



STATE TAX COMMISSION OF MISSOURI

LIBERTY K LLC,) Appeal No. 21-32124
) Parcel/locator No(s): 14-303-00-04-024.00
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 Complainant(s),)
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 v.)
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 TRACY BALDWIN, ASSESSOR,)
 CLAY COUNTY, MISSOURI,)
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 Respondent.)

DECISION AND ORDER

Liberty K LLC (Complainant) appeals the Clay County Board of Equalization's (BOE) decision determining the true value in money (TVM) of the subject commercial property as of January 1, 2021. Complainant did not produce substantial and persuasive evidence of overvaluation. The BOE's decision is affirmed.¹

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.

Complainant was represented by counsel, Ryan Mason. Respondent was represented by counsel, Lucas Wallingford. The evidentiary hearing was conducted on November 30, 2022, via WebEx.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 8540 N. Church Road in Kansas City, Clay County, Missouri. The parcel number is 14-303-00-04-024.00.

2. Property Description. The subject is improved with a one-story approximately 88,305 square-foot, big-box single-tenant retail building, located on approximately 7.47 acres of land. Of that total gross building area, approximately 80,706 square-feet is retail space, 7,848 square-feet is a combined office and storage spaces, and 7,187 square-feet is storage mezzanine. The site has approximately 510 feet of frontage along Stoneridge Parkway. The improvements were constructed in 2004. The subject has been renovated within the last five years. The effective age of the improvements has been estimated at 10 years. As of January 1, 2021, the subject was 100% occupied by Kohl's.

3. Respondent and the BOE. Respondent assessed the subject property and determined the TVM on January 1, 2021, was \$9,229,400. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$8,177,248.

4. Complainant's Evidence. Complainant submitted the TVM of the subject property on January 1, 2021, was \$6,120,000. Complainant presented Thomas Scaletty's Written Direct testimony (WDT) and Summary Appraisal Report identified as Exhibit A, which are entered into evidence.

Complainant presented testimony from witness Thomas Scaletty, a MAI designated commercial real estate appraiser with approximately 30 years of appraisal experience. Mr. Scaletty composed an appraisal report for Complainant in which he developed the sales comparison, cost, and income approaches to estimate the TVM in fee simple of the subject property on January 1, 2021. Mr. Scaletty testified the sales comparison approach was considered to provide the most reliable indication of market value and the income approach was relied upon significantly as support for the sales comparison approach. (Exhibit A at 76) Mr. Scaletty testified that he did not apply the cost approach. Mr. Scaletty testified he arrived at a final reconciled opinion of value of \$6,180,000.

Regarding the sales comparison approach, Mr. Scaletty testified he chose nine comparables. He testified he was able to calculate the TVM of the property if it were vacant and available for occupancy at the time of appraisal or the fee simple interest. He excluded built-to-suit and leasebacks because the nature of these sales reflect decreasing sale prices and increasing capitalization rates as the remaining lease term declines. (Exhibit A). He testified that these sales are not indicative of an investment in a fee simple estate in the subject, because sales leaseback transactions may have purchase prices that are significantly higher, so too many adjustments would need to be made and make the transaction unreliable as a comparable. (Exhibit A) He testified built-to-suit and sales leaseback are generally viewed as a financing vehicle; therefore, in his opinion, those sales would be encumbered and not a reflection of a fee simple interest. (WDT and Exhibit A) Regarding fee simple sales, Mr. Scaletty testified that these represent the best way to

estimate market value, and these transactions involved properties that were vacant at the time of their sale or were vacated by the seller for occupancy by the buyer. (Exhibit A)

Mr. Scaletty testified he considered nine verified sales of regional properties in Missouri and surrounding states. Some of the comparables were occupied at the time of sale, but Mr. Scaletty testified those leases were set to expire and the impact of value was minimal as the occupant was to vacate the property upon termination of the lease. Prior to adjustments, the comparable sales price range was \$39.62 to \$92.13 per square-foot. (Exhibit A) Following adjustments for differences in time/market conditions, age/condition, building size, and location, the improved sales indicate a narrowed value range for the subject from \$53.44 to \$91.21 per square-foot. (Exhibit A at 57) Relying on this data, the Mr. Scaletty estimated the retrospective market value for the subject, as of January 1, 2021, equal to \$70.00 per square-foot. (Exhibit A) The TVM under sales comparison was \$6,180,000 (calculated at \$70.00 per square-foot x 88,305 square-feet = \$6,181,350, rounded). (Exhibit A at 57)

Regarding the income approach, Mr. Scaletty testified that second generation leased properties were the appropriate category of comparables for this approach. Mr. Scaletty testified that he did not use the lease for the subject property in this approach, nor did he review it, but its terms were summarized on page 56 of his report. He did not rely on the terms of the subject property's lease, as "this build-to-suit lease rate is above market" and "tenant pays an above market rate for a turn-key lease that provides a prototype building allowing for economies of scale in the overall company"; therefore not useful in determining income. (Exhibit A at 56-57)

Mr. Scaletty utilized six rent comparables located in Kansas and Missouri. Following adjustments for differences in lease terms, age/condition, location, etc., he calculated a lease rate range for each property and calculated a NOI to arrive at a capitalization rate. Mr. Scaletty calculated a lease rate range between \$5.00 and \$13.00 per net rentable square-foot. (Exhibit A) Relying on the data, he estimated a typical market lease rate of \$7.00 per square-foot. (Exhibit A) After expenses, Mr. Scaletty found a NOI of \$5.73 per square-foot. (Exhibit A) Mr. Scaletty estimated an adjusted direct capitalization rate of 8.50% and found a projected net operating income for the subject property of \$505,719, which reflects the stabilized income potential for the first year of the projections. (Exhibit A) His reliance on this approach was as support to the sales comparison approach. (Exhibit A) His TVM under the income approach was \$5,950,000 (rounded).

5. Respondent's Evidence. Respondent submitted the TVM of the subject property on January 1, 2021, of \$9,189,700. Respondent submitted WDT of Grant Knauff and Exhibit 1, Property Record Card and Cost and Income Approaches, Exhibit 2, Valuation Report and appendix. Mr. Knauff testified he is an employee of Clay County, Missouri, Assessor's office with more than 7 years' experience appraising property in Missouri. Mr. Knauff testified Exhibit 1 and 2 utilize all three approaches to value, but ultimately gives most emphasis to the income approach to value the subject property with consideration given to the sales comparison and cost approaches. (WDT)

For the cost approach, Mr. Knauff used three land comparable sales, making various adjustments to find a land value for the subject property. He utilized Marshall Valuation

Service (MVS), which is a proven national cost service, to value the subject property's improvements. (WDT and Exhibit 2) Mr. Knauff testified he estimated the replacement cost new of the improvements and the accrued depreciation, then the land value. His overall TVM under the cost approach was \$7,559,000 (rounded).

For the sales comparison approach, Mr. Knauff used three comparables. Mr. Knauff chose economically similar comparables to the subject property, including a recent sale of the subject property itself. (WDT and Exhibit 2) He utilized sales data in and around subject market area for comparison. (Exhibit 2) Mr. Knauff's comparables have the same or very similar highest and best use to the subject property. (Exhibit 2) He found adjusted comparable sales values per square-foot range from \$97.08 - \$133.62 and made adjustments for time from the sale date to effective appraisal date at 4% per year increase, to develop an average of \$112.79 per square-foot for the subject. (WDT and Exhibit 2)

Mr. Knauff's income approach considered the rental data of the subject property. He noted that a county questionnaire on current leases median rents for B, C, D facilities range from \$5.58 to \$9.53 per square-foot (on a triple net or absolute basis) and the subject property's current rental rate as found in the lease was \$8.90 per square foot. (Exhibit 2 at 16-17) Mr. Knauff used the Avison Young Q1 2020 Cap Rate Report (National) and The Boulder Group (Midwest) to develop his loaded capitalization rate of 7.75%. (Exhibit 2) He found an NOI of \$712,201, when multiplied by the capitalization rate, his conclusion of a TVM under the income approach was \$9,189,690. (Exhibit 2)

6. Evidence of New Construction & Improvement. There was no evidence of new construction and improvements from January 1, 2021, to January 1, 2022. Section 137.115.1.

7. Value. The TVM of the subject property on January 1, 2021, was \$8,177,248.

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. 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 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).

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.

Complainant did not produce substantial and persuasive evidence of the alleged TVM for the subject property. Respondent although not required, presented evidence that supports the BOE's value.

The comparable sales approach was utilized as Complainant's primary approach to value. The evidence in the record indicates Complainant's appraiser sought to exclude built-to-suit or sale leaseback sales as comparables. By rejecting the use of sale leasebacks or built-to-suit comparables, Complainant did not develop an accurate measure for the market value. Complainant presented no substantial and persuasive evidence indicating the property rights cannot be adjusted properly under USPAP standards or appraisal practice to the subject property. If the appraiser determines dollar adjustments are warranted for property rights, financing terms, conditions of sale, or market conditions, those adjustments can and should be made. The theory that a leased property is encumbered, and therefore not a preferable comparable is unpersuasive, is speculative, and is not a methodology utilized in 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 property doesn't equate to evidence. The present record contains no evidence to support the theory. The record indicates a lack of sufficient comparable sales for Complainant. There was no

substantial or persuasive evidence to support Complainant's TVM under the sales comparison approach.

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. Mr. Scaletty determined there is sufficient market-based income data for retail properties to estimate the potential NOI of the subject property and utilize the income approach. "One way to estimate fair market value is with an income approach capitalizing the income the real property could generate. *Snider*, 156 S.W.3d at 347. Mr. Scaletty's income approach did develop a value by superimposing a market-based "potential" NOI and capitalization rate on the subject's real estate to estimate the TVM. Mr. Scaletty's finding of value is ultimately not persuasive due to the lack of comparables that truly parallel the subject property's potential income. There was no substantial or persuasive evidence to support Complainant's TVM under the income approach under current Missouri law. Although not required given the burden of proof, Respondent presented exhibits and testimony that support the BOE's valuation of the subject property.

CONCLUSION AND ORDER

The BOE decision is AFFIRMED. The TVM of the subject property, as of January 1, 2021, was \$8,177,248.

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 Clay 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 September 29, 2023.
STATE TAX COMMISSION OF MISSOURI

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