



STATE TAX COMMISSION OF MISSOURI

ELDA MO WW H LLC,)	Appeal No 17-111818
)	
)	
Complainant,)	Parcel # 23V310204
)	
v.)	
)	
JAKE ZIMMERMAN, ASSESSOR,)	
ST. LOUIS COUNTY, MISSOURI,)	

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

On June 14, 2019, Chief Counsel Maureen Monaghan, acting as the Hearing Officer (Hearing Officer) entered a Decision and Order (Decision) affirming the St. Louis County Board of Equalization’s (BOE) assessment of the subject property as of January 1, 2017. ELDA MO WW H LLC, (Complainant) subsequently filed an Application for Review of Hearing Officer’s Decision and Order on the grounds of both overvaluation and discrimination. Jake Zimmerman, Assessor of St. Louis County, Missouri, (Respondent) filed a Response. Complainant filed a Reply.¹

The Hearing Officer’s Decision as to discrimination is AFFIRMED. The Hearing Officer’s Decision as to overvaluation is SET ASIDE. We determine that the true value in

¹ After the Application for Review and Response were filed, proceedings were stayed pending resolution of the ratio discrimination claims in *Crown Diversified Industries Corp. v. Zimmerman*, 683 S.W.3d 273 (Mo. banc. 2024).

money of the subject property on January 1, 2017 was \$240,000.

Procedural History

The Respondent and the BOE determined the true value in money (TVM) of the property to be \$7,185,700 as of January 1, 2017, attributing a value of \$480,900 to land and \$6,677,800 to improvements. Complainant timely appealed to the State Tax Commission (STC) on the issue of overvaluation and discrimination. The Hearing Officer affirmed the BOE's determination. Complainant timely filed its Application for Review.

Description of the Subject Property

The subject property is located at 2801 Fountain Place, St. Louis County, Missouri. It is a 5 story, 110 room hotel constructed in 2007-2008 and sits on .92 acres. It was developed to be a full-service property affiliated with the Choice Hotel brand. In 2010, that affiliation was terminated and the property was taken over by a bank via a Deed in Lieu of Foreclosure. The current owner, Elda MO Ww H LLC, acquired the property on February 25, 2013 as part of a 1031 like-kind exchange for the subject property and at least two other properties that are not located in the St. Louis area. The recorded price for the combined properties was \$9,621,000; however, a value as to the specific subject property was not stated. Due to these factors, the sale was not an arms-length transaction. In 2016, the hotel became part of the Best Western Premier collection of hotels.

Complainant's Evidence Regarding Overvaluation

Complainant contends that the TVM of the subject property was \$240,000 as of January 1, 2017. To support the opinion of value, Complainant offered the following exhibits:

Exhibit	Description
A	Appraisal Report of Gary Andreas, MAI
B	Written Direct Testimony of Andreas

Complainant presented the testimony of Certified General Real Estate Appraiser, Gary Andreas (Andreas). Andreas considered all three approaches to value – income, cost and sales comparison. He considered the highest and best use of the property as improved to be as a commercial hotel until economic conditions warrant razing the structure to allow redevelopment of the site.

Andreas believed the cost approach to be inapplicable. In doing so, he relied on Steve Rushmore, after whom the Rushmore method of hotel valuation is named. In his book Market Value and the Valuation Process at page 311, Rushmore wrote:

The cost approach is seldom used to value existing hotels and motels . . . The cost approach is not applied to hotels and motels because its underlying assumptions do not reflect the investment rationale of typical hostelry buyers. Lodging facilities are income-producing properties that are purchased to realize future profits. Replacement or reproduction cost has little bearing on an investment decision when the buyer is primarily concerned with the potential return on equity.

With respect to the sales comparison approach, Andreas found that the necessary data were not available to adjust sales of comparable properties in order to reflect the real estate value alone. He therefore applied the sales comparison approach as an alternate method to estimating the value of the real property by valuing the land as if vacant after factoring in demolition costs. However, this value did not exceed, or was less than, the value indicated by the income approach.

With respect to the income valuation approach, Andreas developed the Rushmore

method of valuation for the hotel property. The hotel was not operating under a national franchise affiliation until 2016 when it joined the Best Western Premier association. As noted below, however, despite this new association with Best Western, total revenues in 2016 did not increase over 2015. Andreas determined that the total revenue of the hotel was \$2,719,915 in 2014, \$3,135,614 in 2015, and \$3,071,802 in 2016. Net operating profit (excluding property taxes and licenses) was \$800,645 in 2014, \$868,240 in 2015, and \$655,945 in 2016.

For 2017, Andreas projected that total revenue would increase marginally to \$3,295,200 and that net operating profit would increase to \$823,000. Consistent with the Rushmore method, Andreas then deducted income attributable to the business itself (\$342,211), income attributable to personal property (\$317,582) and income attributable to structural components (\$131,808) resulting in an estimated net income attributable to the real property of \$31,399. By capitalizing the net income attributable to the real property using the band-of-investment technique and determining a loaded overall capitalization rate of 13.26%, Andreas calculated the market value of the subject real property, after adjustment for non-realty components as of January 1, 2017, to be \$240,000, rounded.

Respondent's Evidence Regarding Overvaluation

Respondent did not present evidence of valuation of the subject property. According to Andreas, in 2016, Respondent valued the land at \$6,260,700 and the improvements at \$489,300, for a total of \$6,750,000, but in 2017, valued the land at \$480,900 and the improvements at \$6,677,800, for a total of \$7,158,700. The BOE also determined the value of the subject property as of January 1, 2017 to be \$7,158,700.

Complainant's Evidence Regarding Discrimination

Complainant presented written direct testimony of Robert Glouemans who prepared a 2017 ratio study of St. Louis County commercial properties. Complainant's evidence included:

EXHIBIT ²	DESCRIPTION
A	Written Direct Testimony (WDT) of Robert Gloudemans (Gloudemans)
B	Gloudemans 2017 Ratio Study of St. Louis County Commercial Properties
D	St. Louis County Sales Validation & Verification Guidelines
E	Standard on Ratio Studies
F	Standard on Mass Appraisal of Real Property
G	Deposition Designations of Sandy Youtzy (Youtzy)
H	Deposition Designations of John Gillick (Gillick)
I	St. Louis County Council Order 1-19-16 approving 2016-2017 Assessment Maintenance Plan and attaching January 1, 2016 – December 31, 2017 STL County Assessment Maintenance Plan
K	Email 8-10-2016 from Youtzy to STC Local Assistant Manager Jeff Schmidt Advising of Attached Residential and Commercial Cost Data
L	WDT of Steve Weber (S. Weber)
Q	Map of St. Louis County Commercial Areas
R	St. Louis County 2016 Certified and Final Data Files
S	St. Louis County 2017 Preliminary Assessment and Data Files
T	St. Louis County 2017 Certified and Final Data Files
U	St. Louis County Commercial Sales Lists
V	WDT of Steven Hottle (S. Hottle)
W	Curriculum Vitae of S. Hottle
X	August 25, 2018 Letter to S. Hottle from Gloudemans
Y	Attachment to Letter – Valid Solds and Unsolds Sorted by NBHD, LUC, & GBA
Z	Attachment to Letter – Value Changes by NBHD & Property Type
AA	Summary of Locator No. 23Q440942
BB	Summary of Locator No. 14N120324

² Exhibits C, J, N, O, P, MM and JJJJ were withdrawn by Complainant. Hearing Officer sustained the County's objections to Exhibit M titled Copy of PreBOE Ratio 06012017 and PreBOE Ratio Sales Data 1 and the exhibit was excluded.

CC	Summary of Locator No.09J130677
DD	Summary of Locator No. 14N410430
EE	Summary of Locator No. 29V420059
FF	Summary of Locator No.17V320178
GG	Summary of Locator No. 10K240106
HH	Summary of S. Weber Review
II	Sale #5 Review
JJ	Sale #6 Review
KK	Sale #55 Review
LL	Sale #105 Review
NN	Sale #119 Review
OO	Sale #195 Review
PP	Sale #199 Review
QQ	Sale #346 Review
RR	Sale #348 Review
SS	Sale #398 Review
TT	October 2017 Assessment Roll
UU	Complainant's Joint Deposition Designation of Youtzy
VV	Written Rebuttal Testimony (WRT) (BOE-Only) Gloudemans
WW	2017 Final Review Instructions
XX	Group Exhibit XX Respondent's Emails and Spreadsheets
YY	Group Exhibit YY Review Sheets – Respondents Production 00001-07350
ZZ	WRT of Gloudemans
AAA	Sale 8
BBB	Sale 19
CCC	Sale 23
DDD	Sale 57
EEE	Sale 65
FFF	Sale 81
GGG	Sale 148
HHH	Sale 180
III	Sale 226
JJJ	Sale 262
KKK	Sale 263
LLL	Sale 280
MMM	Sale 302
NNN	Sale 303
OOO	Sale 311
PPP	Sale 320
QQQ	Sale 363
RRR	Sale 402

SSS	Sale 403
TTT	Sale 427
UUU	Sale 467
VVV	Sale 487
WWW	Sale 505
XXX	Sale 552
YYY	Sale 559
ZZZ	Sale 562
AAAA	WRT of S. Hottle
BBBB	Sale 1
CCCC	Sale 27
DDDD	Sale 28
EEEE	Sale 36
FFFF	Sale 55
GGGG	Sale 60
HHHH	Sale 78
IIII	Sale 83
JJJJ	Sale 85
KKKK	Sale 90
LLLL	Sale 117
MMMM	Sale 147
NNNN	Sale 205
OOOO	Sale 207
PPPP	Sale 230
QQQQ	Sale 240
RRRR	Sale 246
SSSS	Sale 274
TTTT	Sale 294
UUUU	Sale 356
VVVV	Sale 367
WWWW	Sale 413
XXXX	Sale 434
YYYY	Sale 503
ZZZZ	Sale 514
AAAAA	Sale 548
BBBBB	Sale 558
CCCCC	Sale 560
DDDDD	Sale 563

EEEEEE	Sale 564
FFFFF	Sale 586
GGGGG	Written Surrebuttal Testimony (WST) of S. Hottle
HHHHH	WST Gloudemans
IIIII	Email of Richard Brunk, attorney for the BOE
KKKK	Scope of Josh Myers (Myers) contract
LLLLL	Mecklenburg report

Complainant called Sandy Youtzy as a witness. Youtzy is the Chief Administrative Manager for the St. Louis County Assessor’s Office. She testified as to Respondent’s commercial valuation process, personnel and CAMA. Respondent’s CAMA, which Respondent’s office personnel refers to as IAS (independent appraisal system), utilizes the income and the cost approaches to value commercial property. Youtzy testified that she supervises the County’s commercial valuation manager. The position of commercial valuation manager was vacant during the reassessment for 2017. She testified that there were additional vacancies in 2016-2017 including the sales validation position and CAMA modeler. The modeler analyzes market data and makes changes to the CAMA.

Youtzy was questioned on the failure of the Assessor’s office to collect information in preparation of the commercial valuation for the 2017 cycle. Youtzy stated there was no rent survey conducted for the 2017 assessment cycle. There was no income and expense survey performed for the 2017 cycle. There was no adjustment for the cost of land data from 2015 to 2017. Youtzy was questioned as to regular review of the CAMA’s valuations for 2017. Assessors conduct quarterly ratio studies to monitor performance of their CAMA, identify potential areas of concern, and assist in market analysis. It is part of the calibration

process for the CAMA. Youtzy testified that Respondent did not conduct quarterly ratio studies.

Youtzy testified that the process for commercial valuation is that the CAMA sets values, then reviewers go in and look at each valuation individually. There are approximately 12,000 improved commercial properties in St. Louis County. Review appraisers were allowed to go into the IAS on individual commercial properties and change values. Review appraisers made changes without supervision, notes, or documentation. Youtzy testified that she has no idea how many property values were changed during the review process.

Complainant called John Gillick as a witness. He is a commercial assessment analyst for Respondent. He took that position in March 2016. His duties include validating commercial sales. He testified that the ideal situation would be to verify sales in 2-3 months. When he took the position in 2016, Respondent had sales dating back to 2012 that were unverified. In January 2017, he emailed the commercial review appraisers who were conducting final reviews for 2017. In that email, Gillick provided sales of commercial properties to be used as comparable sales during the final review process. The sales provided to the review appraisers included unverified sales.

Gloude-mans testified on behalf of Complainant. He is a partner in Almy, Gloude-mans, Jacobs and Denne. He is a tax consultant specializing in property tax assessment administration and has been engaged in such work for over 40 years. He was hired to analyze the assessment of commercial property in St. Louis County for tax year

2017. More specifically, he was hired to determine the average or common level of assessment for commercial property for tax years 2017-2018. Gloudemans prepared a report of his findings.

To analyze the assessment of commercial property in St. Louis County for tax year 2017, Gloudemans used sales of commercial property in St. Louis County that occurred from July 2016 through June 2017. The study utilized data from the St. Louis County Assessor’s Office regarding sales of commercial properties and assessment data.

Hottle Appraisal Company verified the commercial sales used in the study. The verification procedures were compliant with the IAAO Standard of Verification and Adjustment of Sales and the IAAO Standard on Ratio Studies. A total of 228 valid sales were used for the study. Two sales were removed from the list of sales as outliers. After reviewing the sales, Gloudemans opined the following measures of central tendency:

Median	Weighted Mean	COD	PRB
95.4%	88.9%	29.2	-.063

Gloudemans testified that two themes emerged from his study. First, he found extreme regressivity in commercial assessments in St. Louis County meaning properties with higher values were assessed at a lower assessment ratio than properties with lower valuations. Second, Respondent selectively appraised sold properties. It was his opinion that the use of 2017 values “provides unreliable and biased ratio statistics.”

Gloudemans produced a second study using a method provided by IAAO when there is an indication of selectively reappraising sold properties, also known as sales chasing. Sales chasing is when sold and unsold properties are not appraised in the same

manner, i.e., parcels that sell are selectively reappraised based solely on their sale prices. Sales chasing makes a ratio study unreliable as it biases it and gives it misleading indicators. Gloudemans testified that the IAAO suggests methods for detecting sales chasing and methods for compensating for sales chasing when conducting ratio studies.

The most common method used to detect sales chasing is comparing value changes for sold and unsold properties. Gloudemans looked at value changes for sold and unsold properties. Gloudemans found the median increase in the values of sold properties was 3.93% while there was no significant change in the values of unsold properties. Gloudemans opined that the differential in value changes for sold and unsold indicated the presence of sales chasing and that the practice of sales chasing was practically significant.

Gloudemans conducted a second ratio study to address any impact of sales chasing on the results of the ratio study. One method for compensating for sales chasing is to use current sales prices and prior year values adjusted for reappraisal activity or assessment value changes in the population. The percentage increase or decrease in the prior year's appraised values for the population is used to adjust the prior year's values for the sample.

Following the prescribed method, Gloudemans (1) filtered sales to remove properties that had changes in use, new construction, demolitions or other significant changes; (2) used certified 2016 values in place of 2017 values; and (3) adjusted measures of central tendency upward based on the overall change in values for the population.

Gloudemans new ratio study used 191 sales based on the certified 2016 values with the upward adjustment. Two sales were removed as outliers, leaving 189 sales for ratio analysis. He also adjusted the mean and weighted mean upward by 3.56% to account for

the use of the 2016 assessment roll and the differences in the market between 2016 and 2017.

Gloude-mans reported the following findings for commercial assessments in St. Louis County in 2017 in his second study:

Median	Weighted Mean	COD	PRB
88.8%	78.4%	0.346	-.104

Gloude-mans stratified the measures by geographical regions, value and property type.

Measure	Median	Weighted Mean
Overall	88.8%	78.4%
Property Type	87.9%	73.1%
Geographical Area	87.9%	76.1%
Value Range	82.6%	77.0%

Gloude-mans recommended use of the weighted mean, weighted by geographical area, as the appropriate measure of common level of assessment. As an alternative, the value-weighted median would be recommended. His recommendation for the use of the weighted mean was based upon effective tax rate equalization for the purpose of equalizing the amount of taxes paid. He testified that if he wanted to find a typical ratio, or common level of assessment, for commercial properties in St. Louis County, he would look at the median.

Gloude-mans criticized the assessment performance of the Respondent. Gloude-mans testified that during the course of his study he learned that:

1. Respondent did not have a CAMA modeler for 2017 and relied on 2 individuals to fill this roll;
2. Respondent's commercial sales analyst position was vacant and when one was hired there was a backlog of old sales to verify;
3. Respondent did not conduct an income and expense survey;
4. Respondent carried the cost tables from 2015 over to 2017; and
5. Respondent's commercial review appraisers had authority to alter the values with little to no oversight. The review appraisers changed values for 99 of the 226 valid sales. The PRD for those 99 sales is 1.200 versus 1.081 for the other 127 sales.

GlouDEMANS testified that Respondent's poor assessment practices have an adverse impact on the reliability of the assessor's valuation. He felt Respondent's CAMA system was inherently flawed due to the lack of up-to-date market data, staff vacancies, and related inability to conduct current market analysis.

Besides finding Respondent's assessment practices were lacking and contending Respondent engaged in sales chasing, GlouDEMANS testified Respondent's commercial assessments are highly regressive. High-value properties are generally valued at a lower percentage of their fair-market value than lower-value properties.

Complainant and other property owners subject to this hearing do not consist of all high-value properties or all low-value properties. GlouDEMANS testified that there is no threshold for which properties are valued too low and which are valued too high. In other words, he cannot tell us which Complainants are paying more than their fair share of taxes or which ones are paying less.

Respondent's Evidence Regarding Discrimination

Respondent presented the following exhibits as to the level of assessment of commercial properties in St. Louis County, which were admitted into evidence:

EXHIBIT ³	DESCRIPTION
1	WDT of Youtzy
2	Spreadsheet of 2017 Commercial Appeals to the St. Louis County BOE
3	Spreadsheet of PAR Commercial Appeals that Waived their BOE Hearing
4	WDT of Josh Myers (Myers)
5	Curriculum Vitae of Myers
6	Gloudemans' Ratio Study
7	WDT of Gloudemans
8	Spreadsheet of "Discrimination Only" Complainants
9	Spreadsheet of Gloudemans' Sales that also Filed Tax Appeals in 2017
10 AMENDED	Spreadsheet of Complainants Who Filed Appraisals as Evidence of Value
14	WDT of Myers
15	Sales Ratio Study of the St. Louis County 2017 Commercial Reassessment, Prepared by Myers
16	IAAO's Standard on Ratio Studies
17	Spreadsheet Containing Commercial Property Sales Used by Myers in Preparing His Sales Ratio Study
18	WDT of Gillick
19	Gillick Professional Qualifications
20	IAAO's Standards on Verification and Adjustment of Sales
21	St Louis County Sales Validation & Verification Guidelines
22	WRT of Myers
23	Diagram showing Median Sales Ratios and Confidence Intervals
24	WRT of Gillick
25	Spreadsheet of Valid/Invalid Sales
26	Sales Packets of St. Louis County and S. Hottle (Hard Copy)
27	Spreadsheet of Sales that Occurred after Final Review
28	Spreadsheet of S. Weber and Hottle Comparables
29	Respondent's Counter-Designations of Gillick Deposition
30	Respondent's Counter-Designations of Youtzy Deposition
31	WST Myers
32	WST Gillick
33	Respondent's Sales Packets
34	WST Youtzy
35	Neighborhood Review Spreadsheet

3 Exhibits 11 (PAR Marketing Materials), 12 (Appraisals produced by Complainants in discovery), 13 (Spreadsheet of Complainant parcels that produced appeals in discovery)

36	Respondent's Counter-Designations of Youtzy Deposition
37	Information on Gloudemans' sale 246
38	Information on Gloudemans' sale 655
39	Information on Gloudemans' sale 21

Josh Myers testified for Respondent. He is a Statistical Consultant specializing in property tax and assessment analysis. He has a master's degree in statistics. His past employment includes working for the City of Norfolk, Virginia, as a CAMA Modeler Analyst. Myers has been a member of the IAAO Editorial Review Boards and Technical Standards Committee.

Myers was asked to perform ratio studies for commercial and residential properties in St. Louis County for the 2017-2018 Assessment Cycle. Myers received approximately 590 sales of commercial properties that sold from June 2016 through June 2017. He filtered the sales for those that were valid or probably valid. He filtered out sales with values determined by the BOE or STC in prior assessment years. Myers also removed outliers. After filtering, he had 185 sales to use in his study.

Myers conducted his study and reported the following measures of central tendency:

Measure	Median	Weighted Mean	COD	PRB
	93.714%	85.042%	21.41	-.032

Myers also tested for selective reappraisal (sales chasing). He tested by comparing value percentage changes between the Assessor's certified values from 2015 and the Assessor's certified values from 2017 for sold and unsold properties. Myers found the median percent change of the sold versus unsold properties was different by only 3.384%,

and median absolute deviation was 3.858%. Although his testing indicated statistically significant sales chasing, he did not find it to rise to the level of practically significant. Therefore, he did not conduct a second study.

Myers stated there were six reasons he did not find the sales chasing to be practically significant:

1. The IAAO standard for COD is from 5%-20% and his COD was 21.410%. If the sales chasing would have been practically significant, the COD would have been narrower;
2. Only one sale had a sale price identical to the total appraised value and only three other sales had a total appraised value within \$5000 of the sale price;
3. The distribution of sales ratios does not contain any large clusters of ratios around any one value or otherwise have an atypical shape;
4. 176 sales out of the 194 sales had certified appraised values in both 2015 and 2017; 58 of those sales (33%) had a 2017 appraised value that was farther away from the sale price than it was in 2015;
5. 39 of the 176 sales that had certified appraised values in both 2015 and 2017 (22%) had their values move closer to the sale price in the 2017 reassessment but still had sales ratios outside the bounds of 80% and 120%; and
6. 91 out of 194 sales (47%) are either less than 80% or greater than 120%. If selective reappraisal was rampant, then it would be unlikely for almost half of the sales to be outside a range this broad.

Standard of Review

A party subject to a Decision and Order of a hearing officer of the State Tax Commission (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).

Jurisdiction

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary, or capricious, including the application of any abatement. The Hearing Officer shall issue a decision and order affirming, modifying or reversing the determination of the Board of Equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. *Article X, Section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431.4, RSMo.*

Weight to be Given Evidence

The Hearing Officer is not bound by any single formula, rule or method in determining true value in money and is free to consider all pertinent facts and estimates and give them such weight as reasonable they may be deemed entitled. The relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide. *St. Louis County v. Security Bohomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St.*

Louis County v. STC, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC*, 436 S.W.2d 650 (Mo. 1968).

Opinion Testimony by Experts

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert on that subject, with knowledge, skill, experience, training, or education may testify thereto. The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reliable, but the facts or data need not be admissible evidence. *Section 490.065, RSMo; State Board of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146 (Mo. 2004); *Courtroom Handbook on Missouri Evidence, Wm. A. Schroeder*, Sections 702-505, pp. 325-350; *Wulfin v. Kansas City Southern Industries, Inc.*, 842 S.W.2d 133 (Mo. App. E.D. 1992)

The Hearing Officer, as the trier of fact, may consider the testimony of an expert witness and give it as much weight and credit as deemed necessary when viewed in connection with all other circumstances. *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. W.D. 1991). The Hearing Officer, as the trier of fact, is not bound by the opinions of experts but may believe all or none of the expert's testimony or accept it in part or reject it in part. *Exchange Bank of Missouri v. Gerlt*, 367 S.W.3d 132, 135-36 (Mo. App. W.D. 2012).

Complainant's Burden of Proof

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 Company v. STC*, 436 S.W.2d 650 (Mo. 1968). The taxpayer is the moving party seeking affirmative relief; therefore, the taxpayer bears the burden of proving the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary or capricious.” *Westwood Partnership*, 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 and persuasive controverting evidence is required to rebut the presumption, with the burden of proof resting on the taxpayer.” *Cohen*, 251 S.W.3d at 348. *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). *See also*, *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).

Analysis of Overvaluation Claim

Complainant's expert Gary Andreas employed the Rushmore method to value the subject property. The STC has recognized the Rushmore method as the most appropriate valuation approach for hotel properties. See *Yogijikrupa Hospitality C LLC v. Assessor, Taney County*, Appeal No. 19-89506, at 5; *Grady Hotel Investments, LLC v. Cox*, Appeal No. 16-79001; *Elda MO WW H, LLC v. Zimmerman*, Appeal No. 15-14635, at p. 9; *Hampton Ave. Investments v. Bushmeyer*, Appeal No. 11-20302, at p. 4; *Drury 141, LLP v. Zimmerman*, Appeal No. 07-11514.⁴

The Hearing Officer found that Complainant's evidence was not substantial and persuasive mainly for four reasons:

First, the Hearing Officer suggested that Andreas used only the hotel's historical income and expense data to estimate the hotel's income and expenses for 2017 and that those numbers were unreliable for forecasting 2017 income and expenses because the hotel only became affiliated with a franchise in 2016. However, this suggestion is not justified. The hotel's income and expenses in 2016, during which time the hotel was affiliated with Best Western, were in fact included in Andreas' forecast, as were data from other properties and data contained in Pannell Kerr Forster's 2016 publication Trends in the Hotel Industry.

Second, the Hearing Officer rejected Andreas' conclusions because Andreas

⁴ A hotel is a business, but it is the value of the real estate, not the business, that is at issue for property tax valuation purposes. "The Rushmore approach was introduced by Stephen Rushmore, an appraiser and author of five textbooks on hotel valuation and three reference books on hotel investing . . . Rushmore's assertion is that, by deducting the costs associated with intangible value and personal property from a property's operating expenses, the remaining NOI is for the real property only." Understanding Intangible Assets and Real Estate: A Guide for Real Property Valuation Professionals, IAAO, at 14.

deducted franchise fees from his 2017 net revenue estimate. However, the evidence shows that under the Rushmore method, it is typically considered appropriate to impute (and to deduct from revenue) hotel franchise fees if the market is dominated by franchised hotels. Andreas demonstrated that all of the potentially competitive hotels operating in the vicinity of the subject property do so with the benefit of a national franchise, as did the subject property itself starting in 2016. Thus, a deduction from net revenue for hotel franchise fees was appropriate under the Rushmore method.

Third, the Hearing Officer stated that “no opinion as to land valuation or cost of demolition was provided.” While it is true that Andreas did not render an opinion as to land valuation or cost of demolition, neither was it necessary that he do so, given his conclusion that an investor would be more likely to buy the property as is for its income stream than to buy it and demolish the hotel in order to put the vacant land to another use. As noted above, the cost approach is seldom used to value existing hotels and motels. This is particularly true for hotels that do not have new improvements. Hotel buyers tend to buy based on the property’s potential for profit. See The Appraisal of Real Estate 14th Ed., at p. 455-56.

Fourth, the Hearing Officer wrote: “Given the purchase of the property in 2013 for \$9,621,000, the opinion of TVM of \$240,000 is not persuasive.” This finding as to the purchase price is simply erroneous. \$9,621,000 was the purchase price for the subject property plus at least two other unrelated properties. A purchase price was not allocated individually to the subject property. The transaction was part of a 1031 like-kind exchange which had to be completed by a certain date in order to retain its tax-advantaged status.

These factors as well as extremely favorable financing terms combine to render the 2013 purchase less than an arms-length transaction and the purchase price an unreliable indicator of the value of the subject property.

In his response to the Application for Review, Respondent makes only one argument: that the trier of fact is free to believe and accept none of the Complainant's evidence. While this is a true statement of the law in the abstract, it does not justify the wholesale rejection of Complainant's appraisal when the appraisal was performed in a manner that is consistent with industry practice and is uncontradicted by any evidence offered by Respondent.

Given the facts that Complainant's expert applied the Rushmore method to value the subject property, that he did so in an appropriate fashion, and that Respondent offered no evidence to the contrary, the evidence supporting Complainant's valuation of \$240,000 is substantial and persuasive.

Analysis of Discrimination Claim

The United States and Missouri constitutions prohibit the discriminatory assessment and taxation of similarly situated properties. *Crown Diversified Industries Corp. v. Zimmerman*, 683 S.W.3d 273, 279 (Mo. banc. 2024). A property owner may seek relief under the claim of discrimination by proving the assessment was calculated at a greater percentage of value than other property within the same class. Systematic undervaluation, whether by an intentional plan or through use of an assessment ratio so grossly excessive as compared to the average ratio as to be inconsistent with an honest exercise of judgment by state officials of other taxable property in the same class, contravenes the constitutional

right of one to be taxed upon the TVM of his property. *Sperry Corp. v. State Tax Comm'n*, 695 S.W.2d 464, 468 (Mo. banc 1985). When an assessor estimates TVM lower than the actual market value for a significant number of properties of the same sub-classification within the jurisdiction, the consequence is that the taxpayers whose properties were undervalued pay less than their fair share of taxes, while the taxpayers whose properties were either accurately valued or overvalued pay more than their fair share of taxes. “In the absence of intentional discrimination, an assessment may, nonetheless, be discriminatory if it ‘in effect amounts to an intentional violation of the essential principle of practical uniformity.’” *Crown Diversified, supra*, quoting *Sunday Lake Iron Co. v. Wakefield Tp.*, 247 U.S. 350, 353 (1918).

The STC is required to correct any assessment or valuation that is arbitrary, capricious, improper, or unfair. *Section 138.430 RSMo.* To prevail on a claim of discrimination in assessment, the Complainant must (1) prove the true value in money of their property on the applicable valuation date; and (2) show an intentional plan of discrimination by the assessing officials resulting in an assessment of that property at a greater percentage of value than other property, generally, within the same class within the same taxing jurisdiction or show that the level of an assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment. *Savage v. State Tax Commission*, 722 S.W. 2d 72 (Mo. banc 1986); *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003).

True Value in Money (TVM)

Given the two-part test for proving a claim of discrimination in the context of *ad valorem* taxation as stated by Missouri courts, the first requirement is finding the TVM of the subject property. As explained herein, the evidence presented was substantial and persuasive to establish a TVM of \$240,000.

Ratio/Discrimination

The second part of the test for proving a claim of discrimination is to show an intentional plan of discrimination by the assessing officials resulting in an assessment of the subject property at a greater percentage of value than other property, generally, within the same class within the same taxing jurisdiction or show that the level of assessment of the subject property is so grossly excessive as to be inconsistent with an honest exercise of judgment. There was no evidence of an intentional plan of discrimination. Therefore, it must be determined whether the subject property's level of assessment was grossly excessive as to be inconsistent with an honest exercise of judgment.

Once TVM of the subject property is considered and the actual assessment ratio for the subject property is calculated, it must be determined whether the level of the assessment of the subject property was discriminatory because it was so grossly excessive as to be inconsistent with an honest exercise of judgment. "By requiring that the level of an assessment be so grossly excessive as to be inconsistent with an honest exercise of judgment in cases in which intentional discrimination is not shown, the courts and the STC refrain from correcting assessments which reflect no more than de minimus errors of judgment on the part of assessors." *Mid-America Financial Corp. v. Zimmerman*, 481

S.W.3d at 571 (internal quotation omitted). “This standard recognized that while practical uniformity is the constitutional goal, absolute uniformity is an unattainable idea.” *Id.* (internal quotation omitted).

Both parties retained experts to perform sales ratio studies to determine the common level of assessment of commercial properties in St. Louis County in 2017. Both experts developed ratio studies using commercial sales from July 2016 through June 2017. Both experts relied upon validation of those sales by another party. Both experts developed measures of central tendency to determine the assessment level for commercial properties for the 2017-2018 assessment cycle. The reported measures of central tendency developed from the ratio studies using sales from July 2016 through June 2017 are as follows⁵:

Expert	Median	Weighted Mean	COD	PRB
Gloudemans	95.4%	88.9%	29.2	-.063
Myers	93.7%	95.2%	21.4	-.032

Both experts developed a value weighted mean. A value weighted mean gives equal weight to each dollar. It is calculated by dividing the total of all appraised values by the total of all sale prices. A value weighted mean is highly impacted by sales with higher prices.

Both experts developed a median. The median gives weight to each parcel. The advantage of the median is that it is less affected by extreme ratios. It is the preferred measure for evaluating overall appraisal level and evaluating the need for reappraisal. If

⁵ As used herein, COD stands for coefficient of dispersion. PRB stands for price-related bias coefficient.

the goal is to find a typical ratio for commercial properties, then the median is the appropriate ratio.

IAAO recommends the median assessment level for a class of properties fall between 90% and 110%. The medians determined by the experts of 93.7% and 95.4% fall within the performance standards of the IAAO.

Both experts developed additional measures of central tendency including the price-related bias coefficient (PRB). The PRB is used to measure assessment equity (regressivity/progressivity). It is a measure of vertical equity that measures the relationship between sales prices and value in percentage terms. According to the IAAO, the PRB should fall between -0.05 and 0.05. (Tr. p. 184) PRBs that are statistically significant and less than -0.10 or greater than 0.10 indicate unacceptable vertical inequities. The experts' reported PRBs of -.063 and -.032 are within the acceptable range set by the IAAO. The reported PRBs indicate there is some degree of regressivity in the assessment of commercial properties; in other words, higher value properties were assessed at a lower assessment ratio than lower value properties.

Both experts developed a coefficient of dispersion (COD). According to the IAAO, the COD is the most generally useful measure of variability or uniformity. The COD measures the average percentage of deviation of the ratios from the median ratio. A lower COD implies a lesser amount of variability or more equity in assessments. The IAAO recommends a COD range for commercial properties of 5.0 to 20.0. The experts reported CODs of 21.4 and 29.2. Unlike the other measures of central tendency developed by the experts, this measure was outside the range suggested by IAAO.

While CODs are a useful measure of uniformity, CODs below 5.0 may indicate sales chasing. Even though the CODs were above 5.0, both experts reviewed the results of their ratio studies for indications of selective reappraisal or sales chasing. The accuracy of a sales ratio study depends on sold properties being appraised in the same manner as unsold properties. If parcels that sold are selectively reappraised based on their sale prices, and if the parcels are included in a ratio study, the assessments will appear more uniform than actuality. The IAAO states that values for individual parcels should not be based solely upon the sale price of a property. If properties' TVM are set at their sale price, the ratio in a sales study will be 100% which may not reflect the accuracy of the TVM as determined by the CAMA system as to the unsold properties.

One method of detecting sales chasing is comparing the changes in value for sold and unsold properties. Both experts compared value changes. Both experts testified that the difference between the valuation changes in the sold and unsold should not only be calculated but the difference in the valuation changes should also be a meaningful difference, i.e., large enough to give concern necessitating corrective action. This is because differences between sold and unsold properties can be explained and expected as with hot spot areas with prices increasing more than other areas. (Tr. 165) Myers used the values from the prior reassessment roll, 2015, and Gloudemans used the last certified roll, 2016⁶. Gloudemans found the difference in the median increase in the value of sold properties as compared to the unsold properties was 3.93%. (Exhibit A p. 21) Myers found

⁶ Properties are reassessed every odd year. Sec. 137.115 The assessment roll in 2016 would reflect the 2015 valuation of the properties within the county for those properties whose improvements had not changed.

the difference in the median increase in the value of sold properties as compared to the unsold properties was 3.384%. (Exhibit 14 p. 13)

IAAO recommends a reasonable tolerance for the statistical comparison of sold and unsold properties. *Fundamentals of Mass Appraisal* also suggests a reasonable tolerance; “sold properties may be disproportionately concentrated in growth areas where values have increased more rapidly than elsewhere. For this reason, it can be prudent to allow an acceptable window or tolerance zone, say, 3 percent or 5 percent, before concluding that any observed differences are meaningful. “ *Fundamentals of Mass Appraisal*, IAAO.

In *Crown Diversified Industries Corp. et al. v. Zimmerman*, 683 S.W.3d 273 (Mo. banc 2014), the Missouri Supreme Court approved the STC’s use of the PRB as the preferred metric for detecting regressive assessment, and the STC’s recognition, based upon IAAO standards, of a safe harbor for PRB falling within -0.05 and 0.05. In *Crown Diversified*, as in this case, Gloudemans testified as an expert for the complaining taxpayers and asserted that recently sold properties were valued at 3.93% higher than unsold properties. *Id.* at 284. The Court upheld the STC’s tolerance level of up to 5% and its conclusion that any sales chasing that took place was, therefore, not practically significant.

Using the medians determined by the experts, the indicated common level of assessments are 29.98% and 30.53%. Complainant’s property was assessed using the statutory rate of 32%. Although there is no bright line test established to identify what constitutes a grossly excessive assessment as opposed to a mere *de minimus* error in judgment, the STC has found a 5% disparity between the common level of assessment and the actual level assessment to be *de minimus*. *Town and Country Racquet Club v. Morton*,

1989 WL 41005 (Missouri State Tax Commission) (*affirmed on appeal in Town & Country Racquet Club v. State Tax Commission of Missouri*, 811 S.W.2d 403 (Mo. App. E.D. 1991)). The STC has found that if the common or average level of assessment is at least within 10% of the statutory level, there is no grossly excessive disparity. *Ben Enterprises*, 89-11166 Mo. State Tax Comm'n 1991, 1991 WL 130907.

Complainant's evidence was not substantial and persuasive to establish that the disparity between their assessment at the statutory 32% and the average level of assessment of commercial properties (29.98% - 30.53%) was so grossly excessive as to be entirely inconsistent with an honest exercise of judgment such that it has the effect of intentional discrimination.

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 \$240,000. The property was assessed using the statutory rate of 32%, resulting in an assessed value of \$76,800.

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 \$240,000. The assessed value was \$76,800.

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 St. Louis County, 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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