 for a final value, rounded to \$750,000.

Income Approach

Johnson developed the income approach based upon his understanding of a fee simple basis which he explained to mean the ownership without taking into consideration any leases on the property. Johnson then analyzed retail rental offerings for strip malls and

former restaurant locations to arrive at a market rent of the property of \$13.00 per square foot. Johnson then derived a capitalization rate of 9.00% taking into consideration the condition of the building, lack of interest in renting the property and the location. The value of the property indicated by the income approach that Johnson developed was \$740,000.

Sales Comparison Approach

Johnson further developed the sales comparison approach using sales of vacant restaurants without taking into consideration the gas station and convenience store portion of the building, even though it is the portion of the building that is currently rented. Johnson derived a value of \$620,000 by use of the sales comparison approach.

Johnson's final, reconciled valuation of the property after considering all 3 methods of valuation was \$725,000.

4. Respondent's Evidence. Respondent submitted Exhibits 1 and 2. Exhibit 1 is the written direct testimony of Alisha M. Gammon, MAI. Exhibit 2 is Gammon's appraisal report on behalf of Integra Realty Resources. Both Exhibits were received without objection.

Gammon developed the Sales Comparison and Income approaches to value. Gammon testified that the Cost Approach was not appropriate as the age of the property, its obsolescence, and other sources of depreciation would tend to make the valuation more subjective. Gammon developed the Income Approach and the Sales Comparison Approach. Gammon further testified that the valuation she developed was based upon a true value in money approach and considered the lease in place for the Circle K gas station/convenience store and its remaining term of approximately 4 ½ years.

Gammon used recent sales of other gas stations/convenience stores. The location of some of the sales were out of state, being from Illinois and Arkansas. Gammon developed a total value of the property of \$1,700,000 using the Sales Comparison method.

For the Income Approach, Gammon used rentals from various states and areas as well to arrive at a capitalization rate of 8%. This, combined with the rental valuation derived was used to develop a total value of the property of \$1,700,000 using the Income Approach.

5. Value. The TVM of the subject real property \$1,170,000 and Assessed value is \$374,400 as of January 1, 2021.

CONCLUSIONS OF LAW

1. Assessment and Valuation. 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). The TVM is "the fair market value of the property on the valuation date[.]" *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). "True value in money is defined in terms of value in exchange not value in use." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). "Determining the true value in money is an issue of fact for the STC." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008).

2. True Value in Money v. Fee Simple. 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).¹³ 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 conditioning the income approach on an assumption all leases are reset to commence on the valuation date. 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. It follows that a realistic estimate of market value may account for both contract and market rent. *Id.* A categorical rule barring consideration of contract rent "hypothesizes an unrealistic market" by assuming

"properties now subject to long-term below-market leases are suddenly available to rent." *Id.* at 513.

3. Method of Valuing Property. "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.

4. 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). "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).

5. Complainant's Burden of Proof. The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE value is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *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 v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (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").

6. Complainant Failed to Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant failed to produce substantial and persuasive evidence. Johnson's appraisal relied most heavily upon the Cost Method of valuation, which as stated in his own report is, generally, most applicable for new or like new improvements; not improvements that are 25 years old. The improvements were a common model for a restaurant and gas station in the 1990s, so any claim of uniqueness relies upon this model along with the changing traffic patterns. This somewhat unique attribute is not enough to justify the reliance upon the Cost Method as it becomes more subjective the older the improvements are. Johnson's comparable sales were vacant restaurants and comparable rents were derived from either restaurants or strip malls, ignoring the income producing gas station/convenience store on the property. Johnson also relied upon a definition of "fee simple" that assumes that there are no leases in place, ignoring the lease that was in place for the gas station/convenience store portion of the property. Complainant's Appraiser's reliance upon the Cost Method of valuation, his reliance upon comparable sales of vacant restaurant properties and his use of Fee Simple valuation rather than True Value in Money valuation make his appraisal unpersuasive.

There is no need to address the evidence of Respondent as Complainant failed to meet its burden.

CONCLUSION AND ORDER

The BOE's decision is Affirmed. The TVM of the subject property as of January 1, 2021, was \$1,170,000 and Assessed value of \$374,400. The assessed value of the property as of January 1, 2022 was \$374,400.

Application for Review

A party may file 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 of Missouri, 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. Charles County, and 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 the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED August 19th, 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 23rd, 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