STATE TAX COMMISSION OF MISSOURI

LOWES HOME CENTERS LLC,	)	
	)	
Complainant(s),	)	
	)	Appeal No. 21-52002
v.	)	Parcel No. 10-0.2-09-00-100-400-1
	)	
CHRISTOPHER ESTES, ASSESSOR,	)	
COLE COUNTY, MISSOURI,	)	
	)	
Respondent.	)	

DECISION AND ORDER
AFFIRMING DECISION OF HEARING OFFICER

Complainant Lowes Home Centers LLC filed an Application for Review of a Decision and Order dated August 19, 2024 in which the decision of the Cole County Board of Equalization was affirmed. The hearing officer found the true value in money of the subject property as of January 1, 2021 to be $9,000,000.

The Commission adopts the hearing officer's findings of fact and conclusions of law as its own and incorporates them herein.

The central (and determinative) dispute in these appeals concerns the proper methodology for assessing owner-occupied "big-box" retail stores. The subject property was owner-occupied and was successfully operating in a thriving market. Despite this fact, Lowes argues that the store should be valued as if vacant. As explained by Lowes real

estate appraiser, Lawrence Allen, he valued the "fee simple" interest in the subject real property rather than a "leased fee" interest. Mr. Allen testified that "[i]n a fee simple interest, a property is valued as if it is available to be leased or available to be occupied." (WDT at 6). Consequently, all of the comparable sales that he examined were vacant, formerly occupied big-box retail properties.

This approach to valuing big-box, owner-occupied retail stores – sometimes referred to as the "dark store" theory – holds that an occupied, operating big-box store should be assessed as if it were unoccupied ("dark"), on the premise that in an arm's length sale the property's fair market value is determined without regard to the current owner's use of the property. *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals Tax Parcel No.: 33-5-43.3, 356*, A.3d 802 (Pa. 2026). The appraisal rationale is that big-box stores are built-to-suit to a retailer's own prototype and not speculatively. First generation users generally don't buy one another's stores, making sales and leases of vacant big-box buildings the best fee-simple comparables. *Menard, Inc. v. Cnty. Of Anoka, No. 02-CV-15-2043, 2019 WL 237158* (Minn. Tax Jan. 15, 2019). Taxpayers thus argue that owner-occupied stores should be valued using vacant-store comparables, which typically produce markedly lower values.

When appraisers value a "fee simple" interest, they tend to use a definition for the term that differs from the definition used in the realm of real estate law. In the law, "fee simple" is defined as an estate which has a duration potentially infinite, being "the broadest property interest allowed by law . . . [it] endures until the current owner dies without heirs . . ." Black's Law Dictionary, 11th Ed. The focus is on the duration of the interest.

In contrast, in the appraisal industry, the term "fee simple" differs from the legal definition. Fee simple ownership is "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." The Dictionary of Real Estate Appraisal, 6th Ed. Thus, under the legal definition, the existence of a lease does not defeat fee simple ownership, but in the appraisal industry, it does. According to the International Association of Assessing Officers, a fee simple interest in property that is subject to a lease is known as a "leased fee" rather than "fee simple."

The "dark store" theory for occupied operating big-box stores is problematic. By interpreting fee simple to mean vacant and unleased, even when the property is not vacant, the methodology assumes a condition that is contrary to what exists. In other words, it imposes a hypothetical condition.

While there is no uniform national rule, the dominant trend is for courts and tax tribunals to largely reject the unadjusted use of vacant comparables to value an occupied big-box store. The reasoning consistently turns on three points:

1. A thriving store does not share the highest and best use of a failed one. *Lowe's Home Centers, LLC v. City of Delavan*, 985 N.S.2d 69 (Wis. 2023). Property must be valued at its current use as a going concern, not as if long-term vacant. *Walmart, Inc. v. City of Davenport Iowa Bd. of Rev.*, 991 N.W.2d 784 (Iowa Ct. App. 2023).

2. Store vacancy tends to correlate with inferior location. *Menard, Inc., supra*.

3. Anti-competitive deed restrictions on resold big-box properties distort the comparables. *Menard, Inc. v. City of Escanaba*, 891 N.W.2d 1 (2016).

CONCLUSION AND ORDER

The Commission declines to adopt the "dark store" theory of valuing occupied, successful big-box retail stores such as the property at issue in this appeal. The decision of the Hearing Officer 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, 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 October 27th, 2026.

Gary Romine, Chairman

Debbi McGinnis, Commissioner

Greg Razer, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid October 30th, 2026, 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

Attachment: Decision and Order dated August 19, 2024

STATE TAX COMMISSION OF MISSOURI

LOWES HOME CENTERS LLC,	)	Appeal No. 21-52002
	)	Parcel No. 10-0.2-09-00-100-400-1
Complainant(s),	)	
v.	)	
CHRISTOPHER ESTES, ASSESSOR, COLE COUNTY, MISSOURI,	)	
Respondent.	)	

DECISION AND ORDER

Lowes Home Centers, LLC, (Complainant) appeals the Cole County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was $9,000,000. Complainant claims the subject property is overvalued and proposes a TVM of $4,100,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.[1]

Complainant was represented by counsel Abraham Benson. Respondent was represented by counsel, John Ruth. The evidentiary hearing was conducted on July 14,

[1] Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

2022, via WebEx before Senior Hearing Officer Erica Gage. This matter was assigned to Senior Hearing Officer Todd D. Wilson for Decision and Order on July 22, 2024.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 3441 Missouri Boulevard, Jefferson City, Cole County, Missouri. The parcel/locator number is 10-0.2-09-00-100-400-1. The property is operated as Lowes and is an owner-occupied big box retail store that has approximately 136,000 square-feet of gross building area and sits on approximately 24.55 acres of land. Attached to the primary structure is a 41,665 outside, partially covered retail/storage space. All building improvements were constructed in 2000. The subject property has approximately 750 feet of frontage along Missouri Boulevard in Jefferson City.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was $9,000,000. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was $9,000,000.

3. Complainant's Evidence. Complainant's testimony and evidence submitted a TVM for the subject property on January 1, 2021, of $4,100,000. Complainant submitted the following exhibits:

Exhibit	Description	Ruling
A	Written Direct Testimony of Laurence Allen	Admitted
B	Appraisal Report	Admitted
C	Information on other retail stores	Not offered
D	Sale Comp – Summary Report	Not offered
E	Excerpt from "The Appraisal of Real Estate"	Admitted

Respondent filed written objection to parts of Exhibit A and to Exhibit B for various reasons. Complainant responded to the objections. The Exhibits were received by the Hearing Officer with the decision on the objection to be set out in the Decision. The objections are overruled. Exhibits A & B are admitted and given the weight due.

Laurence Allen is employed by Allen & Associates as its President and chief appraiser. Mr. Allen is an MAI certified and Missouri Licensed real estate appraiser. Mr. Allen utilized the comparable sales and income approaches to value. The cost approach was not developed due to significant amount of depreciation and obsolescence associated with the subject building improvements, and because buyers and sellers would not utilize this approach. (WDT at 15-16). Mr. Allen testified he reconciled the comparable sales and income approaches and gave the sales comparison approach primary weight in the value conclusion. (WDT at 17)

Mr. Allen valued the fee simple interest in the subject real property rather than a leased fee interest. He testified that, "In a fee simple interest, a property is valued as if it is available to be leased or available to be occupied." (WDT at 6) In accordance with this definition, the 6 comparable sales that Mr. Allen used were all vacant, formerly occupied big box retail properties. Mr. Allen explained that there is a much higher demand for leased properties and much higher prices than vacant properties as there is value in the lease because it represents an income stream. (WDT at 7) According to a study that Mr. Allen referenced, a leased fee transaction will sell at roughly 3x a fee simple transaction. (WDT at 11) The sales comparison approach indicated a value of $30 per square foot or

$4,060,000 for the property.

Mr. Allen discussed two different types of rental rates for the income approach, those being the rental rate of existing buildings and built-to-suit rental rates for properties that had not been built yet. Mr. Allen found that built-to-suit rates are generally higher than market rates for existing buildings. Mr. Allen then identified 14 lease comps to review, but ultimately relied upon four leases of existing buildings to establish the rental rate of the subject property of $3.75 per square foot with a vacancy and credit loss factor of 5.0%. (WDT at 13) Based upon these calculations, Mr. Allen derived a stabilized net income of $417,854. Mr. Allen derived a capitalization rate of 8.50%, which when applied to the net income, gives a value of $4,915,929 and then deducted $152,097 for leasing commissions and a deduction of $593,268 for lost income to reach a final value of $4,170,000 (rounded). (WDT at 15) Mr. Allen then reconciled the sales comparison value of $4,060,000 and the income value of $4,170,000 to a final value of $4,100,000.

4. Official Notice Request by Respondent. Respondent requested the Senior Hearing Officer take Official Notice of the STC decision in *Lowes v. Estes*, Appeal No. 0652004 (finding that the purchase price of the underlying land was $7,467,648). Complainant objected to the Hearing Officer taking Official Notice of the prior decision as it was a value from 20 years prior to the relevant date and there is no other evidence showing possible changes in value. Agencies shall take official notice of all matters of which the courts take judicial notice. Section 536.070(6). Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke,* 129 S.W.2d 866,

869 (1939); *Barth v. Kansas City Elevated Railway Company,* 44 S.W. 788, 781 (1898). The prior decision is hereby Noticed and given the appropriate weight due.

5. Respondent's Evidence. Respondent submitted Exhibit 1 and the WDT of Robert E. Norris, MAI. Exhibit 1 is the Appraisal Report of Mr. Norris. Complainant filed written objections to various questions of the WDT and the Appraisal Report. The Exhibits were received by the Hearing Officer with the decision on the objection to be set out in the Decision. The objections are overruled. Exhibit 1 and the Written Direct Testimony of Mr. Norris are admitted and given the weight due.

Mr. Norris testified he is an independent fee appraiser who was hired by Cole County to appraise the subject property. Mr. Norris testified he valued the real estate to include the land, building and interest thereon. (Transcript page 39) Mr. Norris derived a value of the property as of January 1, 2021 of $8,750,000.

5. Value. The TVM of the subject property on January 1, 2021, was $9,000,000.

6. No Evidence of New Construction & Improvement. There was no evidence of new construction and improvement from January 1, 2021, to January 1, 2022, therefore the assessed value for 2021 remains the assessed value for 2022. Section 137.115.1.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo.

Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. These three approaches are the cost approach, the comparable sales approach, and the income approach (also known as income capitalization). *Id*. at 346-48; *Missouri Baptist Children's Home v. State Tax Comm'n ("MBCH")*, 867 S.W.2d 510, 511 n.3 (Mo. banc 1993).

The cost approach may be based on either reproduction cost or replacement cost. While reproduction cost is the best indicator of value for newer properties where the actual

costs of construction are available, replacement cost may be more appropriate for older properties. *Snider*, 156 S.W.3d at 341, 347.

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id*. at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id*. at 348.

The income approach "is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. "The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id*. "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use." *Id*. (internal quotation omitted). "When applying the income approach to valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered." *Id*.

2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id*.

3. Complainant's Burden of Proof

The BOE's valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage*, 722 S.W.2d at 77 (internal quotation omitted). Evidence

is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co*., 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri,* 596 S.W.2d 469, 471 (Mo. App. 1980).

4. Complainant Did Not Prove Overvaluation.

Although Complainant presented substantial evidence to support its opinion of value, Complainant's evidence was not both substantial and persuasive to rebut the BOE's value and to establish the TVM of the subject property on January 1, 2021.

The evidence established that Complainant's Appraiser gave the most weight to a sales comparison approach. Complainant's comparable sales consist completely of vacant properties and excluded built-to-suit or sale leaseback. Mr. Allen testified that sales leased at the time of purchase sell at around 3x the price of vacant properties. His analysis excluded these categories, but, in so doing, he did not develop an accurate measure for the market value. When the appraiser determines dollar adjustments are warranted for property rights, financing terms, conditions of sale, or market conditions, those adjustments are to be made and should be reflected in the appraisal report. Complainant presented no substantial and persuasive evidence indicating the property rights cannot be adjusted properly under USPAP standards or appraisal practice as to each of the subject properties.

The theory that a leased property is encumbered, and therefore not a preferable comparable, is unpersuasive, is speculative, and not a methodology utilized by Missouri Courts to value property. Courts have addressed a leasehold's non-impact on the transferability of a fee simple estate, stating, "Cases and treatises frequently describe a conveyance of real estate subject to a leasehold estate as a conveyance of a 'remainder' interest, *notwithstanding that fee simple title is what is conveyed.*" *Cooper v. Ratley*, 916 S. W.2d 868, 870 n. 3 (Mo. App. 1996) (emphasis added). The STC has recently decided *St. Louis BOA Plaza, LLC, et al. v. Stephen Conway, Assessor, City of St. Louis*, 17-20066, 17-20067, and 17-20068 (2019) and the Commission, in affirming the decision of the hearing officer, stated:

> "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 RSMo. In most cases, the value of the leased fee and the value of the leasehold should approximate the value of the fee simple unencumbered by a lease." (emphasis added).

"While the Commission has some discretion in deciding which approach best estimates the value of a particular property," the Commission's choice of valuation approach "must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors." *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). To assume that a vacant property is the best or most accurate measure for a value of the subject properties doesn't equate to the evidence. The present record contains no evidence to support Complainant's

theory. The record indicates a lack of sufficient comparable sales for the subject properties.

Complainant failed to provide substantial and persuasive evidence, therefore, the presumption that the BOE determination was correct has not been overcome and Respondent's evidence of value need not be considered.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The TVM of the subject property as of January 1, 2021, was $9,000,000.

Application for Review

A party may file with the Commission an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of Cole County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing

of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED on August 19th, 2024.
STATE TAX COMMISSION OF MISSOURI

Todd D. Wilson
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 August 23rd, 2024, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Stacy M. Ingle
Legal Assistant