



STATE TAX COMMISSION OF MISSOURI

8182 MARYLAND ASSOCIATES,) Appeal No. 17-111564
) 17-111565
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Complainant,)
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v.)
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)
JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)

DECISION AND ORDER SETTING ASIDE HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

Procedural History

Complainant filed its Complaint for Review alleging both overvaluation and discrimination. On June 4, 2019, Chief Counsel, Maureen Monaghan, acting as the Hearing Officer (Hearing Officer) entered a Decision and Order (Decision) in these appeals which were consolidated for hearing and decision purposes inasmuch as the appeals involve a single property that is divided into two parcels for tax purposes. The Decision set aside the valuation of the property as determined by the Board of Equalization of the County of St. Louis (BOE) and further found no Discrimination. 8182 Maryland Associates (Complainant) subsequently filed an Application for Review of Hearing Officer's Decision and Order on both overvaluation and discrimination grounds.

The Hearing Officer found that the Complainant presented substantial and

persuasive evidence to establish the subject property's TVM as of January 1, 2017 at \$14,700,000 and set aside the BOE's determination.

Complainant challenges the Hearing Officer's valuation of \$14,700,000 on the ground that the valuation includes allocation of parking spaces that were also allocated to attached office buildings in appeals 17-111556 (Forsyth Centre Associates LLC) and 17-111561 (8182 Maryland Associates) and to four other office buildings not subject to appeals and, therefore, the parking spaces are being taxed twice. For reasons that we explain herein, we find that the Complainant's argument is well-founded.

Description of Subject Property

The subject property is located at 8182 Maryland Avenue, St. Louis County, Missouri. It consists of a multi-level, 2,090 parking space garage. It contains 601,780 square feet of gross building area located on a 1.81 acre site in St. Louis County. The parking garage was constructed in 1985. Respondent has divided the property into two parcels but it operates as a single economic unit. The subject property is subject to multiple easements and parking operating agreements with the owners of surrounding office buildings. Each owner is allocated a specific number of spaces in the garage and is entitled to the use and revenue from those spaces. The parking garage manager bills each owner for its pro-rata share of operating expenses.

The Respondent and the BOE determined the true value in money (TVM) of the property to be \$19,789,900 as of January 1, 2017, classified as commercial. Respondent assessed the property at the statutory commercial rate of 32% of TVM, or \$6,332,700. Complainant timely appealed to the State Tax Commission (STC) on the issues of

overvaluation and discrimination.

Complainant's Evidence Regarding Valuation

The issue of overvaluation was submitted on exhibits upon agreement of the parties. With respect to valuation, Complainant presented the testimony of Certified General Real Estate Appraiser, Thomas Slack. Slack is the President of Thomas H. Slack Appraisal Company, Inc. Mr. Slack handles 30 to 50 commercial appraisals a year. He has been appraising real estate since 1983. He is a former member of the Kansas Board of Tax Appeals and is certified as a general real estate appraiser in Missouri, Kansas, Iowa and Illinois. He has appraised between 800 and 1,200 commercial, industrial and development properties.

Slack valued the subject property by the Income Approach. He considered, but did not use, the Cost Approach because of the age of the improvements. He considered, but did not use, the Sales Comparison Approach because the easements and parking agreements would have to be assumed not to exist in order for the garage to have value, according to Slack.

In developing the Income Approach, Slack relied on the Direct Capitalization method. He analyzed rents being paid as well as vacancy and credit loss reasonably to be expected from this type of property for the twelve months following January 1, 2017. He deducted estimated operating expenses to arrive at the subject's net operating income. He determined a capitalization rate of 8%, adjusted after consideration of the tax rate to 11.05%.

Slack concluded that the value for the subject property, subject to the easements and

parking operating agreements in force on January 1, 2017, is \$0. Ignoring the easements and parking operating agreements, his opinion of value was \$14,700,000.

Respondent did not present evidence of valuation of the subject property.

Discrimination

The Hearing Officer found against Complainant on the issue of discrimination.

Evidence from the parties regarding Complainant's discrimination claim was submitted during a consolidated hearing involving this appeal and others. A detailed description and analysis of the evidence and our findings of fact and conclusions of law with respect to Complainant's discrimination claim are set forth in our Decision and Order upon application for review in appeal 17-111818 *ELDA MO WW H LLC v. Zimmerman* and incorporated by reference as if fully set forth herein.

Standard of Review

A party subject to a Decision and Order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the Hearing Officer the Decision and Order of the Hearing Officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020

WL 3867819 (Mo. St. Tax Com., July 2, 2020). “The extent of that review extends to credibility as well as questions of fact.” *Lebanon Properties I*, 66 S.W.3d at 770. The Commission “is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to.” *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE’s assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” *See, Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive*

evidence is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975). "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.

Analysis of Overvaluation Claim

Six office buildings share the parking garage which is the subject property of these appeals. Each office building is allocated a certain number of parking spaces in the parking garage. All garage spaces are claimed by the office buildings. The garage is subject to easements that govern the allocation of the spaces. The office building owners claim revenue from the parking spaces and are responsible for their expenses. In his appraisal, Slack concluded that there is no reasonable expectation that anyone would buy the parking garage independent of the surrounding office buildings. Thus, market value is transferred to the office buildings and the garage has no value, because anyone buying the garage independent of the surrounding office buildings would not realize any income.

This conclusion is consistent with prior STC practice. The STC has held that

properties subject to easements are assessed to the dominant estate when the easement deprives the property owner of the property's value. In *Lakewood Village Property Owners Ass'n Inc. v. Savage*, STC 1980-6001 through 1980-6005, 1981 WL 11960 (March 26, 1981), the subject properties were neighborhood common areas with swimming pools, tennis courts and other recreational facilities. The properties were owned by the neighborhood association. Individual property owners within the neighborhood became members of the association by virtue of lot ownership. The deed conveying the properties to the association included a covenant that each lot owner had a "right and easement of enjoyment in and to the common areas[.]" The STC found:

When the use of land is so restricted that its ownership is of no benefit or value, the assessment for tax purposes should be nothing.

...

Where an easement is carved out of one's property for the benefit of another, the market value of the servient estate is lessened, and that of the dominant estate increased.

In those cases, the STC found that the restrictions placed upon the subject properties deprived them of any market value and ordered the subject properties' values to be \$0 for ad valorem tax purposes. The same principle applies in the instant cases, where the parking lot is completely encumbered by parking leases and easements. The six office buildings that utilize the parking garage capture the revenue from the spaces allocated to them. No reasonable buyer would purchase the parking garage for any value because the buyer would not realize any income.

Summary and Conclusion

Although Complainant failed to present substantial and persuasive evidence of

discrimination with respect to Respondent's 2017 commercial property appeals, Complainant presented substantial and persuasive evidence that the true value in money of the subject property on January 1, 2017 was \$0.

ORDER

The Decision and Order of the Hearing Officer regarding the claim of discrimination is affirmed. The Decision and Order of the Hearing Officer regarding the claim of overvaluation is set aside. The true value in money of the subject commercial property on January 1, 2017 was \$0. The assessed value was \$0.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 RSMo within 30 days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this decision is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8 RSMo.

If no judicial review is made within thirty days, this decision and order is deemed final and the Collector of the City of St. Louis, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED January 30th, 2025.

Gary Romine, Chairman

Debbi McGinnis, Commissioner

Gregory Razer, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on January 31st, 2025 to:

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