



STATE TAX COMMISSION OF MISSOURI

AMERCO REAL ESTATE CO,) Appeal No. 21-15968
Complainant(s),)
) Parcel No. 08J531077
v.)
)
)
)
JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

AMERCO Real Estate Co. (Complainant) appeals the St. Louis County Board of Equalization's (BOE) decision determining the true value in money (TVM) of the subject commercial property as of January 1, 2021, alleging overvaluation. Complainant did not produce substantial and persuasive evidence of overvaluation. The BOE's decision is affirmed.¹

Complainant was represented by counsel, Jerome Wallach. Respondent was represented by counsel, Steve Robson. The evidentiary hearing was conducted on October 22, 2024, via Webex before Senior Hearing Officer (SHO) Todd D. Wilson.

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.

PRELIMINARY MATTERS

Prior to the Evidentiary Hearing, the parties argued Complainant's Motion in Limine and Respondent's Motion to Strike Exhibit B. Complainant's Motion in Limine was taken under advisement and was not ruled upon prior to the hearing. The scenario contemplated in the Motion in Limine never arose during the hearing, therefore, the Motion in Limine is overruled.

Respondent's Motion to Strike Exhibit B.

Respondent filed a Motion to Strike Exhibit B, the appraisal report prepared by Ernest Demba for failure to comply with the subpoena duces tecum issued to him. On June 17, 2024, Respondent's counsel requested a Subpoena Duces Tecum from the State Tax Commission (STC) ordering production of the work file associated with Exhibit B. In the request, Respondent gave the following definition:

"Appraisal Work File" as used herein is the work file required by USPSP to perform an appraisal as a licensed appraiser, and includes, but is not limited to, all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation.

The Respondent stated that the work file was directly relevant to testing the appraisal and would allow Respondent to conduct a full cross-examination of the appraiser. On June 20, 2024, the STC issued the subpoena duces tecum, including the definition of Appraisal Work File as proposed by Respondent to be served on Ernest Demba. On June 25, 2024, Mr. Demba, through electronic communication to Respondent's counsel, sent 5 items, 3 of which are the same item in different formats.

Those items are Exhibits 12-2 through 12-6. Exhibit 12-2 is a bar graph of the cap rate of self-storage properties in the U.S. for the second quarter of 2010 to the fourth quarter of 2020, that appears to be from a company called “statista”. Exhibits 12-3, 12-5 and 12-6 are, in different formats, an article, apparently, from Inside Self Storage or ISS discussing Self-Storage cap rates. Exhibit 12-4 is an article, apparently, from Mick Law, P.C. discussing the 2019 Self-Storage Market.

In the initial hearing on Respondent’s Motion to Strike, the Motion was overruled and Exhibit B was received. After Complainant had completed direct testimony with Mr. Demba, Respondent proceeded with an offer of proof on its Motion to Strike.

Respondent requested that Mr. Demba identify the items that he sent in response to the Subpeona Duces Tecum. Mr. Demba was evasive, argumentative, and unresponsive to counsel’s questions. Mr. Demba was asked what was in his work file, to which he responded that the only items in his work file were Exhibit A, Exhibit B and the Subpeona. Mr. Demba refused to acknowledge sending any additional documents or answer any questions regarding his work file stating that his report, (Exhibit B), was sufficient to be his work file and that all that was required was to read the report.

Respondent renewed his Motion to Strike, which was, again, overruled. A short recess was taken at that time.

During the recess, the Hearing Officer, as the finder of fact reviewed Exhibit B, as Mr. Demba suggested and found the following statements:

On page number 6 of the report, Mr. Demba lists several sources of information used including the Unites States Census Bureau, the County Assessor’s records, other county offices, the Post-Dispatch, the St. Louis

Business Journal, appraiser's data bases and personal and individual research.

On page 7 of the report, Mr. Demba states that the real estate market was analyzed through comparable sales, listings, and lender surveys.

On page 8 of the report, Mr. Demba states that he looked for publicly recorded sale information on CoStar, the assessor's office and personal interviews with market participants and local real estate agents.

On the final lines of page 20 of the report, Mr. Demba states, The Addenda contains the market information as a partial backup for the rates used. More information is contained in the appraiser's work file. (The addenda is located at page 25 of the report and is a bar graph stating average cap rate, US self-storage with no reference to its origin.

On the final line of page 21 of the report, regarding the rental rates used in his calculation, Mr. Demba states, "The appraiser's files contain more details if required."

Upon review of Exhibits 12-2 to 12-6, the items that Mr. Demba provided in response to the Subpeona Duces Tecum, it appears that the information may support some parts of his analysis in Exhibit B, but because he refused to answer any questions regarding it, there is no foundation for the information provided and contained in Exhibits 12-2 to 12-6.

The hearing was reconvened and Respondent completed his offer of proof and then initiated the cross examination of Mr. Demba. Upon cross examination, Mr. Demba stated that he has not completed a final report with a final value, he further stated that the report submitted is not an appraisal. Upon being asked if he understood that by not providing an appraisal, Respondent did not have the opportunity to review the appraisal, to present rebuttal or effectively prepare for cross examination regarding the appraisal,

Mr. Demba stated, “That’s your problem, not mine.”

Respondent renewed his motion to strike Exhibit B for failure to comply with the Subpeona Duces Tecum, failing to provide a full work file, failing to identify and provide any foundation for the items that he did provide in accordance with the subpoena, and failing to provide a completed appraisal. Complainant responded. It is hereby found that Mr. Demba failed to respond to the Subpeona Duces Tecum appropriately, failed to answer the questions about the information that he did provide, and that Exhibit B, as stated by Mr. Demba did not constitute an appraisal. The Motion to Strike was granted, Exhibit B is hereby excluded from evidence.

FINDINGS OF FACT

1. Subject Property. The subject property is a 3 story self-storage facility with 52,005 rentable square feet, built in 2016. It is located on 3.49 acres with an address of 1350 N. Highway 67, Florissant, MO with a Parcel number of 08J531077.

2. BOE. The BOE classified the subject properties as commercial and independently determined the TVM on January 1, 2021 was \$7,416,700.

3. Complainant’ Evidence. Complainant submitted Exhibit A, the Written Direct Testimony of Ernest Demba, a commercial appraiser licensed in Missouri, which was received over the objection of Respondent. Complainant’s Exhibit B was excluded from evidence and not received.

Complainant presented testimony from Mr. Demba, a commercial real estate appraiser licensed in Missouri. Mr. Demba stated that his opinion of value of the property as of January 1, 2021 is \$2,690,000.

4. Respondent's Evidence. Respondent submitted Exhibit 1, the BOE determination letter which was received without objection.

5. Value. The TVM of the subject property as of January 1, 2021 was \$7,416,700.

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. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48. The STC has wide discretion in selecting the appropriate valuation method but "cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation approach." *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 the 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.

Complainant's opinion of value is not substantial nor persuasive. Complainant's only evidence was the written direct testimony of Mr. Demba as his report, Exhibit B was excluded from the evidence. While it appears that Mr. Demba is very well qualified to prepare an appraisal and give an opinion of value, his refusal to respond appropriately to the Subpeona Duces Tecum, his refusal to answer simple questions regarding his work file which may have laid foundation for the materials he provided in response to the Subpeona and his statement that Exhibit B was not an appraisal make his opinion as to the value of the property not substantial and not persuasive.

CONCLUSION AND ORDER

The BOE decision is Affirmed. The TVM of the subject property, as of January 1, 2021 was \$7,416,700.

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 St. Louis 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 November 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 November 15, 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