



STATE TAX COMMISSION OF MISSOURI

LION PETROLEUM, INC.) Appeal No. 21-110465, 21-110466, 21-
Complainant(s),) 110467, and 21-110468
) Parcel/locator No(s): 11N230501,
) 11G430611, 10O120172, and
) 16H521287
)
v.)
)
JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On June 16, 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, set by the St. Louis County Board of Equalization (BOE). Lion Petroleum, Inc. (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

The subject properties are described as follows:

Appeal Number	Parcel/Locator No.	Property Description
21-110465	11N230501	12218 St. Charles Rock Rd., fuel service and convenience station
21-110466	11G430611	10280 West Florissant Ave., currently a vacant lot but at other times held a service station or convenience station
21-110467	10O120172	3402 S. Rider Trail, fuel service and convenience station
21-110468	16H521287	1800 Lucas and Hunt Rd., previously a service station and is now a small, independent restaurant

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/Locator No.	Respondent's TVM	BOE TVM
21-110465	11N230501	\$850,900	\$850,900
21-110466	11G430611	\$193,800	\$193,800
21-110467	10O120172	\$1,517,800	\$1,517,800
21-110468	16H521287	\$268,000	\$268,000

Complainant timely appealed to the BOE, which affirmed the values set by Respondent. Complainant then timely appealed to the STC. The four appeals filed by Complainant were consolidated for efficiency. Complainant alleged overvaluation as the basis for each of its appeals. The appeals proceeded to an Evidentiary Hearing on January 30, 2023, in which Complainant was represented by counsel Ryan Prisock and Daniel Peters of Amundsen Davis law firm. Respondent was represented by counsel Steve Robson of the St. Louis County Counselor’s Office.

Complainant submitted the following exhibits for the respective appeals. All of Complainant’s exhibits were admitted without objection from Respondent.

Appeal	Exhibit	Description
21-110465	1	Photographs of subject property
21-110465	2	Aerial photographs of subject property
21-110465	3	St. Louis County Database Information for comparables
21-110465	4	Comparative analysis of sales values of subject property and nearby properties
21-110465	5	2021 Change of Assessment Notice for subject property
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21-110468	7	2021 BOE Assessment Appeal documents
21-110468	8	STC Complaint for Review
21-110468	9	October 2021 Lease agreement between Complainant and Global Mart, LLC

Complainant also submitted the written direct testimony (WDT) of Zubair Lodhi, the President of Complainant, for each respective appeal. In addition to the WDT, Mr. Lodhi testified at the hearing. Mr. Lodhi is regularly involved in the purchase and sale of properties on behalf of Complainant and has done so for over twenty years. Through that experience he has acquired general knowledge of the value of real estate in the St. Louis County area. Mr. Lodhi is not a licensed appraiser in the State of Missouri.

For 12218 St. Charles Rock Rd., Mr. Lodhi testified that Complainant believes the property is overvalued because the convenience store on the property is old, requires regular maintenance, and Complainant incurs continual costs to keep the property in marketable and usable condition. Mr. Lodhi also mentioned that a traffic median lowers the amount of ingress and egress to the property.

For 10280 West Florissant Ave., currently a vacant lot, Mr. Lodhi testified that Complainant believes the property is overvalued due to the property producing no revenue, having limited use, and Complainant has been forced to incur expenses to repair

the gravel. Mr. Lodhi also noted that Complainant has not found any interested buyers to purchase the property.

For 3402 S. Rider Trail, Mr. Lodhi testified that Complainant believes the property is overvalued due to the fact the convenience store on the property requires high maintenance costs and receives lower visits from customers. Mr. Lodhi testified that Complainant purchased the property in 2019 but that he did not recall the purchase price.

For 4251 Lindell Blvd., Mr. Lodhi testified that the subject property was originally intended to be a service station and convenience store, but due to the prohibitive cost of maintenance it can now no longer be used for that purpose. Instead, the property is being used as a small restaurant. Complainant submitted an October 2021 lease agreement (Exhibit 9) for the property between Complainant and Global Mart, LLC with an initial rent of \$2,000 per month.

For all four properties, and in support of Complainant's claims of overvaluation, Mr. Lodhi performed a comparative analysis of sales of other lots in the area as well as 2021 valuation data by Respondent of properties he found to be similar to the subjects (Exhibit 4 for each appeal). Using this sale data and comparative assessment data, Mr. Lodhi calculated a price per square foot for the comparable properties and then came up with a proposed price per square foot and resulting value for each subject property. Mr. Lodhi testified that he considered the best use of each comparable commercial property and whether that commercial activity could be a profitable enterprise. He also looked at location, square footage, and condition of the property as other factors when selecting the

comparable properties. However, Mr. Lodhi admitted upon cross examination that he did not make any market-based adjustments to the sales prices or Respondent's appraised values of these other properties to account for the differences between them and the subjects. Mr. Lodhi also did not research the motivations of the buyers and sellers in the comparable sales that he found for each subject property, nor did he examine the conditions of the comparable sales.

Respondent submitted an Exhibit 1 for each respective appeal. Exhibit 1 is the Board of Equalization Decision Letter stating the BOE's 2021 TVM for each respective subject property. At hearing, Complainant objected to the admission of the Exhibits 1 on the grounds that they were not authenticated. Complainant's objection was overruled, and the Exhibits 1 were admitted.

The Hearing Officer affirmed the decisions of the BOE. Complainant timely filed an Application for Review. Respondent timely filed a Response to the Application for Review.

CONCLUSIONS OF LAW

Complainant's Points on Review

In its Application for Review, Complainant asserts that the Hearing Officer's Decision was erroneous because the Decision did not find Complainant's evidence, particularly Mr. Lodhi's "voluminous expert testimony" and testimony as owner of the properties, was substantial and persuasive evidence to rebut the presumption that the BOE Decision was correct.

Standard of Review

A party subject to a Decision and Order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the Hearing Officer the Decision and Order of the Hearing Officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). "The extent of that review extends to credibility as well as questions of fact." *Lebanon Properties I*, 66 S.W.3d at 770. The Commission "is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to." *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to

establish that the BOE's assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary, or capricious." *See, Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975). "For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48. The STC has wide discretion in selecting the appropriate valuation method but "cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation

approach." *Id.*, at 348.

Commission's Ruling

We find that Complainant's point on review is 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.

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 the testimony utilized the comparable sales approach, income approach, or cost approach to support the proposed values, nor was an appraisal offered of any of the 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. *See Snider*, 156 S.W.3d at 348. While a property owner's opinion of his property's value is generally admissible, the opinion "is without 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).

Complainant failed to utilize one of the three recognized methods of proving valuation. Although Mr. Lodhi was the owner of the properties, an opinion of value without evidence based upon at least one of the three recognized methods of proving valuation is speculative and is not persuasive.

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.

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 January 26, 2024
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 January 26, 2024, to:

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

Stacy M. Ingle
Legal Assistant



STATE TAX COMMISSION OF MISSOURI

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JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
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DECISION AND ORDER

Lion Petroleum, Inc. (Complainant) appeals¹ the St. Louis County Board of Equalization's (BOE) decisions determining the true value in money (TVM) of four commercial properties as of January 1, 2021. Complainants did not produce substantial and persuasive evidence of overvaluation. The BOE decisions are therefore affirmed.

Complainant was represented by counsel Ryan Prisock and Daniel Peters of the

¹ Complainant timely filed complaints for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainants' appeals. Mo. Const. art. X, sec. 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

Amundsen Davis law firm. Respondent was represented by counsel Steve Robson of the St. Louis County Counselor’s Office. The evidentiary hearing for all four appeals was conducted on January 30, 2023, via WebEx. The case was 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

1. Subject Property. The subject properties are commercial properties located in St. Louis County, Missouri. Complainant owns the subject properties, and they are identified as follows:

Appeal Number	Parcel/Locator No.	Property Description
21-110465	11N230501	12218 St. Charles Rock Rd., fuel service and convenience station
21-110466	11G430611	10280 West Florissant Ave., currently a vacant lot but at other times held a service station or convenience station
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21-110468	16H521287	1800 Lucas and Hunt Rd., previously a service station and is now a small, independent restaurant

2. Respondent and BOE. Respondent and the BOE classified the subject properties as commercial and determined the TVM as of January 1, 2021, was as shown in the following table:

Appeal No.	Parcel/Locator No.	Respondent’s TVM	BOE TVM
21-110465	11N230501	\$850,900	\$850,900
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21-110468	16H521287	\$268,000	\$268,000

3. Complainant's Proposed Values. Complainant's opinions of value for the subject properties are as follows:

Appeal No.	Parcel/Locator No.	Complainant's TVM
21-110465	11N230501	\$523,515.70
21-110466	11G430611	\$100,000
21-110467	10O120172	\$644,061.60
21-110468	16H521287	\$125,000

4. Complainant's Evidence. Complainant submitted the following exhibits for the respective appeals. All of Complainant's exhibits were admitted without objection from Respondent.

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regular maintenance, and that Complainant incurs continual costs to keep the property in marketable and usable condition. Mr. Lodhi also mentioned that a traffic median lowers the amount of ingress and egress to the property.

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For all four properties, and in support of Complainant's claims of overvaluation, Mr. Lodhi performed a comparative analysis of sales of other lots in the area as well as 2021 valuation data by Respondent of properties he found to be similar to the subjects

(Exhibit 4 for each appeal). Using this sale data and comparative assessment data, Mr. Lodhi calculated a price per square foot for the comparable properties and then came up with a proposed price per square foot and resulting value for each subject property. Mr. Lodhi testified that he considered the best use of each comparable commercial property and whether that commercial activity could be a profitable enterprise. He also looked at location, square footage, and condition of the property as other factors when selecting the comparables. However, Mr. Lodhi admitted upon cross examination that he did not make any market-based adjustments to the sales prices or Respondent's appraised values of these other properties to account for the differences between them and the subjects. Mr. Lodhi also did not research the motivations of the buyers and sellers in the comparable sales that he found for each subject property, nor did he examine the conditions of the sales of the comparable sales.

4. Respondent's Evidence. Respondent submitted an Exhibit 1 for each respective appeal. Exhibit 1 is the Board of Equalization Decision Letter stating the BOE's 2021 TVM for each respective subject property. At hearing, Complainant objected to the admission of the Exhibits 1 on the grounds that they were not authenticated. Complainant's objection was overruled and the Exhibits 1 were admitted.

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

Appeal No.	TVM
21-110465	\$850,900
21-110466	\$193,800

21-110467	\$1,517,800
21-110468	\$268,000

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. 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 cost approach may be based on either reproduction cost or replacement cost. The reproduction cost, or cost of construction, is a determination of the cost of constructing an exact duplicate of an improved property using the same materials and construction standards. The replacement cost is an estimate of the cost of constructing a building with the same utility as the building being appraised but with modern materials and according to current standards, design and layout. The cost approach is most appropriate when the property being valued has been recently improved with structures that conform to the highest and best use of the property or when the property has unique or specialized improvements for which there are no comparables in the market. While reproduction cost is the best indicator of value for newer properties where the actual costs of construction are available, replacement cost may be more appropriate for older properties. *Snider*, 156 S.W. 3d at 347 (citations omitted).

The income approach "is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. "The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id.* "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its

highest and best use." *Id.* (internal quotation omitted). "When applying the income approach to valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered." *Id.*

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.

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

To obtain a reduction in assessed valuation based upon an alleged overvaluation, the Complainant must prove the true value in money of the subject property on the subject tax day. *Hermel, Inc., v. State Tax Commission*, 564 S.W.2d 888, 897 (Mo. banc 1978). True value in money is defined as the price that the subject property would bring when offered for sale by one willing but not obligated to sell it and bought by one willing or desirous to purchase but not compelled to do so. *Rinehart v. Bateman*, 363 S.W.3d 357, 365 (Mo. App. W.D. 2012); *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008); *Greene County v. Hermel, Inc.*, 511 S.W.2d 762, 771 (Mo. 1974). True value in money is defined in terms of value in exchange and not in terms of value in use. *Stephen & Stephen Properties, Inc. v. State Tax Commission*, 499 S.W.2d 798, 801-803 (Mo. 1973). In sum, true value in money is the fair market value of the subject property on the valuation date. *Hermel, Inc.*, 564 S.W.2d at 897.

“‘True value’ is never an absolute figure, but is merely an estimate of the fair market value on the valuation date.” *Drury Chesterfield, Inc., v. Muehlheausler*, 347 S.W.3d 107, 112 (Mo. App. E.D. 2011), *citing St. Joe Minerals Corp. v. State Tax Comm’n of Mo.*, 854 S.W.2d 526, 529 (Mo. App. E.D. 1993). “Fair market value typically is defined as the price which the property would bring when offered for sale by a willing seller who is not obligated to sell, and purchased by a willing buyer who is not

compelled to buy.” *Drury Chesterfield, Inc.*, 347 S.W.3d at 112 (quotation omitted).

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.* If Respondent is seeking to prove a value different than that set by the BOE, then Respondent is required to rebut the BOE presumption with substantial and persuasive evidence. The BOE’s valuation is presumed to be an independent valuation.

"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).

There is no presumption that the taxpayer’s opinion is correct. The taxpayer in a STC appeal still bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, the Complainant bears the burden of proving the vital

elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary or capricious.” *Westwood Partnership*, 103 S.W.3d 152 (Mo. App. E.D. 2003).

4. Complainant Did Not Prove Overvaluation.

Complainant did not produce substantial and persuasive evidence rebutting the presumptively correct BOE value in each of these appeals. Complainant did not produce evidence supporting a comparable sales approach, income approach, or cost approach to value to prove overvaluation.

Complainant submitted comparative assessment evidence (Exhibit 4 for each appeal) comparing Respondent’s appraised values of other parcels to the subject properties. Although reasonable to assume that two similar properties should be valued similarly, comparative assessment is not the method used to find a TVM for a property and thus Complainant’s observations concerning comparative assessment of other properties is not persuasive evidence.

Sales Comparison

Complainant listed comparable sales in its evidence for each appeal (Exhibit 4 for each respective appeal), but Complainant’s evidence does not make adjustments to comparable properties to find a proper appraisal comparison. Also, 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, not commercial property like the subject properties.

"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 record indicates a lack of sufficient comparable sales to determine a TVM for each subject. Complainant's evidence does not adequately prove that the sales listed in Exhibit 4 were sales at arms-length, nor that the properties themselves were similar to the subjects. Some sales in Complainant's evidence were more than four years old. Some are not actual sales but are current listings of properties for sale. There was no substantial or persuasive evidence to support Complainant's TVMs for each subject under the sales comparison approach.

Income Approach

The concept of "fair market value is a hypothetical metric that asks what price an informed buyer and an informed seller would agree on when neither must act, but both are willing." *Robinson v. Langenbach*, 599 S.W.3d 167, 183 (Mo. banc 2020). 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. "Any property that has the potential to generate income can be valued under the income capitalization approach." Appraisal Institute, *The Appraisal of Real Estate* 441 (14th ed. 2013). Like the sales comparison and cost approach, the income approach is market-based and is aimed at estimating "the property's true value in money." *Snider*, 156 S.W.3d at 347; see also *The Appraisal of Real Estate* at 36 n.1 (noting "all three approaches to value are 'market' approaches in that they rely on market data").

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

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. *Aspenhof Corp. v. State Tax Commission*, 789 S.W. 2d 867, 869 (Mo. App. 1990). It is true that property can only be valued according to a use to which the property is readily available. But this does not mean that in order for a specific use to be the highest and best use for calculating the property's true value in money that particular use must be available to anyone deciding to purchase the property. . . .A determination of the true value in money cannot reject the property's highest and best use and value the property at a lesser economic use of the property. *Snider* at 341, 348-349 (Mo. 2005).

While three of the four properties have commercial activity generating income,

Complainant did not offer evidence proving value using an income approach.

Cost Approach

The cost approach may be based on either reproduction cost or replacement cost. The reproduction cost, or cost of construction, is a determination of the cost of constructing an exact duplicate of an improved property using the same materials and construction standards. The replacement cost is an estimate of the cost of constructing a building with the same utility as the building being appraised but with modern materials and according to current standards, design and layout.

The cost approach is most appropriate when the property being valued has been recently improved with structures that conform to the highest and best use of the property or when the property has unique or specialized improvements for which there are no comparables in the market. Complainant did not develop the cost approach to value.

CONCLUSION AND ORDER

Complainants did not produce substantial and persuasive evidence of overvaluation. The BOE decisions are therefore affirmed. The TVM of the subject properties as of January 1, 2021, with assessed values, are as follows:

Appeal No.	Parcel/Locator No.	TVM	Assessed Value
21-110465	11N230501	\$850,900	\$272,288
21-110466	11G430611	\$193,800	\$62,016
21-110467	10O120172	\$1,517,800	\$485,696
21-110468	16H521287	\$268,000	\$85,760

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 June 16, 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 June 16, 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