STATE TAX COMMISSION OF MISSOURI

CAMPUS CREST OF COLUMBIA LLC and COPPER BEECH TOWN HOMES COMMUNITIES TWENTY LLC,
Complainants,

v.

KENNETH MOHR, ASSESSOR, BOONE COUNTY, MISSOURI,
Respondent.

Appeal Nos. 19-44511 and 19-44512
Parcel Nos. 17-701-00-30-001.00-01 and 17-701-00-24-001.00-01

DECISION AND ORDER

Campus Crest of Columbia LLC and Copper Beech Town Homes Communities Twenty LLC (Complainants) appeal the Boone County Board of Equalization's (BOE) decisions finding the true value in money (TVM) of the subject properties were $14,179,600 and $16,009,700 as of January 1, 2019.[1] Complainants allege overvaluation and discrimination and assert the TVMs of the subject real properties were $11,700,000 and $11,000,000 as of January 1, 2019.[2] Respondent asserts the TVMs were $15,500,000

[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.

and $17,380,000. The BOE decisions are SET ASIDE. The TVMs of the subject real properties as of January 1, 2019, were $11,700,000 and $11,000,000. Complainant is represented by counsel, John Lentell. Respondent is represented by counsel, CJ Dykehouse. The evidentiary hearing was held on November 8, 2022, via WebEx.

Background

This appeal involves off-campus apartment complexes in which most tenants are students at the University of Missouri-Columbia (University). Following campus protests during the Fall 2015 semester, student enrollment declined by approximately 16% from the Fall 2016 semester to the Fall 2018 semester. The enrollment decline resulted in increased vacancy at off-campus student apartment complexes, including the subject properties.

The dispute centers on competing estimates of prospective market recovery in the off-campus student housing market as of January 1, 2019. Because occupancy drives income, the question becomes whether the decreased occupancy in the off-campus student apartment market is a transitory fluctuation preceding a predictable recovery or a persistent risk justifying a lower value for the subject properties as of January 1, 2019.

FINDINGS OF FACT

1. The Subject Properties. The subject residential properties are located in Columbia, Missouri.

19-44511 Campus Crest of Columbia LLC (hereinafter Campus Crest), known as The Arch Apartments, consists of a 12.56 acre lot improved with 11 apartment buildings with the community clubhouse located on the ground floor of one of the buildings. The complex is a student apartment property that includes a mix two, three, and four bedroom units, totaling 216 units with 632 possible beds. The property is configured to serve the student market, as most tenants are University students. As of January 1, 2019, the improvements were 8 years old and in average condition. (Ex. A at 47)

19-44512 Copper Beech Town Homes Communities Twenty LLC (hereinafter Copper Beech) known as Copper Beech Townhomes, consists of an 18.6 acre lot improved with 25 apartment buildings. The complex is a student apartment property that includes a mix of one, two, three, and four bedroom units, totaling 214 units and 654 possible beds. The property is configured to serve the student market, as most tenants are University students. As of January 1, 2019, the improvements were 13 years old and in average condition. (Ex. A at 48)

2. BOE Valuation. The BOE classified the subject properties as residential, independently determining the TVMs were $14,179,600 and $16,009,700 as of January 1, 2019.

3. Respondent's Objections and Motion to Dismiss.

The Senior Hearing Officer (SHO) previously assigned to this appeal issued pre-trial discovery orders regarding dismissal and amending the schedule for discovery.[3] Prior to the Evidentiary hearing, Respondent filed written objections to Complainants' evidence, and within said objections, Respondent renewed their Motion to Dismiss to the current SHO. Respondent's written objections also requested the SHO to exclude admission of all

[3] Respondent filed a Motion to Dismiss due to Complainant's failure to timely submit exhibits. Complainants filed a Motion for Leave, asking the SHO to extend time for submission. The previously-assigned SHO entered an Order to Denying the Motion to Dismiss, granting Complainants time to submit their exhibits.

of Complainant's exhibits on the ground that Complainants had failed to comply with the scheduling order. The SHO noted the written objections and took them under advisement for ruling with the Decision and Order.

During the Evidentiary Hearing, when Complainants offered their exhibits for admission into the record, counsel for Respondent renewed the objection and asked for a continuing objection to the admission of Complainants' exhibits. The SHO issued an interlocutory ruling allowing the introduction and admission of Complainant's exhibits subject to the continuing objection and any specific objections Respondent might make with regard to individual exhibits and given that Complainants' witness' live testimony would be subject to cross examination.

In proceedings before the STC, the admission or exclusion of evidence is within the Hearing Officer's discretion. The STC, an administrative tribunal, like the trial court, has considerable discretion in the admission or exclusion of evidence. *Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 114 (Mo. banc 2015). Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence apply. *Homa v. Carthage R-IX School District*, 345 S.W.3d 266, 282 (Mo. App. S.D. 2011); see also *Luscombe v. Missouri State Bd. of Nursing*, 2013 WL 68899 (Mo. App. W.D. 2013) at 13. When a proper objection is made and preserved, statements in violation of evidentiary rules do not qualify as competent and substantial evidence to support an agency's decision. *Homa*, 345 S.W.3d at 282, quoting *Dorman v. State Bd. of Registration for Healing Arts*, 62 S.W.3d 446, 454 (Mo. App. W.D. 2001). However, Section

536.070(7) allows an administrative tribunal to receive proffered evidence into the record regardless of the merit of any evidentiary objections:

> Evidence to which an objection is sustained shall, at the request of the party seeking to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in the record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it is wholly irrelevant, repetitious, privileged, or unduly long . . . .

"Reception of hearsay or other inadmissible evidence does not dictate a reversal unless there is not sufficient competent evidence to sustain the decision." *Homa*, 345 S.W.3d at 282 (quotation omitted).

In this case, Respondent's continuing objections were grounded on a procedural error by Complainants that essentially created a violation of evidentiary rules, i.e., the failure to file discovery responses pursuant to the deadline set by the scheduling order left the exhibits at trial without foundation for their admission, making them hearsay. However, after reflecting upon the arguments of the parties and examining the evidence as it was presented under interlocutory order, the facts establish that Respondent was in fact provided with Complainants drafts submitted on September 9, 2022, and the final exhibits in the time leading up to the evidentiary hearing. Respondent was also afforded the opportunity to conduct cross-examination of the witness for Complainants and to present their own testimony evidence in rebuttal. Consequently, Respondent was not prejudiced by Complainants' technical non-compliance with the scheduling order. Consequently, in light of all of this information and in the interest of fairness to both parties, Respondent's written objections and the continuing objection to Complainants' evidence are hereby overruled.

4. Complainants' Evidence. Complainants introduced Exhibits A and B for each appeal. Exhibit A[4] in each appeal is an appraisal report prepared by John D. Moran, MAI. Exhibit B in each appeal is Moran's written direct testimony (WDT). Moran concluded the highest and best use of the subject property as improved is its current use as multifamily student housing. (Ex. A at 55; 56)

Moran emphasized the income approach and concluded the TVMs of the subject property as of January 1, 2019, were $11,700,000 and $11,000,000. (Ex. A at 78; 80) The Columbia apartment market has "two distinct market segments: the conventional market and student market." (Ex. A at 22; 21) The student market is divided into the downtown and off-campus markets. (Id.) The subject property is in the off-campus market. As of Fall 2018, the off-campus market had a 36% vacancy rate. (Id. at 28-31; 27-30) As of January 1, 2019, Campus Crest of Columbia LLC had a 44% vacancy rate and Copper Beech Town Homes Communities Twenty LLC had a 43% vacancy rate. (Id. at 35; 34) Meanwhile, the downtown market, comprising approximately 25% of the student market, had a 2.87% vacancy rate and substantially higher rental rates as of January 1, 2019. (Id. at 31; 30)

University enrollment significantly influences occupancy in the student housing market. (Ex. A at 31, 35; 30, 34) Following campus protests during the Fall 2015 semester, University enrollment declined from 35,448 students in 2015, to 29,866 students in 2018,

[4] All citations to Exhibit A with page numbers are in appeal order, with 19-44511, Campus Crest of Columbia LLC, listed first and 19-44512, Copper Beech Town Homes Communities Twenty LLC, listed second.

a decline of approximately 16%. The decline was most pronounced for incoming freshmen, which declined approximately 35%, from a high of 7,864 in 2014 to 5,065 in 2017. (Id. at 31; 30) Online enrollment has increased in recent years. The majority of online students do not seek student housing. (Id. at 37; 37)

The decreased enrollment impacted the downtown and off-campus markets differently. In the five years preceding January 1, 2019, the downtown market added three complexes with 1,413 new beds. (Ex. A at 32-34, 71; 31-33, 73) The downtown market attracted more tenants at "significantly higher" rents than the off-campus market while maintaining a vacancy rate of less than 3%. (Ex. A at 22, 34; 21, 33) By contrast, off-campus market vacancy increased from 10.43% in 2016 to 36.01% in 2018. (Id. At 32; 31) Both of the subjects' vacancy was consistently higher than market, increasing from 15% in 2016 to 44% in 2018 for Campus Crest and increasing from 6% in 2016 to 43% in 2018 for Copper Beech. (Id. at 36; 35) "The high vacancy is the result of the large supply of downtown student housing absorbing a proportionally higher number of students coupled with a decline in student enrollment." (Id. at 35; 34)

As of January, 1, 2019, University enrollment began to stabilize. Fall 2018 enrollment was down 3.3% compared to 2017, but freshman enrollment increased by nearly 9%, but still 30% less than the freshman class of 2014. (Ex. A at 35; 34) Moran noted "[g]rowth to the level achieved before 2016 is not projected at this time". (Ex. A at 35; 34) Further, because the "downtown market continues to capture a higher percentage of the available student supply" […] the "situation is expected to continue to affect the off-campus market for the foreseeable future." (Id. At 71-72; 73) Moran concludes, "projecting higher occupancy in the off campus student market is speculative at this time." (Id.)

Based on the increased supply in the more desirable downtown market and uncertain demand due to decreased University enrollment, Moran determined "[c]urrent trends suggest that it is reasonable to predict that the off campus market has significant risk and will not improve significantly in the near term." (Ex. A at 35; 34) Given these facts, Moran concluded "is our opinion with proper management and rental rate adjustments and better finishes, the subject has the potential to compete better". (Ex. A at 72; 73) This equates to a blended vacancy rate of 27% and 26%, respectively.

Moran analyzed nine off campus student apartment complexes to determine market rent. (Ex. A at 63; 64) For Fall 2018, rents for comparable four bedroom units ranged from $374 per bed to $599 per bed. (Id.) The subjects' Fall 2018 actual rental rates are consistent with market rates. (Id.) Rent concessions are common in the student apartment market. Concessions range from $0 to $3,000. (Ex. A at 72; 73) In 2018, Complainant offered concessions per occupied bed. Moran concluded no concessions were necessary in order for the subject to attain the projected 73% and 74% occupancy, respectively, and therefore made no adjustment for concessions. (Id.)

Expenses for comparable properties ranged from $2,172 or $2,361; respectively, to $3,606 per bed from 2016 through 2018. Campus Crest's expenses were projected be $2,367 per bed in 2019 and Copper Beech's expenses were projected be $2,221 per bed in 2019. Moran concluded the subject's projected expenses per bed in 2019 represented a reasonable market-based expense rate. (Ex. A at 75; 77) Based on the foregoing, the estimated net operating incomes as of January 1, 2019, was $1,237,239 and $1,141,822, respectively. (Ex. A at 68; 76)

Moran estimated an unloaded 7.0% capitalization rate based on four sales of comparable student apartment complexes in Columbia, three out-of-state sales, and Real Estate Report survey data for "first and second tier student apartment properties in the Midwest[.]" (Ex. A at 76; 78). The four local sales closed in 2016 at capitalization rates ranging from 6.02% to 7.09%. (Id. at 75; 77) The out-of-state sales sold at rates ranging from 5.38% to 6.05%. The survey data showed rates ranging from 6.5% for "first-tier" apartment complexes and 7.3% for "second-tier" complexes. Moran's estimated 7.0% capitalization rate accounts for the market-specific risks of lower demand due to decreased student enrollment, increased supply from competing complexes, and the risk in realizing the estimated 73% market occupancy. Adding the effective tax rate of 1.36% to the 7.0% capitalization rate results in a loaded capitalization rate of 8.36%. (Ex. A at 76; 78)

For Campus Crest, dividing the stabilized NOI estimate of $1,237,239 by the loaded capitalization rate of 8.36% equates to a rounded market value of $14,800,000 (rounded). (Ex. A at 74) Moran deducted $500,000 in lost income to account for the lease-up period, $740,000 in entrepreneurial incentive, and $1,900,000 in renovations, for a total discount of $3,140,000, resulting in an estimated market value of $11,700,000. (Ex. A at 78) Moran depreciated the replacement cost of furniture, fixtures and equipment by 50% to estimate value of the subject's personal property at $700,000, resulting in a total real property value of $11,700,000. (Ex. A at 1, 79)

For Copper Beech, dividing the stabilized NOI estimate of $1,414,822 by the loaded capitalization rate of 8.36% equates to a rounded market value of $13,700,000 (rounded). (Ex. A at 78) Moran deducted $335,000 in lost income to account for the lease-up period, $685,000 in entrepreneurial incentive, and $1,700,000 in renovations, for a total discount of $2,720,000, resulting in an estimated market value of $11,000,000. (Ex. A at 80) Moran depreciated the replacement cost of furniture, fixtures and equipment by 50% to estimate value of the subject's personal property at $700,000, resulting in a total real property value of $11,000,000. (Ex. A at 1, 81)

Moran compiled data for a sales comparison approach. However, because "there have been no sales of student off campus properties since the market downturn, this approach is given nominal weight and considered inconclusive." (Id. at 60; 61)

5. Respondent's Evidence. Respondent submitted the following Exhibits 1 through 7 for each appeal, which are admitted into evidence.

19-44511 Exhibits	**Description**	**Decision**
1	WDT of Daniel Kann, MAI MSRE	Admitted
2	Appraisal Report – Campus Crest (Arch), Columbia MO	Admitted
3	Additional WDT of Daniel Kann, MAI MSRE	Admitted
4	Appraisal review of Complainant's appraisal	Admitted
5	USPAP Advisory Opinion #34	Admitted
6	Listing Sheet of Wylder Student Housing Sale	Admitted
7	Additional WDT of Daniel Kann, MAI MSRE (10/27/22)	Admitted
19-44512 Exhibits	**Description**	**Decision**
1	WDT of Daniel Kann, MAI MSRE	Admitted
2	Appraisal Report – Copper Beech Townhomes, Columbia MO	Admitted
3	Additional WDT of Daniel Kann, MAI MSRE	Admitted
4	Appraisal review of Complainant's appraisal	Admitted
5	USPAP Advisory Opinion #34	Admitted

6	Listing Sheet of Wylder Student Housing Sale	Admitted
7	Additional WDT of Daniel Kann, MAI MSRE (10/27/22)	Admitted

Exhibits 1 and 2: Kann WDT and Appraisal Report

Consistent with Moran's appraisal report, Kann noted the "average rent is higher for projects closer to campus." (Exs. 2 at 13) Like Moran, Kann emphasized student enrollment is a primary driver of occupancy for the subject property, (Id. at 14-17 and 43-44), and concluded the highest and best use of the subject is continued "use as an off-campus student housing project." (Id.)

Kann cited University enrollment data from 2009 through 2021. (Ex. 2 at 14) From 2009 to 2015, enrollment increased from 31,314 to 35,448, an increase of 13.2%. (Id.) Consistent with Moran's data, Kann noted enrollment declined to 29,886 in 2018, a decline of 15.7% from 2015. (Id.) Beginning with the Fall 2019 academic term – after the January 1, 2019, valuation date – University enrollment increased from 29,886 to 30,046, an increase of 0.5%. (Id. at 14) Freshman enrollment increased from 5,517 in 2018 to 6,537 for the Fall 2019 academic term, an increase of 18.4%. (Id.) Kann concluded the Fall 2019 enrollment figures confirmed the enrollment decline was temporary. (Id.)

After concluding the decrease in University enrollment since 2015 was temporary, Kann cited vacancy date from May 2020 for four comparable properties as confirmation of the favorable occupancy trend. In pertinent part, Kann summarized the data as follows:

	Comp. 1	Comp. 2	Comp. 3	Comp. 4	Average
Occupancy January 2019	52.5%	65%	46.6%	30.8%	48.7%
Occupancy May 2020	92%	87.1%	75%	100%	88.5%

(Ex. 2 at 44; 42) Based on market data, Kann projected the subject properties to have a stabilized occupancy at 85%. (Id.)

Kann determined the subjects' "stabilized market rent" was "at 85% occupancy." (Ex. 2 at 42) The estimated market rents of $468 and $465; respectively, were based on the subjects' various contract rents per bed, asking rents per bed, and the adjusted rents in five comparable off-campus student apartment complexes. (Id. At 60; 59) Applying per bed monthly market rent to the subject properties' yields a potential gross income of $3,547,200 and $3,652,200; respectively. (Id. At 60; 61) After deducting vacancy loss and concessions, Kann estimated an effective gross income. Kann then deducted estimated expenses from the effective gross income to yield NOIs of $1,581,343 and $1,682,938. (Id.)

Kann developed a 7% capitalization rate for the subject properties; based on the band of investment, surveys, and recent sales. (Ex. 2 at 69-70; 68-69) Kann concluded the band of investment method supported a 7.3% capitalization rate. A survey of 71 sales of student apartment housing in the Midwest averaged 6.23%. Finally, Kann emphasized eight sales of student apartment complexes in the Columbia market. The sales occurred between June 2013 and November 2016, prior to the protracted decline in University enrollment. The capitalization rates for these sales ranged from 5.75% to 7.16%, with a median of 6.35%. Kann concluded:

> There has been a lack of sales activity in 2017 to 2018 due to the declining enrollment. Based on the comparable sales with consideration given to declining demand and fewer transactions, a higher overall capitalization rate

> is warranted for the subject. We estimate an overall capitalization rate of 7.00% for the subject property.

(Ex. 2 at 70; 69) Adding the effective tax rate of 1.36% results in an 8.36% loaded capitalization rate.

Dividing the NOIs of $1,512,912 and $1,682,938 by the 8.36% loaded capitalization rate yields the estimated values. This value is premised on the NOI generated from the estimated 85% occupancy. Kann accounted for the fact the subjects' occupancy as of January 1, 2019, were 56% and 57%, respectively, rather than 85%, by lost rent and entrepreneurial incentive necessary to achieve stabilized occupancy. Kann found a final rounded value estimate of $15,500,000 and $17,380,000, respectively, for the subject real properties. (Ex. 2 at 73; 72)

Kann developed a brief sales comparison approach analysis. (Ex. 2 at 45; 43) The sales comparison approach was used only as "a test of reasonableness" of the income approach. (Id. at 72; 70) Kann determined there were "no market-oriented sales of student housing projects since November 2016." (Id. at 45; 43) Kann analyzed four sales, including the sale of the subject properties. Although two of the transactions were bankruptcy sales, Kann concluded both represented "good indicator of pricing in the current environment." (Id. At 45; 43) Based on the comparable sales, a price ranging from $12,640,000 to $25,300,000 and $13,080,000 to $26,150,000, respectively, or $20,000 to $40,000 per bedroom, is reasonable for the subjects. (Id. At 73; 72)

Exhibits 3 and 4: Rebuttal WDT and Appraisal Review

Kann critiqued Moran's conclusions regarding market occupancy. Kann asserted Moran underestimated the subject's value because his analysis is not based on "stabilized" market conditions. (Ex. 3 at 3) Stabilized market conditions represent the average conditions expected over a specific period or the economic life of the property. (Id. at 3)

Kann concluded Moran's 73% and 74% occupancy rates underestimate stabilized market occupancy because the enrollment decline following the 2015 campus protests caused a "temporary decline in asking rents and a shift to the recession stage of the market cycle." (Ex. 4 at 4) Kann supported this conclusion with a graph depicting "four stages of the market cycle according to the Appraisal Institute." The four stages are expansion, decline, recession, and recovery. (Id. at 5) The graph depicts an oscillating line representing "price," with the highest price in the expansion stage, followed by decreasing price in the decline stage, a low point in the recession stage, followed by increasing price in the recovery stage.

Kann asserted that as of January 1, 2019, the subject property was "in the recession phase, nearing the recovery stage." (Id. at 4) Kann used the graph to illustrate his assertion that "[a]s new supply is limited (cost is greater than value) and student enrollment returns to a normalized level, occupancy and rents will revert towards the long-term average (recovery and expansion phase of the market cycle shown above)." (Id. at 5) Kann concluded:

> Based on the various definitions, historical enrollment, and the prior performance of the off-campus student housing market, it is reasonable and most probable to assume the market will eventually recover to reflect a

> normalized long-term level of occupancy. This is supported by a survey of comparable and competitive off-campus student housing properties in May 2020, which supports a recovering market.

(Id. at 10)

Exhibits 5, 6, & 7: USPAP Advisory Opinion #34, The Wylder, and WDT

These exhibits were presented regarding a recent sale of student apartment housing in the Columbia, Missouri market in August 2022. (Ex. 6 and 7) Kann's presentation of this information serves to demonstrate the "recovering market due to limited supply and upward enrollment trends". (Ex 7 at 2) This is a prospective sale as it occurs 44 months after January 1, 2019, which Kann reports is acceptable under USPAP Opinion 34, which reads "with market evidence that data subsequent to the effective date was consistent with market expectations as of the effective date, the subsequent data should be used." (Ex. 5 at 156)

6. Value. The TVMs of the subject real properties as of January 1, 2019, were $11,700,000 and $11,000,000.

CONCLUSIONS OF LAW

1. Assessment and Valuation. Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). The TVM is "the fair market value of the property on the valuation date[.]" *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.

"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." *Snider*, 156 S.W.3d at 347; *see also Equitable Life Assur. Soc. of U.S./Marriott Hotels, Inc. v. State Tax Comm'n*, 852 S.W.2d 376, 380 (Mo. App. E.D. 1993) (noting the income approach discounts "future dollars to present levels in order to compensate for risk and the elapsed time required to recapture the initial investment"). "This 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. As both appraisers concluded, the income approach is the preferable valuation method for the subject property.

To estimate the present worth of future income, the income approach employs "a capitalization method of valuation … derived from the market, which reduces the need for unsubstantiated, subjective judgments." *Drury Chesterfield, Inc. v. Muehlheausler*, 347 S.W.3d 107, 113 (Mo. App. E.D. 2011). The income approach "is applied in three steps:

(1) net income is forecasted for a specified number of years; (2) an appropriate discount factor or capitalization rate is selected; and (3) the proper discounting and/or capitalization procedure is applied." *Id.*

In order to obtain a reduction in assessed value based upon discrimination, the Complainants must (1) prove the true value in money of their property on January 1, 2019; and (2) show an intentional plan of discrimination by the assessing officials resulting in an assessment of that property at a greater percentage of value than other property, generally, within the same class within the same taxing jurisdiction. *Koplar v. State Tax Commission,* 321 S.W.2d 686, 690, 695 (Mo. 1959). Evidence of value and assessments of a few properties does not prove discrimination. Substantial evidence must show that all other property in the same class, generally, is actually undervalued. *State ex rel. Plantz v. State Tax Commission,* 384 S.W.2d 565, 568 (Mo. 1964). The difference in the assessment ratio of the subject property the average assessment ratio in the subject county must be shown to be grossly excessive. *Savage v. State Tax Commission of Missouri,* 722 S.W.2d 72, 79 (Mo. banc 1986). No other methodology is sufficient to establish discrimination. *Cupples-Hesse, supra.*

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). "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).

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 overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE value 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 Produced Substantial and Persuasive Evidence of Overvaluation.

Complainant produced substantial and persuasive evidence of value, supported by market conditions showing a significant, multi-year decline in University enrollment coupled with increased supply in the more desirable downtown student housing market. Value typically varies "directly with changes in demand and inversely with changes in supply." Appraisal Institute, *The Appraisal of Real Estate* 28 (14^{th} ed. 2013). There is no evidence the subject properties' market reacts atypically to supply and demand constraints. Thus, as demand decreases and supply increases, the subject's value decreases. As of

January 1, 2019, the substantial and persuasive evidence in the record shows there was persistent decreased demand due to decreased student enrollment and persistent increased supply due to the addition of beds in the more desirable downtown market. Complainant's analysis captures this current and prospective market reality, while persuasively showing these factors substantially reduced the expected market-based occupancy and income in the subject's off-campus student housing market, with an attendant increase in investment risk. Complainants' occupancy rates and capitalization rate are supported by substantial and persuasive evidence showing a prospective and persistent lag in demand coupled with increased competition from the more desirable downtown student housing market.

Occupancy

The substantial and persuasive evidence shows that as of January 1, 2019, prospective University enrollment was likely to be less than 35,000 students. The decrease in University enrollment relative to the record-high 2015 level dovetails with the fact the addition of over 1,400 beds in the more desirable downtown market created persistent excess supply. Given the relatively inelastic demand from finite student enrollment, and the increased supply in the more desirable downtown market, the subject property faces a risk that "the growth of one market area may lead to the downfall of a competing market area." *The Appraisal of Real Estate* 137. These facts show the most reasonable long-term projection is for less demand than in 2014 and 2015, coupled with increased supply in the downtown student market. Moran's estimated occupancy rates capture these market-specific supply and demand dynamics and is a persuasive estimate of the subject's stabilized market occupancy as of January 1, 2019.

As of January 1, 2019, the off-campus market occupancy rate was approximately 64%. Respondent's proposed 85% market occupancy is premised on two main assumptions: (1) that University enrollment would revert to a "normalized" level of 35,000 students and (2) that new supply would be limited as the market inevitably progressed through the market cycle and returned to equilibrium. The record does not persuasively support these assumptions.

On this record, Kann's assumption that "normalized" enrollment is 35,000 students represents a high-water mark for student enrollment, not the norm. University enrollment met the 35,000 threshold in only ***two*** of the 10 years preceding January 1, 2019. Enrollment exceeded 34,000 in 2012 and 2013, and in the remaining six years ranged from 29,866 to 33,805. Enrollment declined from 35,488 in 2015 to 29,866 in 2018, a decline of 16%. (Ex. A at 14) The fact enrollment met the 35,000 threshold in only two of preceding 10 years, coupled with the sustained decline in the three years immediately preceding the valuation date, does not provide a persuasive basis for concluding "normalized" University enrollment is 35,000. Instead, the data persuasively supported Moran's assertion that "[f]uture enrollment numbers are unknown, but expected to rebound at levels lower than historical highs, but higher than recent years." (Ex. A at 48) Finally, even if enrollment increased to 35,000, the enrollment growth "would have only a small impact on the large number of vacant beds in this market." (Ex. A at 35)

Kann's assertion that market cycles show the subject's market will revert to 85% occupancy is similarly unpersuasive. The hypothetical, graphical illustration of general market cycles included in Exhibit 4, the USPAP Advisory Opinion included in Exhibit 5, the sale of The Wlyder in Exhibit 6, and the associated rebuttal testimony in Exhibit 3 and 7 is only marginally relevant. The graph lacks data and in no way reflects the specific market dynamics of the subject's market. The 14th Edition of *The Appraisal of Real Estate* makes this point: "[a]lthough these stages can describe the life cycle of market areas in a general way, they ***should not be used as specific guides to market trends***. *Id.* at 136. Real estate markets have "no set life expectancy, and the life-cycle is not an inevitable progression." *Id*. In other words, the progression through market cycles is driven by the actual supply and demand dynamics in a specific market, not reversion to an inevitable mean.

More fundamentally, the subject's May 2020 occupancy and a subsequent sale in August 2022 are minimally relevant to the TVM as of January 1, 2019. (Ex. 6) For purposes of this appeal, the subject's value is determined as of January 1, 2019. Section 137.115.1; Section 138.430.1. Events subsequent to the valuation date are typically irrelevant. In *Ithaca Trust Co., Executor and Trustee, v. United States*, 279 U.S. 151 (1929), the Court explained this principle in a case involving the valuation of an estate as of the testator's death:

> The first impression is that it is absurd to resort to statistical probabilities when you know the fact. But this is due to inaccurate thinking. The estate so far as may be is settled as of the date of the testator's death. The tax is on the act of the testator not on the receipt of property by the legatees. Therefore the value of the thing to be taxed must be estimated as of the time when the act is done. But the value of property at a given time depends upon the relative intensity of the social desire for it at that time, expressed in the money that it would bring in the market. Like all values, as the word is used by the law, it depends largely on more or less certain prophecies of the future, and the value is no less real at that time if later the prophecy turns out false than when it comes out true.

Id. (Internal citations omitted).[5]

The logic of *Ithaca Trust* applies with equal force here, where the benchmark is the subject's TVM as of January 1, 2019. The relevance of the May 2020 survey data and subsequent sale data depends on the reasonable expectations of a willing buyer and seller on the valuation date. *Mo. Baptist Children's Home*, 867 S.W.2d at 512 (holding fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller"). There is no indication that on January 1, 2019, the May 2020

[5] *See also Paloian v. LaSalle Bank, N.A.*, 619 F.3d 688, 693 (7th Cir. 2010) (holding when value is determined as of a certain date "[h]indsight bias is to be fought rather than embraced"); *First Nat. Bank of Kenosha v. United States*, 763 F.2d 891, 893–94 (7th Cir. 1985) (citing *Ithaca Trust* and holding "[b]ecause property is valued as of the date of death, the only relevant facts are those that this hypothetical buyer and seller could reasonably have been expected to know at that time"); *Bos. Gas Co. v. Bd. of Assessors of Bos.*, 941 N.E.2d 595, 611 (Mass. 2011) (holding post-valuation facts risk "hindsight bias" and are admissible only if the "information … would be knowable to a hypothetical buyer and seller of the subject property as of the assessment date"); *Eop-Nicollet Mall, L.L.C. v. Cnty. of Hennepin*, 2005 WL 443844, at *10 (Minn. Tax Feb. 11, 2005) (holding evidence of market decline following the Enron bankruptcy and September 11, 2001 attacks had "no relevance" to the property's value as of January 1, 2000, or January 1, 2001, because "[w]hile hindsight may give us a better indication of how the market has indeed performed since the assessment date, we are bound to make a determination as to the value of the properties as of the assessment date and not in retrospect"); *In re Appeal of ANR Pipeline Co.*, 79 P.3d 751, 764 (Kan. 2003) (holding the "admission of actual income figures for future years beyond the valuation date contradicts the principle of anticipation and undermines and distorts an income approach to value"); *Sabin v. Dep't of Revenue*, 528 P.2d 69, 72 n.11 (Or. 1974) (noting "[w]here facts relating to the value of the assessed property are not known at the time of the assessment, and if known at that time would have affected the market value of the property as, for example, where it is later discovered that the property contains valuable minerals, hindsight acquired by a later discovery of such facts should not be employed to change the valuation found on the assessment date"); *City of New Brunswick v. State Div. of Tax Appeals,* 189 A.2d 702, 706 (N.J. 1963) (holding lease terms renegotiated after the assessment date should not be considered because value must be based "upon what was known and anticipated as of the assessing date, unaided by hindsight").

occupancy data or existence of a sale in 2022 was known or reasonably predictable. Instead, the substantial and persuasive evidence in the record shows that as of January 1, 2019, the current reality and prospective outlook indicated the subjects' off-campus market would experience a persistent reduction in demand due to decreased enrollment and a persistent increase in supply due to competition from the downtown market. The relevance of the May 2020 occupancy data and the subsequent sale in Exhibit 6 is premised on the type of hindsight bias inconsistent with the STC's statutory obligation to determine the "fair market value of the property on the valuation date[.]" *Snider*, 156 S.W.3d at 346. Therefore, Moran properly gave the May 2020 occupancy data "minimal consideration in developing an opinion of value as of January 1, 2019[.]" (Ex. A at 34; 33) The substantial and persuasive evidence in the record supports Moran's estimated market occupancy of 73% or 74%. Respondent's estimated 85% occupancy rate assumes student enrollment and demand will inevitably revert to an historical mean, relies on post-valuation data, and inadequately accounts for increased supply in the more desirable downtown market.

As of January 1, 2019, the enrollment decline and increased competition from the downtown student apartment market resulted in occupancy rates significantly below 85%. The substantial and persuasive evidence in the record indicates that as of January 1, 2019, reasonable projections of future occupancy rates are closer to Complainant's proposed occupancy rates. The substantial and persuasive evidence in the record shows the TVMs of the subject properties as of January 1, 2019, were $11,700,000 and $11,000,000.

5. Complainants Did Not Prove Discrimination.

Where there is a claim of discrimination based upon a lack of valuation consistency, Complainants have the burden to prove the level of assessment for the subject property in 2019. This is done by independently determining the market value of the subject property and dividing the market value into the assessed value of the property as determined by the assessor's office.

Complainants must then prove the average level of assessment for residential property in Boone County for 2019. This is done by (a) independently determining the market value of a representative sample of residential properties in Boone County; (b) determining the assessed value placed on the property by the assessor's office for the relevant year; (c) dividing the assessed value by the market value to determine the level of assessment for each property in the sample; and (d) determining the mean and median of the results.

The difference between the actual assessment level of the subject property and the average level of assessment for all residential property, taken from a sufficient representative sample in Boone County must demonstrate a disparity that is grossly excessive. *Savage, supra.*

Complainants' discrimination claim fails because they failed to establish the assessment ratio. Without establishing their ratio, they cannot establish that they are being assessed at a higher percentage of market value that any other property. They have not demonstrated that a statistically significant number of other residential properties within Boone County are being assessed at a lower ratio of market value than their property. Because Complainants failed to establish that they are being assessed at a higher percentage of market value than a statistically significant number of other properties in Boone County, they have failed to establish discrimination.

CONCLUSION AND ORDER

The BOE's decisions are set aside. The TVMs of the subject properties as of January 1, 2019, were $11,700,000 and $11,000,000.

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 Boone County, 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 September 29, 2023.

Erica M. Gage
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 September 29, 2023, 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