



STATE TAX COMMISSION OF MISSOURI

ROBERT J. HELLMAN JR.,) Appeal No. 21-18396 through 21-18404
) Parcel/Locator: (see table below)
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)
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) Complainant(s),
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)
)
) v.
)
)
) JAKE ZIMMERMAN, ASSESSOR,
)
) ST. LOUIS COUNTY, MISSOURI,
)
) Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On July 14, 2023, State Tax Commission (STC) Senior Hearing Officer Benjamin C. Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the valuations of the subject properties as of January 1, 2021. The BOE had affirmed the valuations of the subject properties made by Jake Zimmerman, Assessor, St. Louis County, Missouri, (Respondent). Robert J. Hellman Jr. (Complainant) timely filed an Application for Review of the Decision and Order of the Hearing Officer.

We AFFIRM the Decision of the Hearing Officer. Segments of the Hearing Officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. Subject Properties. The subject properties are described as follows:

Appeal No.	Parcel No.	Address	Description
21-18396	20N110355	12051 Gailcrest Lane	Complainant’s residence which he built in 1990 after purchasing the land. The house is a single family two story conventional brick home with a total of 8,133 square feet of living space, including five bedrooms, six full bathrooms, and three half bathrooms, and located in the Town and Country area of St. Louis County. The home sits on about two acres.
21-18397	21S320086	334 Turnbury Circle	Single family ranch style home built in the 1960s. The house has been vacant since 2017 because of extensive water damage. The house has four bedrooms and two and a half bathrooms.
21-18398	24V610705	102 Carriage View Dr.	Two story attached single family home. Complainant purchased it around 1989. The home has two bedrooms, two and a half bathrooms, and about 1,200 square feet of living space. There has been some water damage to the property. Complainant’s friend is living in the home.
21-18399	23Q610800	1220 H Wicklow Rd.	Attached home/condo in the Manchester, Missouri area. The house has two bedrooms and one and half bathrooms and about 1,156 square feet of living space.
21-18400	23Q610819	1220 I Wicklow Rd.	Attached home/condo in the Manchester, Missouri area. The house has two bedrooms and one and half bathrooms.
21-18401	22S121240	106 Shadalane Walk A	888 square foot condo with two bedrooms and one and a half bathrooms.

21-18402	22S110910	102 Shadalane Walk D	808 square foot condo with two bedrooms and one and half bathrooms. Complainant is currently renting the property.
21-18403	22S110929	102 Shadalane Walk E	808 square foot condo with two bedrooms and one and half bathrooms. Complainant is currently renting the property.
21-18404	22S110956	102 Shadalane Walk H	808 square foot condo with two bedrooms and one and half bathrooms.

2. Assessment and Valuation. Respondent and the BOE determined that each respective subject property's value, as of January 1, 2021, was as set forth in the table, below:

Appeal No.	Parcel No.	Respondent's Valuation	BOE Valuation
21-18396	20N110355	\$2,469,900	\$2,469,900
21-18397	21S320086	\$278,200	\$278,200
21-18398	24V610705	\$179,500	\$179,500
21-18399	23Q610800	\$115,900	\$115,900
21-18400	23Q610819	\$125,200	\$125,200
21-18401	22S121240	\$83,900	\$83,900
21-18402	22S110910	\$80,400	\$80,400
21-18403	22S110929	\$80,400	\$80,400
21-18404	22S110956	\$80,400	\$80,400

Complainant timely appealed to the BOE, which affirmed the values set by Respondent. Complainant then timely appealed to the STC. The eight appeals filed by Complainant were consolidated for efficiency. Complainant alleged overvaluation and discrimination as the bases for each of his appeals. The appeals proceeded to an Evidentiary Hearing in which Complainant appeared pro se and Respondent was represented by counsel.

Complainant submitted a combined 68-page exhibit labeled throughout as A1 through A33. Pages A1 through A10 refer to Appeal No. 21-18396, A11 through A24 refer to Appeal No. 21-18397, A25 through A31 refer to Appeal Nos. 21-18399 and 21-18400, and A32 through A33 refer to Appeal No. 21-18401. The Exhibit contains photographs of subject properties, various bids and proposals from contractors, and other miscellaneous information. The exhibit was admitted without objection. Complainant testified as to the condition issues affecting each of the eight subject properties. Complainant testified that, in his opinion, the condition issues negatively affected the subject properties' values. Complainant was not a licensed appraiser and did not offer ratio studies to support his claims of discrimination in assessment for any of the subject properties.

Respondent introduced Exhibit 1 for each appeal, which was a copy of the BOE decision letter related to each subject property and dated October 29, 2021. Exhibit 1 was received without objection.

The Hearing Officer subsequently entered the Decision affirming the decision of the BOE. Complainant subsequently filed his application for review.

CONCLUSIONS OF LAW

Complainant's Points on Review

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

- (1) the Decision was "made against an individual that does not have any Ownership or legal standing in the case" due to a misspelling of Complainant's last name on the Decision, i.e., Hellman instead of the correct spelling Hellmann;
- (2) the Decision did not take into account the condition of the subject properties and the costs to bring them up to the conditions of comparable properties used by Respondent and the BOE to determine TVM;
- (3) the Decision did not address Complainant's appeals regarding the 2020 assessments for two parcels for which Complainant claimed to have filed appeals;
- (4) the Decision was not issued within 60 days of the Evidentiary Hearing.

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).

Commission's Ruling

We find that all of Complainant's points on review are without merit; accordingly, Complainant's Application for Review is DENIED. However, we have provided our reasons, *ex gratia*, for denying Complainant's Application for Review.

With regard to Complainant's first point on Application for Review, it is the parcel locator number, the physical address, and the appeal number that identify a parcel of real property on appeal before the STC, not the precise spelling of the property owner's name in the Decision. Furthermore, upon review of the record, the Hearing Officer conducted the hearing in compliance with the statutes and regulations that govern the conduct of hearings.

With regard to Complainant's second point on the Application for Review, we find the allegations to be without merit for the following reasons:

The Hearing Officer correctly applied the substantial and persuasive evidence standard to the evidence presented in an appeal before the STC. The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. There was no presumption in favor of the BOE's valuation in this appeal, but Complainant still had the burden of proving that the valuation placed on the subject property was erroneous and of establishing what should be the value of the subject property. Neither Complainant's exhibits nor his testimony utilized the comparable sales

approach, income approach, or cost approach to support his proposed values, nor did he offer an appraisal of any of the eight properties as evidence of the TVM of those properties as of January 1, 2021. The STC “cannot base its decision on opinion evidence that fails to consider information that should have been considered” under a recognized approach to value, *Snider*, 156 S.W.3d at 348.

Complainant did not prove discrimination for the subject properties. Missouri courts have consistently held that a taxpayer alleging discrimination must show (1) the true value in money of his or her property as a necessary part of her discrimination claim; and (2) the proper method of determining discrimination is to compare the actual level of assessment of the subject property as determined by the assessor to the common level of assessment for the subject property’s subclass. *Crown Diversified Industries, Corp. v. Zimmerman*, 2023 WL 4277484 (Mo. App. E.D. 2023), citing *State ex rel. Ashby Road Partners, LLC v. State Tax Com'n*, 297 S.W.3d 80, 85 (Mo. banc 2009) and *Cupples Hesse Corp. v. State Tax Com'n*, 329 S.W.2d 696, 700 (Mo. 1959). Regarding the first point in the discrimination analysis, Complainant did not rebut the correctness of the BOE’s valuation or prove his proposed TVM for each subject property. As discussed above, Complainant did not present substantial and persuasive evidence rebutting the presumption of correctness of the BOE’s values and establishing that his values were correct. Complainant did not present any recent comparable sales or a properly-authenticated appraisal report supported by the testimony of the appraiser who performed the appraisal to establish the TVMs were lower than what was found by the BOE. Therefore, Complainant failed to establish a market value which is the first step in the ratio discrimination analysis.

Furthermore, Complainant presented no evidence of properties for comparison with the subject property in order to establish an intentional plan of discrimination by St. Louis County. There was no evidence presented that a statistically significant number of other residential properties within St. Louis County are being assessed at a lower ratio of market value than the subject property. No ratio studies were offered in support of Complainant's claims. For example, Complainant testified that 12051 Gailcrest Lane was appraised higher than neighboring properties based on his observations, but again presented no persuasive comparable sales in support of his testimony. Because Complainant failed to establish the market value of the subject property and failed to establish that it is being assessed at a higher percentage of market value than a statistically significant number of other properties in St. Louis County, the claim of discrimination for each appeal fails.

With regard to Complainant's third point on the Application for Review, the Evidentiary Hearing here was conducted to determine the values of the eight subject properties as of January 1, 2021, not as of January 1, 2020. The STC cannot hear and decide claims related to previous years' assessments, particularly where appeals for those previous years were not before the STC in the first instance.

Finally, with regard to Complainant's fourth point, the Hearing Officer did not err in issuing the Decision more than 60 days after the Evidentiary Hearing. Section 138.431.6 states that STC decisions shall be issued within 60 days after the evidentiary hearing or the date on which the last party involved in the matter files a brief, whichever occurs later. The word "shall" in this context is intended to be directory and not mandatory. *See Frye v. Levy*, 440 S.W.3d 405, 410 (Mo. Banc 2014) ("As with any statutory construction question,

the answer to whether a statute is ‘mandatory’ or ‘directory’ turns on the language chosen by the legislature . . . a statute that imposes an obligation will be construed to be ‘mandatory’ . . . if the statute explicitly provides what the consequence of non-compliance will be . . . and . . . the required action can be taken only before the stated deadline or can be performed only in the stated manner.”). If a statute imposes an obligation and does not explicitly allow only compliant actions, the statute likely is “directory” and the non-compliance is not subject to sanction by the courts. *Frye*, 440 S.W.3d at 410.

The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer’s Decision and the application for review of Complainant, affirms the Hearing Officer’s decision. The record supports the Hearing Officer’s findings. The Commission finds that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895- 96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err in affirming the BOE’s determinations of value and finding the TVMs of the subject properties based upon the substantial and persuasive evidence in the record.

ORDER

The Decision of the Hearing Officer is AFFIRMED. Segments of the Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, may be incorporated herein, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 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.

If no judicial review is made within 30 days, this decision and order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED December 15, 2023.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, 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 December 15, 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



STATE TAX COMMISSION OF MISSOURI

ROBERT J. HELLMAN JR.,) Appeal No. 21-18396 through 21-18404
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JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Robert J. Hellman Jr. (Complainant) appealed assessments made by the Board of Equalization of St. Louis County (BOE) on each of the subject parcels on the grounds of overvaluation and discrimination.¹ The assessments made by the BOE are AFFIRMED. Complainant failed to present substantial and persuasive evidence to rebut the presumption of correct assessment by the BOE as to each of the subject properties.

¹ Complainant timely filed a complaint for review of assessment for each of these respective appeals. 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.

The evidentiary hearing for these appeals was held on June 17, 2022, via Webex. Complainant appeared pro se. Respondent was represented by counsel, Tim Bowe. The appeals were heard and decided by Senior Hearing Officer Benjamin C. Slawson. For efficiency, the appeals have been consolidated in this Decision and Order.

FINDINGS OF FACT

3. Subject Properties. The subject properties are described as follows:

Appeal No.	Parcel No.	Address	Description
21-18396	20N110355	12051 Gailcrest Lane	Complainant’s residence which he built in 1990 after purchasing the land. The house is a single family two story conventional brick home with a total of 8,133 square feet of living space, including five bedrooms, six full bathrooms, and three half bathrooms, and located in the Town and Country area of St. Louis County. The home sits on about two acres.
21-18397	21S320086	334 Turnbury Circle	Single family ranch style home built in the 1960s. The house has been vacant since 2017 because of extensive water damage. The house

			has four bedrooms and two and a half bathrooms.
21-18398	24V610705	102 Carriage View Dr.	Two story attached single family home. Complainant purchased it around 1989. The home has two bedrooms, two and a half bathrooms, and about 1,200 square feet of living space. There has been some water damage to the property. Complainant's friend is living in the home.
21-18399	23Q610800	1220 H Wicklow Rd.	Attached home/condo in the Manchester, Missouri area. The house has two bedrooms and one and half bathrooms and about 1,156 square feet of living space.
21-18400	23Q610819	1220 I Wicklow Rd.	Attached home/condo in the Manchester, Missouri area. The house has two bedrooms and one and half bathrooms.

21-18401	22S121240	106 Shadalane Walk A	888 square foot condo with two bedrooms and one and a half bathrooms.
21-18402	22S110910	102 Shadalane Walk D	808 square foot condo with two bedrooms and one and half bathrooms. Complainant is currently renting the property.
21-18403	22S110929	102 Shadalane Walk E	808 square foot condo with two bedrooms and one and half bathrooms. Complainant is currently renting the property.
21-18404	22S110956	102 Shadalane Walk H	808 square foot condo with two bedrooms and one and half bathrooms.

4. Assessment and Valuation. Respondent and the BOE determined that each respective subject property's value as of January 1, 2021 as is set forth in the table, below:

Appeal No.	Parcel No.	Respondent's Valuation	BOE Valuation
21-18396	20N110355	\$2,469,900	\$2,469,900
21-18397	21S320086	\$278,200	\$278,200
21-18398	24V610705	\$179,500	\$179,500

21-18399	23Q610800	\$115,900	\$115,900
21-18400	23Q610819	\$125,200	\$125,200
21-18401	22S121240	\$83,900	\$83,900
21-18402	22S110910	\$80,400	\$80,400
21-18403	22S110929	\$80,400	\$80,400
21-18404	22S110956	\$80,400	\$80,400

5. Complainant's Proposed Values.

Appeal No.	Parcel No.	Complainant's Proposed TVM
21-18396	20N110355	\$1,299,900
21-18397	21S320086	\$111,500
21-18398	24V610705	\$139,900
21-18399	23Q610800	\$53,400
21-18400	23Q610819	\$33,400
21-18401	22S121240	\$54,100
21-18402	22S110910	\$68,400
21-18403	22S110929	\$54,100
21-18404	22S110956	\$54,100

6. Complainant's Evidence. For the eight appeals, Complainant submitted a combined 68 page Exhibit labeled throughout as A1 through A33. Pages A1 through A10

pertain to Appeal No. 21-18396, A11 through A24 pertain to Appeal No. 21-18397, A25 through A31 pertain to Appeal Nos. 21-18399 and 21-18400, and A32 through A33 pertain to Appeal No. 21-18401. The Exhibit contains photographs of subject properties, various bids and proposals from contractors, and other miscellaneous information. The exhibit was admitted without objection.

Complainant testified for all eight appeals. For Appeal No 21-18396, Complainant testified that the outdoor structures such as the deck, pool, and tennis court are suffering from extensive water damage. Complainant also testified that the home needs a new roof. Complainant offered photographs of some of these issues. Complainant also offered city permits and estimates from contractors showing the cost of creating a pavilion and remodeling these outdoor features of the home. Complainant stated that he thinks it will cost him a total of about a million dollars to do these repairs and complete the remodel. To obtain his opinion of value for the subject, Complainant took Respondent's appraised value and subtracted these "damages" due to the condition of the outdoor features of the property. In support of Complainant's claim of discrimination, Complainant testified that he has noticed houses selling near his own for a less dollar per square foot price than the price per square foot at which Respondent assessed his home. No specific comparable sales were identified by Complainant.

For Appeal No. 21-18397, Complainant testified that the property is vacant, suffers from extensive water damage, and that the City of Ballwin notified Complainant that it must approve occupancy minimums prior to anyone moving into or renting the home. Complainant offered photographs in support of showing the condition of the property.

Complainant also offered a number of bids from contractors showing the cost to repair some of these condition issues.

For 21-18399 and 21-18400, Complainant testified that there has been water intrusion into the condo units due to a flood. Complainant offered a \$52,300 estimate from a rehab company (A29 through A31) to show the estimated cost of remodeling these units. For 21-18401, Complainant testified that the unit has suffered from theft. Complainant offered pictures of the stolen HVAC system and estimate from Classic Aire Care. Complainant testified he reached his opinion of value by taking off the replacement cost of the HVAC system and other “damages” repair costs which he believes devalue the property. For the remaining appeals, Complainant did not offer documentary evidence but testified that in his opinion each subject property’s condition issues negatively affect value. Complainant is not a licensed appraiser, nor did he offer ratio studies in support of his discrimination claims for these appeals.

4. Respondent's Evidence. Respondent introduced Exhibit 1 for each respective appeal, a copy of the BOE decision letter dated October 29, 2021 stating the BOE TVM for the respective subject property as of January 1, 2021. The Exhibits were admitted without any legal objection.

5. Value. The TVM of the subject properties on January 1, 2021 were as follows:

Appeal No.	Parcel No.	TVM
21-18396	20N110355	\$2,469,900
21-18398	24V610705	\$174,500

21-18399	23Q610800	\$115,900
21-18400	23Q610819	\$125,200
21-18401	22S121240	\$83,400
21-18402	22S110910	\$80,400
21-18403	22S110929	\$80,400
21-18404	22S110956	\$80,400

CONCLUSIONS OF LAW

1. Assessment, Valuation, and Discrimination.

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 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.

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.

To obtain a reduction in assessed value based upon discrimination, a complaining taxpayer must (1) prove the true value, also known as the fair market value (FMV), of the subject property as of the taxing date, and (2) show an intentional plan of discrimination by the assessor resulting in an assessment at a greater percentage of value than other property within the same class and the same taxing district, or, in the absence of such an intentional plan, show that the level of assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment. *Crown Diversified Industries, Corp. v. Zimmerman*, 2023 WL 4277484 (Mo. App. E.D. 2023), citing *State ex rel. Ashby Road Partners, LLC v. State Tax Com'n*, 297 S.W.3d 80, 85 (Mo. banc 2009) and *Cupples Hesse Corp. v. State Tax Com'n*, 329 S.W.2d 696, 700 (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* at 79. 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). 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 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 establish that the BOE valuation was erroneous for each respective appeal, nor did Complainant produce substantial and persuasive evidence establishing his proposed opinions of value as to the TVM for any of the subject properties as of January 1, 2021. Neither Complainant's exhibits nor his testimony utilized the comparable sales approach, income approach, or cost approach to support his proposed values, nor did he offer an appraisal of any of the eight properties as evidence of the TVM of those properties as of January 1, 2021.

Even if Complainant had rebutted the presumption of correct valuation by the BOE, Complainant has not proven that the TVM of the subject property is the amount he has

proposed for each property. While a property owner's opinion of value is generally admissible, the opinion lacks "probative value where it is shown to have been based upon improper elements or an improper foundation." *Shelby Cty. R-IV Sch. Dist. v. Herman*, 392 S.W.2d 609, 613 (Mo. 1965); see also *Cohen v. Bushmeyer*, 251 S.W.3d 345, 349 (Mo. App. W.D. 2008) (noting a property owner's opinion of value loses probative value when it rests on an improper foundation).

The comparable sales approach is the method used to determine the TVM of the subject 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." *Snider*, 156 S.W.3d at 347-48 (internal quotation omitted). Complainant failed to offer any comparable sales for consideration.

Complainant's opinions of value are based upon deducting value from Respondent's appraised value for each subject property depending on condition issues and costs to remodel and fix these issues. This is not an accepted approach to value in Missouri. Complainant's proposed values are speculative, and Complainant has not met his burden of proof in any of these appeals.

7. Complainant Did Not Prove Discrimination.

Complainant did not prove discrimination for the subject properties. Missouri courts have consistently held that (1) a taxpayer alleging discrimination must show the true value in money of his or her property as a necessary part of her discrimination claim; and (2) the proper method of determining discrimination is to compare the actual level of assessment of the subject property as determined by the assessor to the common level of assessment

for the subject property's subclass. *Crown Diversified Industries, Corp. v. Zimmerman*, 2023 WL 4277484 (Mo. App. E.D. 2023), citing *State ex rel. Ashby Road Partners, LLC v. State Tax Com'n*, 297 S.W.3d 80, 85 (Mo. banc 2009) and *Cupples Hesse Corp. v. State Tax Com'n*, 329 S.W.2d 696, 700 (Mo. 1959). Regarding the first point, Complainant did not rebut the correctness of the BOE's valuation or prove his proposed TVM for each subject property. As discussed above, Complainant did not present substantial and persuasive evidence rebutting the presumption of correctness of the BOE's values and establishing that his values were correct. Complainant did not present any recent comparable sales or a properly-authenticated appraisal report supported by the testimony of the appraiser who performed the appraisal to establish the TVMs were lower than what was found by the BOE. Therefore, Complainant failed to establish a market value which is the first step in the ratio discrimination analysis.

Regarding the second point, Complainant presented no evidence of properties for comparison with the subject property in order to establish an intentional plan of discrimination by St. Louis County. There was no evidence presented that a statistically significant number of other residential properties within St. Louis County are being assessed at a lower ratio of market value than the subject property. No ratio studies were offered in support of Complainant's claims. Complainant testified that 12051 Gailcrest Lane was appraised higher than neighboring properties based on his observations, but again presented no persuasive comparable sales in support of his testimony. Because the Complainant failed to establish the market value of the subject property and failed to establish that it is being assessed at a higher percentage of market value than a statistically

significant number of other properties in St. Louis County, the claim of discrimination for each appeal fails.

CONCLUSION AND ORDER

The BOE decisions are affirmed. The TVM of the subject properties as of January 1, 2021, with assessed values, are as follows:

Appeal No.	Parcel No.	TVM	Assessed Value
21-18396	20N110355	\$2,469,900	\$469,281
21-18398	24V610705	\$174,500	\$33,155
21-18399	23Q610800	\$115,900	\$22,021
21-18400	23Q610819	\$125,200	\$23,788
21-18401	22S121240	\$83,400	\$15,846
21-18402	22S110910	\$80,400	\$15,276
21-18403	22S110929	\$80,400	\$15,276
21-18404	22S110956	\$80,400	\$15,276

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 St. Louis 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 July 14, 2023.
STATE TAX COMMISSION OF MISSOURI

Benjamin C. Slawson
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 July 14, 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