



STATE TAX COMMISSION OF MISSOURI

601 METROPLITAN SQUARE, LLC,)	
)	
Complainant,)	Appeal No. 19-20159
)	Parcel No. 0116-00-0015-0
v.)	
)	
MICHAEL DAUPHIN, ASSESSOR,)	
CITY OF ST. LOUIS, MISSOURI)	
)	
Respondent.)	

DECISION AND ORDER

601 Metropolitan Square, LLC, (Complainant) appeals the City of St. Louis Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject commercial property on January 1, 2019, was \$59,969,000. Complainant alleges overvaluation and asserts the TVM on January 1, 2019, was \$35,000,000. Complainant produced substantial and persuasive evidence supporting a deferred maintenance deduction of \$100,000. Complainant's remaining evidence did not persuasively establish additional overvaluation or the value that should have been placed on the property. The BOE decision is SET ASIDE to the extent it does not account for the \$100,000 deferred maintenance deduction.¹ The TVM of the subject property on January 1, 2019, was \$59,869,000.

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, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

Complainant was represented by attorney Peter Corsale. Respondent was represented by attorney Abby Duncan. Both parties filed a post-hearing brief and a reply brief.

FINDINGS OF FACT

1. The Subject Property. The subject property consists of a 1.45-acre lot and 42-story office building in downtown St. Louis, Missouri. The building was constructed in 1989. The December 2018 rent roll indicates the building has 1,003,680 square feet of rentable space. The property includes 930 covered parking spaces.

2. Assessment and Valuation. The BOE determined the TVM of the subject property was \$59,969,000 as of January 1, 2019. The 2019 BOE value is the same value applied in the 2017 assessment. (Ex. A at 16)

3. Complainant's Evidence. Complainant introduced Exhibits A through D. Each exhibit was admitted into evidence. The exhibits are as follows:

Exhibit A	Appraisal Report of Thomas H. Slack, MAI
Exhibit B	Slack's Written Direct Testimony
Exhibit C	Slack's Written Rebuttal Testimony
Exhibit D	Slack's Written Sur-rebuttal Testimony

Slack Appraisal

Slack determined the highest and best use of the subject property was continued use as a multi-tenant office building. (Ex. A at 29) Slack valued the subject property by the sales comparison approach and income approach, with emphasis on the income approach. (Ex. A at 55; Ex. B at 62)² Slack concluded the indicated values from the sales comparison

² All citations to written testimony are to the numbered question and answer.

and income approaches were \$38,500,000 and \$31,700,000 respectively, with a reconciled value of \$35,500,000 as of January 1, 2019. (Ex. A at 54-55)

In both approaches to value, Slack made adjustments to separate the fee simple value from the "leased fee" value. (Ex. A at 33, 53; Ex. C at 7) The leased fee value is based on the value of the in-place leases as opposed to general market rates. Slack testified his methodology is based on standards applied in Kansas property tax appeals. (Tr. 1 at 31:20-23; 33:3-5) These standards assume the property is "vacant and available and there for you, you must account for all the costs to lease the property up ... from zero to whatever it is." (Tr. 1 at 32:18-22) Slack acknowledged he is "not sure that that's not necessarily uniform, but from state to state, that's the way it became there." (Tr. 1. at 32:22-23)

Consistent with these standards, Slack made property rights adjustments in the sales comparison approach accounting for the costs of tenant improvements and leasing commissions necessary to achieve market occupancy. Slack made corresponding deductions in the income approach. (Ex. A at 32-34; 54; Tr. 1 at 33:1-5) The difference in the parties' value estimates stems largely from Slack's deductions for leasing commissions tenant improvements.

Sales Comparison

Slack analyzed five comparable properties located in the downtown St. Louis central business district. The unit of comparison was price per rentable square foot. Each comparable property sold with in-place leases. (Ex. A at 33)

Slack made property rights adjustments by quantifying tenant improvement and leasing commission costs based on leases in the subject property and in BOA Plaza, a

similar class A, multi-tenant office building located in the downtown St. Louis central business district. The annualized tenant improvement paid by the landlord at the subject property averaged \$2.73 per square foot. Slack concluded that "[w]ith an average term of 104 months, (8.7 years), the typical [tenant improvement cost] spent by the landlord at [the subject property] is \$23.68 per square foot. (Ex. A at 34)³ Leasing commissions for the 70% of occupied space totaled \$7,001,675. (Ex. A at 34) The property rights adjustments for the five comparable sales ranged from zero to -35%. (Ex. A at 36)

Slack acknowledged leasing commissions for the subject property "have been paid for the 70% to 75% of the property that is leased." Slack further acknowledged "[a] buyer does not have to pay commissions for as long as the lease being purchased is in force." (Ex. A at 34) Slack also noted that once the tenant improvement allowance is spent, tenants pay above market rent. (Ex. A at 33) Slack noted the "value of the leased fee is substantial," and that "the leases in force at the subject property clearly add substantially to the fee simple value." (Ex. A at 34)

Slack also adjusted the comparable properties to account for differences in market conditions, age, size, parking, and deferred maintenance. Slack estimated \$1,230,000 in deferred maintenance over the "next two to three years" based on a "Property Condition Assessment" (McGuire Report) provided by McGuire Engineers. (Ex. A at 35, 68) The McGuire Report recommended two air conditioning units, two water pumps, and all EPDM roofing "should be considered for replacement within the next 2 to 3 years." The cost

³ The tenant improvement cost is calculated as follows: $[(\$2.73 \times 104) / 12 = \$23.66]$. The difference between \$23.66 and \$23.68 is immaterial.

breakdown was \$100,000 for the air conditioners, \$200,000 for the water pumps, and \$1,000,000 for the roof. The McGuire Report noted the air conditioning units were in poor condition and should be replaced "within a year." (Ex. A at 68) Slack accounted for reserves for replacement implicitly with a slightly higher capitalization rate. (Tr. 2 at 55:12-25; 56:1-2)

Slack concluded Sales 1, 2, and 3 are "the most reliable indicators of value." (Ex. A. at 35)⁴ Slack's conclusions regarding Sales 1, 2, and 3 are summarized as follows:

	Subject Property	Sale 1	Sale 2	Sale 3
Address	211 N. Broadway	100 N. Broadway	200 N. Broadway	701 Market
Age	30	44	35	34
Occupancy	71.6%	42%	73%	89%
Rentable SF	1,040,829	510,202	337,088	401,625
Sale Price	N/A	\$19,900,000 \$39.00 per SF	\$19,000,000 \$56.37 per SF	\$35,000,000 \$87.15 per SF
Property Rights Adjustment		-15%	-30%	-35%
Age Adjustment		14%	5%	4%
Size Adjustment		-10%	-15%	-15%
Parking Adjustment		10%	0%	0%
Deferred Maintenance		0%	-3%	-2.1%
Total Adjustment		14%	-13%	-13.1%
Adjusted Fee Simple		\$38	\$34	\$49

4 Sales 4 and 5 were sold for renovation. Slack applied no property rights adjustment to these sales. Sale 6 is a smaller building with 98% occupancy. Slack applied a -40% adjustment to account for the leased fee value. (Ex. A at 36)

Value				
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Based on the range of values and the fact Sales 1 and 2 indicated a narrower range of \$34 to \$38 per square foot, Slack concluded the market value of the subject property was \$37 per square foot of rentable area. While the December 2018 rent roll indicated the subject property included 1,003,680 square feet of rentable space, Slack concluded the subject property had 1,040,829 square feet of rentable area. Multiplying 1,040,829 by \$37 per square foot yields an estimated value of \$38,500,000. (Ex. A at 36)

Income Approach

Slack estimated market rent by reviewing seven leases with commencement dates between 2017 and 2019, surveyed lease rates in peer properties, and confidential lease information from a nearby building. (Ex. A at 39-43) Slack concluded market rent was \$17.60 per square foot. (Ex. A at 43; Ex. B at 44) Slack amortized tenant improvement costs over the average lease term to conclude annual tenant improvement costs of \$3.51, resulting in an annualized "effective" rental rate of \$14.10 per square foot. (Ex. A 43)

In addition to rental income, Slack concluded the subject property generates \$1.36 per square foot in parking income and \$0.25 per square foot in miscellaneous income from storage, antenna rentals, and late fees. (Ex. A at 44)

Slack attributed no pass-through income to the subject property. (Ex. A at 43; Ex. C at 3) Pass-through income is received by the owner when tenants assume responsibility for their pro-rata share of increased expenses following the base year. (Ex. C at 3; Tr. 1 at 22:22-25; 23:1-6) Slack testified that "in a fee simple appraisal, appraisers value the property as if there are all new leases beginning on the tax date. Thus, there are no first-

year expense reimbursements." (Ex. C at 3)

Slack concluded the subject property's market-based vacancy loss was 29% with an expected credit loss of 1%. The 29% vacancy loss is based on the subject's 73.1% average occupancy in 2017 and 2018, down from the 80.4% occupancy reported in 2013. (Ex. A at 44)⁵ Slack also noted that surveyed vacancy rates in Class A office space in the downtown St. Louis central business district ranged from 14% to 39.5%. (Ex. A at 44) The higher surveyed vacancy rates include the vacant AT&T Center located at 900 Chestnut in downtown St. Louis. AT&T Center has approximately 1,400,000 square feet designed for a single tenant. The building has inadequate parking. (Tr. 2 at 8:4-6; 17:22-24)

Slack estimated pre-tax operating expenses by reviewing the expenses at the subject property and in competing buildings. The comparable expenses ranged from \$6.51 to \$9.53 per square foot. Because of variations in expense accounting, Slack emphasized the actual expenses incurred at the subject property as representative of market-based expenses. (Ex. A at 46) Slack concluded the market-based operating expenses for the subject property were \$6.63 per square foot. (Ex. A at 48)

Based on the foregoing market rent and expense analysis, Slack estimated a net operating income (NOI) of \$5,044,803:

⁵ Slack's vacancy conclusions are based on a net rentable area of 140,829 square feet. Slack based this conclusion on lease summaries allocating operating expenses to tenants based on 140,839 square feet of rentable area. The December 2018 rent roll states the rentable area is 1,002,237 square feet. Slack acknowledged his "opinion of value would be subject to change" if the rent rolls accurately reflected the net rentable area. (Ex. A at 4)

Effective Rent	\$14.10 per square foot
Vacancy/Credit Loss	(- 30%)
Other Income/Parking	\$1.61 per square foot
Expenses	(- \$6.83 per square foot)
NOI	\$5,044,803 (\$4.85 per square foot)

(Ex. A at 49)

Slack estimated the capitalization rate by consulting recent sales and surveys, with an emphasis on surveys. Slack emphasized surveys because sales typically involve leased properties, which is inconsistent with his assumption the value of a fee simple interest is based on an "unencumbered" property. (Ex. A at 50) Slack concluded the pre-tax capitalization rate was 9.50%, which is consistent with the mid-range of surveyed capitalization rates for class A office buildings in the downtown St. Louis central business district. Adding the 3.14% effective tax rate yields a loaded capitalization rate of 12.64%.

(Ex. A at 52)

Slack divided the NOI (\$5,044,803) and capitalization rate (0.1264) to calculate an initial value estimate of \$39,922,229.⁶ After deducting deferred maintenance (\$1,230,000) and leasing commissions (\$7,001,657), Slack calculated an indicated value of \$31,690,573, rounded to \$31,700,000. (Ex. A at 53)

Reconciliation

Slack reconciled the \$38,500,000 value indicated by the sales comparison approach and the \$31,700,000 value indicated by the income approach into a final value estimate of

⁶ Dividing Slack's NOI estimate (\$5,044,803) by his estimated capitalization rate (0.1264) yields \$39,911,416, not \$39,922,229.

\$35,500,000. (Ex. A at 55)

4. Respondent's Evidence. Respondent introduced Exhibits 1, 2, and 3. Exhibit 1 is an appraisal report prepared by Ryan Brennan. Exhibit 2 is Brennan's written direct testimony. Exhibit 3 is Brennan's written rebuttal testimony.

Brennan Appraisal

Like Slack, Brennan determined the highest and best use of the subject property was continued use as a multi-tenant office building and that the income approach was the best indicator of value. (Ex. 1 at 35; 81) Unlike Slack, Brennan deducted only those leasing commissions and tenant improvement allowances necessary to lease the property up from its 75.3% actual occupancy to his estimated 85% market occupancy. (Ex. 1 at 78-79) Further, unlike Slack, Brennan did not deduct deferred maintenance. (Ex. 1 at 58-59) Finally, unlike Slack, Brennan attributed \$655,319 in pass-through income to subject property, which was added to the NOI. Brennan estimated TVM of the subject property as of January 1, 2019, was \$69,900,000. (Ex. 1 at 81)

Sales Comparison

Brennan analyzed five comparable properties located in the St. Louis downtown central business district. The primary unit of comparison was price per rentable square foot. (Ex. 1 at 74, 76) Brennan adjusted the comparable sales for difference in time of sale, size, parking, quality, age, and economic characteristics. (Ex. A at 75-76) The adjusted sale prices ranged from \$42.11 to \$107.31 per square foot with an average of \$73.31, and a median of \$64.83. Brennan concluded the market value of the subject property was \$75 per square foot of rentable space. Multiplying the subject's 1,002,237

square feet of rentable area by \$75 per square foot yields an estimated value of \$75,200,000. (Ex. 1 at 77)

Brennan applied a lease-up discount to account for the leasing commissions and tenant improvement costs required to bring the property from its actual 75% occupancy as of January 1, 2019, to Brennan's estimated market occupancy of 85%. (Ex. 1 at 78) Brennan estimated a three-year lease-up period and discounted lost rent to present value by utilizing a 10% discount rate based on a survey. Brennan estimated the present value of lost rent was \$1,424,634. (Ex. 1 at 78) Brennan further estimated a leasing commission of 6.0% over a five-year term, resulting in a \$552,592 deduction. Brennan estimated tenant improvement costs of \$30.00 per square foot, resulting in a \$3,203,430 deduction. Finally, Brennan included a 10% lease-up profit, resulting in a total estimated lease-up cost of \$5,698,721, rounded to \$5,700,000. (Ex. 1 at 79) Subtracting the lease-up discount (\$5,700,000) from the initial value estimate (\$75,200,000) results in indicated value of \$69,500,000.

Income Approach

Brennan estimated market rent for the subject property's office, storage, and retail space based on leases in other office buildings in the downtown St. Louis central business district, on recent leases at the subject, and surveyed lease rates. (Ex. 1 at 41-55)

Brennan estimated market rent for office space by considering seven leases at other office buildings in the downtown St. Louis central business district, recent leases at the subject, and surveyed lease rates. (Ex. 1 at 42-49) The base rent for the comparable leases ranged from \$15.00 to \$19.00 per square foot. Brennan adjusted for differences in lease

dates, building size, parking availability, lease length, and the quality and condition of the building. The adjusted rents ranged from \$15.50 to \$20.81 per square foot, with an average of \$17.74 per square foot and a median of \$17.17 per square foot. New leases at the subject property were had a base rent of \$17.50 per square foot. Surveyed rates were higher. Brennan concluded market rent for the subject property was \$17.25. (Ex. 1 at 48)

Brennan estimated market rent for the retail space and storage areas by comparing similar retail and storage area leases. (Ex. 1 at 50-55) Brennan estimated the market rent of the retail space at \$14.00 per square foot. (Ex. 1 at 52) Brennan estimated the market rent of the storage space at \$10.00 per square foot. (Ex. 1 at 55)

Based on the foregoing, Brennan estimated potential rental income was \$17,136,947
$$([963,705 \text{ sf office} \times \$17.25] + [31,929 \text{ sf retail} \times \$14.00] + [6,603 \text{ sf storage} \times \$10.00] = \$17,136,947).$$
 (Ex. 1 at 55)

Brennan estimated 15% vacancy and collection loss based on surveyed vacancy rates and the subject's actual 24.7% vacancy rate as of January 1, 2019. (Ex. 1 at 55) Brennan testified he concluded a 15% vacancy and collection loss because this was closest to the CBRE survey of vacancy rates for class A office space in the downtown St. Louis central business district. Brennan testified that unlike the Newmark Grubb Zimmer survey, the CBRE survey did not include the vacated AT&T building. (Ex. 1 at 23; Tr. 2 at 83:25; 84:1-5) Brennan did not consider the AT&T building part of the market for Class a multi-tenant office space because the building is designed for single tenant use and has "next to no parking." (Tr. 2 at 99:7-15) Brennan's estimate of 15% market occupancy is consistent with the market occupancy for class A, multi-tenant building in the downtown St. Louis

central business district. Subtracting vacancy and collection loss from the estimated potential rental income estimate results in an effective rental income of \$14,566,405 (Ex. 1 at 55)

Brennan added income from parking, miscellaneous sources, and pass-through income for tenant contributions to maintenance. For parking and miscellaneous income, Brennan calculated the median amount generated from 2016 through 2018. Based on this analysis, Brennan estimated \$1,716,995 in parking income and \$160,648 in miscellaneous income. (Ex. 1 at 55-56)

Brennan estimated pass-through income of \$0.80 per square foot based on the median pass-through income generated by four other buildings in the downtown central business district. Multiplying \$0.80 by the market occupancy results in \$655,319 of pass-through income; i.e., $(727,509 \text{ square feet} \times \$0.80 = \$582,007)$. (Ex. 1 at 56)

Brennan estimated operating expenses by considering the subject's operating from 2016 through 2018 and a survey of operating expenses incurred in 2018 by five nearby office buildings. The median expense from 2016 through 2018 for both the subject and the comparable properties was \$7.15 Brennan estimated market expenses at \$7.50 per square foot, or \$7,516,778 $(\$7.50/\text{sf} \times 1,002,237 \text{ sf})$. (Ex. 1 at 58)

The final component of Brennan's expense analysis considered estimated expenses for replacement reserves and a community improvement district (CID) special assessment. Surveys indicated the average replacement reserve for downtown St. Louis central business district office space was \$0.29 per square foot. Brennan estimated replacement reserves at \$0.25 per square foot, or \$250,559 $(1,002,237 \text{ sf} \times \$0.25 \text{ sf})$. The CID charge for 2019

for was \$76,908. (Ex. 1 at 58)

Brennan's reconstructed income and expense statement is summarized as follows:

Potential Rental Income	\$17,136,947
Vacancy and Collection Loss	-15% (\$2,570,542)
Effective Rental Income	\$14,566,405
Parking Income	\$1,716,995
Pass Through Income	\$655,319
Miscellaneous Income	\$160,648
Effective Gross Income	\$17,099,367
LESS Expenses with Management	(\$7,516,778; \$7.50 sf)
LESS Reserves	(\$250,559; \$0.25 sf)
LESS CID	(\$76,908)
Stabilized NOI	\$9,255,122

Finally, Brennan estimated a direct capitalization rate based on surveyed rates, the band of investment method, and five sales of nearby multi-tenant office buildings. (Ex. 1 at 58-61) The surveys indicated capitalization rates ranging from 5%-10%. Rates in the downtown St. Louis central business district office trended toward the higher end of this range. (Ex. 1 at 59) The band of investment method indicated a rate of 9.13%. (Ex. 1 at 60) The comparable sales indicated a rate of 9.05%. (Ex. 1 at 61-62) Brennan concluded a capitalization rate of 9.1% reflected "the economic reality of the subject." (Ex. 1 at 62) Adding the effective tax rate of 3.14% resulted in a loaded capitalization rate of 12.24%. Dividing Brennan's estimated NOI (\$5,814,656) by the loaded capitalization rate (.1224) yields an indicated value of \$75,613,742, which Brennan rounded to \$75,600,000. Subtracting the \$5,700,000 in lease-up costs results in an estimated value of \$69,900,000. (Ex. 1 at 62)

Reconciliation

Brennan reconciled the \$69,500,000 value indicated by the sales comparison approach and the \$69,900,000 value indicated by the income approach into a final value estimate of \$69,900,000. (Ex. 1 at 81)

5. Value. The TVM of the subject property on January 1, 2019, was \$59,969,000.

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). "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). "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).

"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 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." *Snider*, 156 S.W.3d at 348.

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). "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).

Complainant objected to Brennan's appraisal report and testimony for lack of foundation because they are based on sales data from reports prepared by other appraisers.⁷ (Tr. 2 at 130:16-131:15) Complainant argues *State ex rel. Missouri Highway & Transp. Comm'n v. Sisk*, 954 S.W.2d 503, 508 (Mo. App. 1997) and *State ex rel. State Highway Comm'n v. Berkeley Sch. Dist.*, 618 S.W.2d 195, 197-98 (Mo. App. 1981) establish Brennan's appraisal report and written direct testimony are inadmissible. (Compl. Br. 16-17) *Sisk* and *Berkeley* are materially distinguishable.

In *Sisk*, the circuit court excluded evidence of a comparable sale for lack of

⁷ Complainants' pre-hearing objections to Brennan's written direct testimony and appraisal report were overruled by an order dated December 15, 2020. Notably, like Brennan, Slack acknowledged it "was necessary to rely on information and data furnished by others." (Ex. A at 2)

foundation because the appraiser relied on another appraiser's recitation of sale data. Critically, the sale was subject to a confidentiality clause precluding verification. *Sisk*, 954 S.W.2d at 507. Under those circumstances, *Sisk* held the circuit court did not abuse its discretion by excluding evidence of the comparable sale due to lack of foundation. *Id.* at 509-10. Unlike *Sisk*, Complainants did not show the data included in Respondent's Exhibits 1 and 2 were unverifiable due to a confidentiality clause or a similar obstacle precluding verification.

Berkeley held the circuit court erred in admitting an appraiser's testimony regarding four comparable sales because the testimony was based on "unreliable" information from an "unknown person" in the appraiser's office. *Berkeley*, 618 S.W.2d at 198. The appraiser conceded he had "no recollection of confirming [the sales], so they must have been confirmed by someone in my office." *Id.* Thus, the purported verification was purely speculative and may have never happened.

Unlike the appraiser in *Berkeley*, who had "no recollection" of undertaking any inquiry to verify the sales at issue, Brennan verified data by reviewing rent rolls, income and expense statements, and other appraisals. (Tr. 2 at 130:3-14) Brennan's verification is consistent with the general rule that an appraiser "may base his opinions in part upon his investigation and his inquiries concerning other sales even though such sources constitute hearsay and would ordinarily be inadmissible." *Berkeley*, 618 S.W.2d at 197.⁸ The fact

⁸ See also *State ex rel. State Highway Comm'n v. Carlson*, 463 S.W.2d 74, 77 (Mo. App. K.C. 1970) (noting "that the customary standards and trade channels used by the business community at appraisals of land value, although to a great extent based on information derived from others and therefore founded on hearsay, have been safely relied on"); *State*

Brennan consulted acceptable sources to verify sales data distinguishes this case from the purely speculative verification in *Berkeley* and demonstrates his report and testimony fall within the general rule permitting appraiser to verify sales by reference to otherwise inadmissible information.

The impetus for excluding Brennan's testimony and report is further diminished because the facts regarding trustworthiness can "be developed on cross-examination and [may] weaken or destroy the value of the opinion." *Carlson*, 463 S.W.2d at 78 (internal quotation omitted); *see also Barron*, 400 S.W.2d at 37 (noting "any deficiency ... goes to the weight of his testimony, not the qualification"). Complainant cross-examined Brennan extensively regarding the foundation for his report and testimony and therefore had ample opportunity to undermine the credibility of his report and testimony.

Finally, any residual basis for excluding the evidence is negated because the facts are determined by an administrative hearing officer rather than a jury. *Cf. State v. Sladek*, 835 S.W.2d 308, 313 (Mo. banc 1992) (noting that in matter not tried to a jury, "a certain amount of latitude in the admission of evidence is allowed, and [...] the rules of exclusion are less strictly enforced"). For these reasons, Complainants' objection to Brennan's appraisal report and testimony is overruled. Brennan's appraisal report and testimony are admitted into evidence.⁹

ex rel. State Highway Comm'n v. Barron, 400 S.W.2d 33, 38 (Mo. 1966) (holding "[t]he examination of market reports, and information acquired from others, as to sales of property qualifies a witness to testify as to values").

⁹ Section 138.060 applies to the City of St. Louis and provides "the assessor shall not advocate nor present evidence advocating a valuation higher than that finally determined by the assessor or the value determined by the board of equalization, whichever is higher,

3. 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 misclassified or overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's valuation 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 fact-finder to view the facts in a way that favors that party").

4. Complainant Did Not Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant's proposed value is premised on the assumption a "fee simple estate means absolute ownership *unencumbered by any other interest or estate*, subject only to

for that assessment period." Respondent's Exhibits 1 and 2 conclude the TVM of the subject property exceeds the value set by the BOE. Respondent does not advocate a value higher than that determined by the BOE. (Ex. 1 at 6; Resp. Br. at 30-31) Exhibits 1 and 2 are admissible as evidence for sustaining the value assigned by the BOE. 12 CSR 30-3.075(1).

the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat." (Compl. Br. at 18) (citing Appraisal Institute, *The Dictionary of Real Estate Appraisal* 90 (6th Ed. 2015)). Based on this assumption, Complainant deducts \$7,001,657 in leasing commissions, approximately \$17,500,000 in tenant improvements, and attributes no pass-through income to the subject property. The net result is an approximately \$24,500,000 deduction accounting for leasing commissions already paid, tenant improvements already in place, and a reduced NOI estimate that does not account for income actually generated by the property. Further, Complainant's assertion the subject property's market vacancy is 29% is inconsistent with surveyed occupancy rates for class A, multi-tenant office space in the downtown St. Louis central business district. Finally, unlike Respondent, Complainant deducted \$1,230,000 in deferred maintenance.

Complainant asserts their proposed value is based on standard appraisal practice. Slack, however, testified he is unsure whether the Kansas standards he utilized to appraise the subject property are uniform "from state to state[.]" (Tr. 1. At 32:22-23) Complainant's assertion that estimating TVM of the subject property requires an assumption it is "unencumbered" by leases is not based on Missouri law. Consequently, Slack's appraisal is not credible and does not constitute substantial and persuasive evidence of the TVM of the subject property as of January 1, 2019.

Fee Simple

Complainant asserts a fee simple interest exists only if it is "unencumbered" by a lease. Complainant further asserts separating the fee simple value from the leased fee value means the "juxtaposed market leases must all start at the date of valuation." (Compl. Br.

at 20) This assumption underlies Complainant's deduction of all leasing commissions and tenant improvement allowances and the conclusion the subject property generates zero pass-through income. Complainant's argument is unpersuasive.

Complainant's definition of "fee simple" is based on an industry-specific dictionary, not Missouri law. (Compl. Br. at 1, 18) (citing Appraisal Institute, *The Dictionary of Real Estate Appraisal* 90 (6th Ed. 2015)). 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").¹⁰ Therefore,

¹⁰ *See also Bussen v. Del Commune*, 195 S.W.2d 666, 668 (Mo. 1946) (holding the rights conferred by the lease of property held in fee simple are "wholly possessory" and "do not in any wise affect or involve the title to real estate"); *Forder v. Davis*, 38 Mo. 107, 111 (Mo. 1866) (holding a city was a necessary party in an ejectment action because it "had only granted a leasehold, and the fee simple still remained in the city").

the power to encumber real property with a lease is 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. Complainant cites 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 the consideration of "economic realities" when estimating the value 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 often a function of the income it generates. *Id.* at 513. Thus, when valuing property under the income approach, the STC may consider both contract and market rent. *Id.* A rule that contract rent cannot be considered "hypothesizes an unrealistic market" by assuming "properties now subject to long-term below-market leases are suddenly available to rent." *Mo. Baptist Children's Home*, 867 S.W.2d at 513.

Like the failure to consider the effect of a long-term lease, Complainant's approach hypothesizes an unrealistic market by assuming all leases are reset to the valuation date as if the entire property is suddenly available to rent. No evidence supports this assumption. Both Slack and Brennan testified leases in buildings like the subject property ***do not*** share a common base year. (Tr. 2 53:16-25; 54:1-2 and 89:3-4) Complainant's lease-reset assumption ignores economic realities and rests on a counter-factual assumption that all leases are reset to January 1, 2019.

Complainant nonetheless asserts that assuming all leases commence on the

valuation date is necessary to "match the two sides of the equation (leases and expenses)" to obtain a "constant and pure" NOI estimate. According to Complainant, proceeding without the lease-reset assumption "would force the appraiser to determine when leases come off and on the roll ... thus disrupting the value of the fee." (Compl. Br. at 20)

Of course, a persuasive estimate of the TVM of the subject property as of January 1, 2019, necessarily relies on contemporaneous estimates of market rent, expenses, other income, and occupancy. These general market data, derived both from the subject property and comparable properties, are the constituent elements of the NOI that is capitalized at a market rate to estimate value under the income approach. This "relatively straightforward" calculation requires the STC to "project the net income stream that could reasonably be anticipated by an investor/purchaser, discounting future dollars to present levels in order to compensate for risk and the elapsed time required to recapture the initial investment." *Equitable Life Assur. Soc. of U.S./Marriott Hotels, Inc. v. State Tax Comm'n*, 852 S.W.2d 376, 380 (Mo. App. 1993). At no point in this "relatively straightforward" calculation is there an assumption that all leases in an established multi-tenant office building share the same base year. Instead, direct capitalization is based on a single-year income stream representing a projection of the income that can be "reasonably be anticipated by an investor/purchaser" over time. *Id.*; see also Appraisal Institute, *The Appraisal of Real Estate* 492-93 (14th ed. 2013) (noting direct capitalization "processes a single year's income into an indication of value" and must account for "the stability of the property's income

stream").¹¹ The projected market occupancy factored into the NOI estimate dispenses with Complainant's concern that an appraiser would have "to determine when leases come off and on the roll ... thus disrupting the value of the fee." (Compl. Br. at 20)

The property rights adjustments in Slack's sales comparison approach illustrate the deficiency in Complainant's position. Slack applied progressively larger negative adjustments as the occupancy of the comparable sales increased. For instance, Sale 1 was 42% leased while Sale 3 was 89% leased. Slack applied a negative 15% adjustment to Sale 1 and a negative 35% adjustment to Sale 3. A negative adjustment accounts for a comparable property's superior feature and permits a like-kind comparison. The necessary implication of a larger negative adjustment for higher occupancy is that comparable sales with occupancy similar to the subject property are considered less comparable while properties with lower vacancy are considered more comparable. Thus, under Complainant's analysis, Sale 3, with an occupancy *most comparable* to the subject property, is considered the *least comparable* and a negative 35% adjustment is applied to

¹¹ Complainant's position that all leases are assumed to commence on the valuation date is further undermined by the fact they fail to account for it in their capitalization rate analysis. Complainants' lease-reset assumption yields a potentially more durable income stream and shorter investment recapture period. For instance, the income from a property 85% occupied by tenants with new eight-year leases is potentially more durable than that from a similar property 85% occupied by similar tenants with leases whose average remaining term is considerably shorter. Because the appropriate capitalization rate is in part a function of investment risk, *Equitable Life Assur. Soc. of U.S./Marriott Hotels, Inc.*, 852 S.W.2d at 380, Complainant's assumption that all leases are reset as if new should result in a *lower* capitalization rate resulting in a *higher* value estimate. See also, *The Appraisal of Real Estate* at 493 (noting the direct capitalization rate is influenced by the "overall level of risk" measured in part by "the stability of the property's income stream").

the sale price. This analysis reflects the assumption that valuing the fee simple interest requires an assumption the property is "unencumbered" and the value estimate must "account for all the costs to lease the property up ... from zero to whatever it is." (Tr. 1 at 32:18-22) As established, neither Missouri law nor the economic realities of the subject property require that assumption. The unavoidable result of Complainant's assumption and analysis is a substantial underestimation the subject property's TVM. Analysis of the proposed deductions for leasing commissions and tenant improvements necessary to achieve market occupancy and the attribution of zero pass-through income confirms this conclusion.

Leasing Commissions

Leasing commissions are an expense affecting the net income generated by a property. Appraisal Institute, *The Appraisal of Real Estate* 484 (14th ed. 2013). Slack deducted \$7,001,675 in leasing commissions, reflecting the total estimated costs of all leasing commissions necessary to achieve market occupancy. (Ex. A at 53; Tr. 1 at 30:1-25; 31:1-3)

Complainant's evidence does not persuasively establish the necessity of deducting the total of all leasing commissions "to lease the property up ... from zero to whatever it is." (Tr. 1 at 32:18-22) There is no evidence the subject property's occupancy has been zero at any time relevant to January 1, 2019, valuation date. To the contrary, as of January 1, 2019, the subject's occupancy rate was 72%. As Slack acknowledged, the leasing commissions necessary to achieve market occupancy "have been paid" and a purchaser of the subject property would pay no leasing commissions for any of the occupied space. (Ex.

A at 34) Complainant's proposed \$7,001,657 leasing commission deduction – representing the total estimated cost "to lease the property up ... from zero to whatever it is" – is not supported by substantial and persuasive evidence.

Tenant Improvements

A tenant improvement allowance is a rent concession provided by the owner at the beginning of the lease for the construction of tenant improvements. *The Appraisal of Real Estate* 474. While tenant improvement allowances are a cost, Complainant's wholesale deduction of all tenant improvements expended to achieve market occupancy is unpersuasive.

First, Slack acknowledged that once tenant improvement allowances are spent, the tenants pay above market rent. (Ex. A at 33) Under these circumstances, analysis of the effective rent received due to rent concessions is "a moot point" because, for instance, "concessions granted in the first two years of the lease" have no bearing on "the income generated in the third year[.]" *The Appraisal of Real Estate* at 448. There is no evidence showing that all or most of the tenant improvement concessions were not yet paid or that the improvements were not yet in place as of January 1, 2019. Further, Complainant's evidence does not persuasively establish that an informed, willing seller would deduct from the sale price the total cost of all previously paid tenant improvement allowances. Drawing this conclusion requires the illogical assumption that an informed seller would freely surrender substantial economic benefits by essentially twice paying for tenant improvements. *Cf. Mo. Baptist Children's Home*, 867 S.W.2d at 514 (noting it "is contrary to all logic" to assume "a business enterprise will freely surrender substantial economic

benefits...").

Second, Complainant's deduction of the all past tenant improvement costs assumes the improvements add no value to the subject property. "Property permanently affixed to the real estate, or which has become a part thereof, generally speaking, becomes taxable to the owner as a part of the real estate, at least until its removal (if permitted as between the lessor and lessee)." *Greene Cty. v. Hermel, Inc.*, 511 S.W.2d 762, 771 (Mo. 1974). This principle is consistent with Brennan's testimony that "if the work is done before, you know, the date of value, then the work is already done that's the condition of the property. That's what rent – that's what it rents for." (Tr. 2 at 183:7-10) Complainant offered no substantial and persuasive evidence accounting for the value accruing to the subject property as a result of the tenant improvements. Complainant's deduction of the all past tenant improvement costs is not required by law and is not based on substantial and persuasive evidence.

Pass-Through Income

Respondent asserts the subject property generates \$582,007 in pass-through income. (Ex. 1 at 55) The pass-through income contributes to the NOI and, therefore, increases the TVM. Slack asserts there can be no pass-through income because a fee simple valuation presupposes "base year expense stops as if all are new current leases." (Ex. A at 43)

As established, Complainant cites no authority for the proposition that valuing a property with market data entails an assumption that leases are reset to commence on the valuation date. A leading appraisal treatise specifically states that pass-through "[e]xpense recoveries are usually treated as separate revenue items[.]" *Appraisal of Real Estate* 472. This authority undermines Complainant's unsupported argument.

Further, there is no evidence Complainant's attribution of zero pass-through income assumption reflects economic reality. Both Slack and Brennan testified leases in buildings like the subject *do not* share a common base year lease and *do* generate pass-through income. (Tr. 2 53:16-25; 54:1-2 and 89:3-4) There is no evidence supporting the conclusion market participants wholly ignore pass-through income by valuing established multi-tenant office buildings on the counter-factual assumption that all leases are reset to the purchase date.

Complainant also argues pass-through income is non-existent in a fee simple analysis because market rents factor in market expenses, and there "are no deviations between the market rent and market expenses to account for the pass-through income. (Compl. Br. at 11) Again, Missouri law requires consideration of economic realities when estimating the TVM of real property for purposes of *ad valorem* taxation. *Mo. Baptist Children's Home*, 867 S.W.2d at 513. Both experts testified the subject property and buildings like it in fact typically generate pass-through income. Further, Complainant tacitly concedes that the theoretical congruence of market rent and expenses yields to the practical reality of "market inefficiencies" resulting in pass-through income. (Compl. Br. at 2) The evidence establishes that, in reality, the subject property generates pass-through income. This income factors into the value of the subject property's real estate.

Market Vacancy

Complainant asserts the market vacancy of the subject property was 30% as of January 1, 2019. Surveyed vacancy rates in class A, multi-tenant office buildings in the downtown St. Louis central business district indicated a market vacancy rate of

approximately 15%. Consistent with this market data and during the course of the same evidentiary hearing, Slack concluded the market vacancy of the BOA Plaza building was 15% while the market vacancy of the subject property was 30%. Applying a market vacancy double that applied to BOA Plaza – a similar class-A multi-tenant building in the same market – is neither credible nor persuasive. The overstated market occupancy further undermines the persuasiveness of Complainant's proposed value.

Deferred Maintenance

Complainants proposed value includes a \$1,230,000 deduction for deferred maintenance based on the McGuire Report. The McGuire Report recommended the replacement of water pumps, two air conditioning units, and all EPDM roofing "within the next two to three years." (Ex. A at 61, 68)

"Deferred maintenance" refers to "items in need of immediate repair on the effective date of the appraisal ... for the building to continue to function as it should and to be marketable to potential buyers." *The Appraisal of Real Estate* 618. "Short-lived items," by contrast, "have not reached the end of their total useful life expectancy and are not completely deteriorated, but they are substantially depreciated in comparison with the overall structure." *Id.* at 619. The distinction is crucial because "substantial deferred maintenance items typically require lump-sum adjustments in the sales comparison and income capitalization approaches[.]" *Id.* Short-lived items are typically accounted for by "replacement reserves" set aside to fund predictable, periodic replacement of building components. *Id.* at 485.

The McGuire Report concluded the EPDM roof is in "poor condition" and

recommends replacement "in 2 to 3 years" at a cost of \$1,000,000. (Ex. A at 67-68) Short-lived items include items such as "the roof covering[.]" Items like "the roof covering" are typically considered short-lived items accounted for in replacement reserves. *Id.* at 619.

Similarly, the McGuire Report concluded two water pumps were in poor condition and recommended replacement within two years at a cost of \$200,000. (Ex. A at 66, 68) The McGuire Report concluded the roof and water pumps were in poor condition and should be replaced in the future. The McGuire Report does not conclude these items are in need of immediate repair or are non-functional. The roof and water pumps are short-lived items that with an expected life span less than that of the building. The cost of these predictable necessity of replacing or repairing these items is accounted for in reserves for replacement. Respondent accounted for replacement reserves expressly by allocating \$250,559 annually for repair and replacement of short-lived items. (Ex.1 at 58) Slack accounted for replacement reserves implicitly with a slightly higher capitalization rate, resulting in a slightly lower value estimate to account for replacement reserves. (Tr. 2 at 55:24-24; 56:1-2) Neither the roof nor the water pumps warrant deferred maintenance deductions above and beyond the reserves for replacement factored in by both appraisers.

Finally, the McGuire Report concluded two air conditioners were in poor condition and recommended replacement within a year at a cost of \$100,000. (Ex. A at 63, 68) Respondent concedes the two air conditioning units are in need of immediate repair at a cost of \$100,000. (Resp. Br. at 25) Complainant produced substantial and persuasive evidence warranting a \$100,000 deferred maintenance deduction for the two air conditioners.

CONCLUSION AND ORDER

The BOE's decision setting the TVM at \$59,969,000 as of January, 1, 2019, is set aside. Complainant produced substantial and persuasive evidence supporting a deferred maintenance deduction of \$100,000. The TVM of the subject property on January 1, 2019, was \$59,869,000.

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 the City of St. Louis, 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 December 17, 2021.

Eric S. Peterson
Senior Hearing Officer

State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on December 17, 2021, to:

Counsel for Complainant, Peter Corsale, pcorsale@mlklaw.com
Counsel for Respondent, Abby Duncan, duncana@stlouis-mo.gov
Assessor, Michael Dauphin, dauphinm@stlouis-mo.gov
Collector, Gregory Daly, showerst@stlouiscity.com
Clerk, Beverly Fitzsimmons, fitzsimmonsb@stlouis-mo.gov

Elaina Mejia
Legal Coordinator

Contact Information for State Tax Commission:
Missouri State Tax Commission
421 East Dunklin Street
P.O. Box 146
Jefferson City, MO 65102-0146
573-751-2414
Fax 573-751-1341



STATE TAX COMMISSION OF MISSOURI

601 METROPOLITAN SQUARE, LLC)	Appeal No 19-20159
)	
)	
Complainants,)	
)	
v.)	
)	
MICHAEL DAUPHIN, ASSESSOR,)	
CITY OF ST. LOUIS, MISSOURI,)	

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On December 17, 2021, Senior Hearing Officer Eric S. Peterson (Hearing Officer) entered a Decision and Order (Decision) setting aside the decision of the Board of Equalization of the City of St. Louis (BOE). 601 Metropolitan Square, LLC (Complainant) subsequently filed an Application for Review of Hearing Officer's Decision and Order. Michael Dauphin, Assessor of the City of St. Louis, Missouri, (Respondent) filed an Opposition to Complainant's Application for Review.

We AFFIRM the Decision and Order of the Hearing Officer. The decision of the Hearing Officer is hereby incorporated into our Decision without further reference.

FACTS AND PROCEDURAL HISTORY

The subject property consists of a 1.45 acre lot and 42 story Class A office building in the Central Business District in downtown St. Louis, known as Met Square. The building was constructed in 1989 and has 1,003,680 square feet of rentable space and 920 covered parking spaces. The property was transferred on June 7, 2018 from Metropolitan Square LLC to 601 Metropolitan Square LLC for \$73,850,000. The BOE determined the TVM of the subject property was \$59,969,000 as of January 1, 2019, which is the same value as applied in the 2017 assessment. Complainant timely appealed to the State Tax Commission (STC) on the issue of overvaluation. The issue of overvaluation was presented at an evidentiary hearing on March 4, 2021, to the Hearing Officer who set aside the BOE's determination to the extent that it did not account for \$100,000 deferred maintenance and set the TVM of the property at \$59,869,000.

Complainant now contends that the TVM of the subject property was \$42,500,000 as of January 1, 2019. To support the opinion of value, Complainant offered the following exhibits:

Exhibit	Description
A	Appraisal Report of Thomas H. Slack, MAI
B	Written Direct Testimony of Slack
C	Written Rebuttal Testimony of Slack
D	Written Sur-rebuttal Testimony of Slack

Complainant presented the testimony of Certified General Real Estate Appraiser Thomas H. Slack, MAI (Slack). He is a designated member of the Appraisal Institute (MAI). Mr. Slack determined the TVM of the property to be \$35,500,000.

To develop the Sales Comparison approach, Slack analyzed five comparable

properties located in the downtown St. Louis central business district. The unit of comparison he used was the price per rentable square foot. Each of the comparable properties sold with in-place leases. The working definition that Slack used to create his appraisal assumes that the property is vacant as of January 1, 2019, therefore, the owner would have leasing commission and tenant improvement expenses necessary to arrive at his projected 70% occupancy rate. Slack determined that leasing commissions would total \$7,001,675 and tenant improvement expenses of approximately \$17,500,000 for a total of approximately \$24,500,000. This total is the main difference in the values determined by the appraisers.

In developing the income approach, Slack reviewed the property's actual income and expenses as well as reviewed market data. Slack estimated gross rental at \$17.60 per square foot for the Class A Office space. Slack amortized tenant improvement costs over the average lease term to conclude annual tenant improvement costs of \$3.51, resulting in an annualized "effective" rental rate of \$14.10 per square foot. In addition to rental income, Slack concluded that the subject property generates \$1.36 per square foot in parking income and \$0.25 per square foot in miscellaneous income. Slack attributed no pass-through income to the property as he stated the market rent assumes a base year with no expense reimbursements.

Slack analyzed vacancy rate data and also considered the subject property's historical vacancy rates. Slack concluded a vacancy rate of 29% and a collection loss rate of 1% were appropriate after comparing the subject property's vacancy rate and the market vacancy rates. Slack analyzed the subject property's actual expenses as well as

comparable property expenses to arrive at a total expense per square foot of \$6.63. The resulting net operating income (NOI) was \$4.85 per square foot or \$5,044,803. Slack then developed a loaded capitalization rate of 12.64% to generate an initial value estimate of \$39,922,229. He then deducted deferred maintenance of \$1,230,000 and leasing commissions of \$7,001,657 to arrive at a rounded value of \$31,700,000.

The deferred maintenance that Slack used was based on a report from an Engineering firm. The report recommended that 2 air conditioning units, two water pumps, and all EPDM roofing, “should be considered for replacement within the next 2 to 3 years.” The 2 air conditioning units, with estimated replacement cost of \$100,000, were in poor condition and should be replaced within a year. Slack accounted for reserves for replacement by using a slightly higher capitalization rate.

Slack valued the subject property by the sales comparison approach and income approach. Slack did not utilize the cost approach. Slack concluded the respective indicated values from the sales comparison and income approaches were \$38,500,000 and \$31,700,000, respectively, with a reconciled estimated value of \$35,500,000 as of January 1, 2019.

In both approaches to value, Slack made adjustments to separate the fee simple value from the “leased fee” value. This is done to value the property as if it were vacant, therefore, all the expenses of leasing the property including leasing fees and tenant improvements would be deducted to arrive at the TVM, irrespective of the subject property’s actual occupancy rate or the “market” occupancy rate. Based upon this approach, Slack deducted \$7,001,675 in leasing commissions, approximately \$17,500,000

in tenant improvements and attributed no pass-through income to the subject property.

Respondent contends that the TVM of the subject property as found by the BOE of \$59,969,000 as of January 1, 2019, should be affirmed but is not contesting the Hearing Officer's determination of the TVM of the property being \$59,869,000. To support the contention, Respondent offered the following exhibits:

Exhibit	Description
1	Appraisal Report of Ryan Brennan
2	Brennan's Written Direct Testimony
3	Brennan's Written Rebuttal Testimony

Respondent presented the testimony of Ryan Brennan (Brennan). Brennan is employed with the Assessor's Office of the City of St. Louis. Brennan's report is subject to the exception to licensure of appraisers in Section 339.501.5(3)¹². The Hearing Officer overruled Complainant's objections to the exhibits on grounds of lack of foundation and admitted the exhibits into the record.

Brennan developed the sales comparison and the income approaches. Brennan did not develop the cost approach. In developing the income approach, Brennan reviewed the property's actual income and expenses as well as reviewed the market data. Brennan estimated the gross market rent for office space was \$17.25 per square foot, retail space at \$14.00 per square foot and storage space at \$10.00 per square foot. Brennan determined that vacancy and collection loss for the subject property to be 15% based upon the property's current vacancy rate of 24.7% and the survey of vacancy rates in the central

¹² All statutory citations are to RSMo 2000, as amended.

business district.

Brennan included income from parking, pass through expenses, and miscellaneous sources based on the financial records of the subject property. Based on this analysis, Brennan attributed \$1,716,995 in parking income, \$655,319 in pass through expenses and \$160,648 in miscellaneous income. (Ex. 1 at 55-56)

Brennan analyzed the subject property's actual expenses as well as comparable property expenses to arrive at a total expense per square foot of \$7.50.

The final component of Brennan's expense analysis considered estimated expenses for replacement reserves and a community improvement district (CID) special assessment. Surveys indicated the average replacement reserve for downtown St. Louis central business district office space was \$0.29 per square foot. Brennan estimated replacement reserves at \$0.25 per square foot, for an annual total of \$250,559 (1,002,237 square feet x \$0.25 per square foot = \$250,559). The CID charge for 2019 for was \$76,908. Brennan's NOI for the property was \$9,255,122. Brennan then developed a loaded capitalization rate of 12.24% resulting in a rounded value of \$75,600,000 by the income capitalization approach.

Brennan developed the sales comparison approach using 5 sales of office buildings in the St. Louis Central Business District. He arrived at a value of \$75 per square foot after making adjustments. Brennan arrived at a rounded value of \$75,200,000 by the sales comparison approach.

Prior to making a final determination of value, Brennan determined that the property was not at market occupancy, being approximately 75% occupied rather than 85% occupied, and, therefore, a lease up discount needed to be applied to achieve market

vacancy rate. Brennan determined that a lease up discount of \$5,700,000 needed to be applied to the value of the property.

Brennan reconciled the value indicated by the sales comparison approach, the value indicated by the income approach and reduced that by the lease up discount to arrive at a final value estimate of \$69,500,000. (Ex. 1 at 80)

CONCLUSIONS OF LAW

Complainant's Points on Review

In its Application for Review, Complainant asserts that the Hearing Officer's Decision was erroneous because the Hearing Officer:

1. admitted Respondent's evidence of value;
2. did not accept the methodology of Complainant regarding determination of a market-based rent in the income approach;
3. did not accept the methodology of Complainant regarding occupancy rate;
4. did not accept the methodology of Complainant regarding the use of capital expenditures/deferred maintenance in determining the value of the property; and
5. did not accept the methodology of Complainant regarding the use of pass-through income in determining the property's net operating income.

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.

STC's Ruling

For the reasons that follow, the STC finds Complainant's arguments to be unpersuasive. The STC, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision, the Application for Review of Complainant and Respondent's response opposing the Application for Review, affirms the Hearing Officer's

decision.

Complainant's First Point on Review

The Hearing Officer, in a separate Order dated December 15, 2020 thoroughly analyzed the admissibility of Respondent's evidence, finding that Brennan's testimony and report meet the minimum threshold for admissibility. The Hearing Officer, in the Decision and Order, repeated this analysis. We agree with these findings and conclude no error in the admission of Respondent's evidence into the record.

Complainant's Second and Fifth Point on Review

Complainant's Second and Fifth Points on Review both relate to the use of Fee Simple Interest v. Leased Fee Interest in the appraisal and the resulting analysis. Complainant's contention is that property should be appraised as if it were unencumbered by any leases or interests in the property and therefore, subject to leasing up expenses such as commissions and tenant improvement for the entirety of the building.

The assessor values property in fee simple interest. An estate in fee simple is ownership of all the rights in a property. A lease conveys property rights to another. The tenant receives a leasehold interest that allows the tenant the right to use and occupy the property under conditions. The fee ownership remains with the owner of the property. For ad valorem purposes, the property to be assessed consists of the land and improvements and the possessory interests in the property. Section 137.115.1. In most cases, the value of the leased fee and the value of the leasehold should approximate the value of the fee simple. The STC is bound to follow the law as set out by the Court in *Missouri Baptist Children's Home v. State Tax Comm'n* 867 S.W.2d 510, 512 (Mo. banc 1993) in which the Court set

out that to determine the true value in money, the economic reality of the situation in that the assessing authority may “utilize actual as well as potential income in determining value”. The Western District in *Nance v. State Tax Comm’n* 18 S.W.3d 611, 617 (Mo. App. 2000) found that to ignore certain impacts of actual rentals would ignore economic realities.

The Hearing Officer found that Complainants’ proposed value is premised on the assumption a "fee simple estate means absolute ownership ***unencumbered by any other interest or estate***, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat." (Compl. Br. at 1, 18) (citing Appraisal Institute, *The Dictionary of Real Estate Appraisal* 90 (6th Ed. 2015)). Based on this assumption, Complainants deduct \$7,001,675 in leasing commissions, approximately \$17,500,000 in tenant improvements, and attribute no pass-through income to the subject property. The net result is a deduction of over \$24,500,000 accounting for leasing commissions already paid, tenant improvements already in place, and a reduced NOI estimate that does not account for income actually generated by the property.

Complainants assert their proposed value is based on standard appraisal practice. Slack, however, testified he is unsure whether the Kansas standards he utilized to appraise the property are uniform "from state to state[.]" (Tr. 1. At 32:22-23) Complainants' assertion that estimating TVM of the subject property requires an assumption the property is "unencumbered" by leases is not based on Missouri law. Consequently, the deduction of approximately \$24,500,000 accounting for leasing commissions already paid, tenant improvements already in place, and a reduced NOI estimate does not account for income

actually generated by the property. The Hearing Officer properly found that Complainant's evidence is not credible and does not constitute substantial and persuasive evidence of the TVM of the subject property as of January 1, 2019.

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. 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. This approach is most appropriate when valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can be reasonably estimated from existing market conditions.

Commercial real estate lease agreements may contain terms in which, in addition to rent payments, the tenant agrees to pay expenses. Terms may include the tenant paying the expenses or paying an additional amount based upon increases in the expense items from the initial lease period.

Complainant's appraiser developed the income approach to value. The appraiser, in doing so, did not include expense reimbursements, also known as pass through income, in his calculation because he estimated rental rates as of January 1, 2019, which would mean it is the base year with no reimbursements. (Ex A, P.47). Both appraisers stated that that there was expense reimbursement from the subject property in 2016, 2017 and 2018. Respondent's evidence showed pass through expense income of the subject property of \$655,319 in 2018. (Respondent's Post-Hearing Brief at 10)

As established, Complainant cites no authority for the proposition that valuing a property with market data entails an assumption that leases are reset to commence on the valuation date. A leading appraisal treatise specifically states that pass-through "[e]xpense recoveries are usually treated as separate revenue items[.]" *Appraisal of Real Estate* 472. This authority undermines Complainants' unsupported argument.

Further, there is no evidence Complainants attribution of zero pass-through income assumption reflects economic reality. Both Slack and Brennan testified leases in buildings like the subject property *do not* share a common base year lease and *do* generate pass-through income. (Tr. 2 53:16-25; 54:1-2 and 89:3-4) There is no evidence supporting the conclusion market participants wholly ignore pass-through income by valuing established multi-tenant office buildings on the counter-factual assumption that all leases are reset to the purchase date.

Complainants also argue that pass-through income is necessarily "non-existent in a fee simple analysis" because market rents factor in market expenses. (Compl. Br. at 18). Missouri law requires consideration of economic realities when estimating the TVM of real property for purposes of *ad valorem* taxation. *Mo. Baptist Children's Home*, 867 S.W.2d at 513. Both experts testified that the subject property and buildings like it typically generate pass-through income. The evidence establishes that the subject property generates pass-through income. This income factors into the value of the subject property.

Complainant's Third Point on Review

Complainant's Third Point on Review is that the Hearing Officer should not have

used of an occupancy rate of 85% when the property has a long history of declining occupancy. The Hearing Officer in his Decision sets out the methodology that Brennan used to derive a market vacancy of 85% using vacancy surveys for Class A office spaces in the central business district. Clearly, the Hearing Officer accepted this methodology and in doing so, rejected Complainant's proposed vacancy rate. We cannot determine that the hearing officer acted in an erroneous, arbitrary, capricious, or unreasonable manner or that he abused his discretion in making this determination. Complainant's contention is without support and is not persuasive.

Complainant's Fourth Point on Review

Complainant's Fourth Point is that the Hearing Officer did not accept the methodology of Complainant regarding the use of capital expenditures/deferred maintenance in determining the value of the property.

After developing his sales comparison and income approaches to value, Complainant's appraiser made an adjustment to the indications of value for capital expenditures/deferred maintenance. The adjustment made was a negative \$1,230,000 based on a report from MEPC McGuire Engineers which recommended immediate replacement of two water-cooled air-conditioning units at a cost of \$100,000, with two pumps and the EDPM roofing being replaced within 2 years. "Deferred maintenance" refers to "items in need of immediate repair on the effective date of the appraisal ... for the building to continue to function as it should and to be marketable to potential buyers." *The Appraisal of Real Estate* 618. "Short-lived items," by contrast, "have not reached the end of their total useful life expectancy and are not completely deteriorated, but they are

substantially depreciated in comparison with the overall structure." *Id.* at 619. The distinction is crucial because "substantial deferred maintenance items typically require lump-sum adjustments in the sales comparison and income capitalization approaches[.]" *Id.* Short-lived items are typically accounted for by "replacement reserves" set aside to fund predictable, periodic replacement of building components. *Id.* at 485.

The MEPC McGuire Engineers report states that the only items requiring immediate replacement were the two water-cooled air-conditioning units. The remaining items were not listed as requiring immediate replacement for the building to continue to function as it should and be marketable to potential buyers. Slack and Brennan both testified that a buyer would consider the report, however, the hearing officer is granted broad discretion to determine what amount should be considered deferred maintenance and what amount should be considered reserves. The hearing officer determined that the repairs that required immediate attention were deferred maintenance and therefore, deducted \$100,000 from the BOE value. There is nothing in the record that suggests that this is an abuse of discretion or is arbitrary or capricious.

Summary and Conclusion

The Hearing Officer determined the TVM based upon the substantial and persuasive evidence in the record. STC finds that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record.

ORDER

The decision of the Hearing Officer determining the TVM of the subject property at \$59,869,000 is affirmed.

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 August 8th, 2025.

Gary Romine, Chairman

Debbi McGinnis, Commissioner

Greg 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 August 8th, 2025, 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