STATE TAX COMMISSION OF MISSOURI

CAMPUS LODGE,	)	Appeal No. 19-44513
	)	
	)	
Complainant,	)	
	)	Parcel No. 17-701-00-20-001.00
v.	)	
	)	
KENNETH MOHR, ASSESSOR,	)	
BOONE COUNTY, MISSOURI,	)	
	)	
Respondent.	)	

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On September 23, 2022, State Tax Commission (STC) Senior Hearing Officer Eric S. Peterson (Hearing Officer) entered a Decision and Order (Decision) setting aside the decision of the Boone County Board of Equalization (BOE) and finding that the true value in money (TVM) of the subject property was $8,600,000 as of January 1, 2019. Kenneth Mohr, Assessor, Boone County, Missouri, (Respondent) subsequently timely filed an Application for Review of the Decision. Complainant later filed a response.

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

The subject property is an off-campus apartment complex located in Columbia, Missouri, in which most apartment tenants are students at the University of Missouri-Columbia (University). The property consists of 22.62 acres with 13 three-story apartment buildings and a clubhouse. There are 192 four-bedroom apartments, for a total of 768 beds. As of January 1, 2019, the improvements were 14 years old and in average condition. Complainant purchased the property in January 2015 for $35,250,000.

Following campus protests during the Fall 2015 semester, student enrollment in the University declined by approximately 16% from the Fall 2016 semester to the Fall 2018 semester. The enrollment decline resulted in increased vacancy at off-campus student apartment complexes, including the subject property, where the vacancy rate was 48% as of January 1, 2019. Simultaneously, online student enrollment increased, and online students did not seek student housing.

The dispute before the Hearing Officer in this matter centered on Complainant's and Respondent's competing estimates of prospective market recovery in the off-campus student housing market as of January 1, 2019, and how the estimates of market recovery contributed to calculations of occupancy, concessions, and capitalization rate, all of which impacted value.

Both appraisers agreed that the cost approach to value was inappropriate in this situation. Both appraisers used the sales comparison approach to value; however, there were few comparable sales, and the results were given little weight in determining the final value. Both appraisers relied most heavily upon the income approach to value the subject property.

Complainant's appraiser estimated the stabilized vacancy rate for the property at 30%, or 70% occupancy rate, based on decreased student enrollment as of January 1, 2019, increased supply in the more desirable downtown student apartment market, increased vacancy in the off-campus student market, and the "speculative" nature of projecting significant reversals in these trends.

Respondent's appraiser estimated the subject's stabilized vacancy rate as of January 1, 2019, was 15%, or 85% occupancy rate, "which is more than the January 2019 occupancy and less than the May 2020 occupancy rate." Respondent's appraiser based this upon the historic occupancy rate of off-campus student housing of approximately 90%; the fact that no new, off-campus student housing complexes had been added since 2014; and that freshman enrollment had increased by 9% in 2018 over the enrollment in 2017.

Complainant's appraiser determined that the appropriate capitalization rate to use in the income approach to valuation was 7.5%. Complainant's appraiser derived the capitalization rates from four comparable sales and found that the derived capitalization rates were 6.02%, 6.65%, 7.09%, and 7.09%. Complainant's appraiser further considered capitalization rates of similar properties in other locations which showed rates of 6.05%, 5.38% and 5.50%. Complainant contended that its capitalization rate should be higher than any other market capitalization rate to account for the increased risk associated with the student housing market.

Complainant's appraiser further discounted the value of the property for expenses in leasing up the property, entrepreneurial incentive due to increased risk, above market concessions, and the projected occupancy rate of 70%. All of these factors were functions of the increased risk with the student housing market.

Respondent's appraiser analyzed comparable sales in the area from June 2013 to November of 2016 to arrive at a capitalization rate of 7.00%. The capitalization rate from the comparable sales ranged from 5.75% to 7.16%. Respondent's appraiser also considered declining demand for beds in determining that the capitalization rate should be within the range derived, but toward the higher end to discount for this decline.

The BOE determined a TVM of $14,679,000. Complainant's appraisal opined a TVM of $8,600,000. Respondent's appraisal opined a TVM of $14,200,000. Consequently, both Complainant and Respondent produced substantial evidence to rebut the BOE presumption. The Hearing Officer found that only Complainant's evidence was both substantial and persuasive as to the correct TVM for the subject property as of January 1, 2019, $8,600,000.

CONCLUSIONS OF LAW

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).

Respondent's Points on Review

Respondent asserts the Hearing Officer's Decision should be set aside because:

1. The Decision will create inequity and lack of uniformity in the suburban student housing market in Boone County because it is inconsistent with another decision relating to a student housing project in the same geographic area and for the same date of valuation.

2. The Decision was not issued within 60 days of the Evidentiary Hearing.

3. The Decision erroneously analyzed the income approach to value.

Commission's Ruling

For the reasons that follow, the Commission finds Respondent's arguments to be unpersuasive. The Commission, having reviewed the whole record and having considered the Hearing Officer's Decision, the Application for Review of Respondent, and the Response of Complainant, affirms the Hearing Officer's Decision.

In his first point, Respondent argues that the Decision of the Hearing Officer is inconsistent with the decision of another hearing officer in Appeal No. 19-44600, *Breckenridge Group Columbia Missouri LLC, Complainant v. Tom Schauwecker, Assessor, Boone County, Missouri*. We find no inconsistency. First, decisions of hearing officers can be persuasive but do not have precedential value on determinations made by the Commission. Second, Breckenridge is factually distinguishable.

In *Breckenridge*, the hearing officer found that the complainant did not produce substantial and persuasive evidence of overvaluation. The property in the appeal was a student apartment complex containing 318 units and 972 beds located in Columbia, Missouri. Respondent used the same appraiser in that case as in the instant case. The complainant in Breckenridge used a different appraiser than Complainant in the instant case. Complainant's appraiser in *Breckenridge* only utilized the income approach and focused on deferred maintenance and repairs to the property in arriving at an opinion of value. The complainant's appraiser and the respondent's appraiser presented competing reports with competing projections for vacancy rates, expenses, and capitalization rates.

Notably, in *Breckenridge*, the hearing officer found that both the complainant and the respondent had presented substantial evidence to rebut the presumption the BOE's decision was correct but that only the respondent's evidence was both substantial and persuasive to establish the correct value to be placed on the property. The hearing officer found the complainant's appraiser's "mistaken calculation" in the application of his unloaded and loaded capitalization rates to net operating income and deducting lease-up expenses to be less persuasive than the respondent's appraiser's expense projections. The decision in *Breckenridge*, while it considered a similar property in Columbia, Missouri, to the subject property in the instant appeal, was based upon the facts and the evidence presented in that case. The appraisal of the complainant in *Breckenridge* was found to be less persuasive than the appraisal of the respondent, the opposite of the instant appeal. "While practical uniformity is the constitutional goal, absolute uniformity is an unattainable ideal." *Savage v. State Tax Commission,* 722 S.W.2d 72, 79 (Mo. banc 1986). So long as there are separate cases and different evidence to be reviewed, each appeal before the STC should be viewed and decided on its own merits. Respondent's first point is denied.

With regard to Respondent's second point, we acknowledge the Hearing Officer did not issue the Decision within 60 days after the Evidentiary Hearing or the date on which the last post-hearing brief was filed. Under Section 138.431.6, 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.

With regard to Respondent's third point that the Hearing Officer erroneously analyzed the income approach to value, the Hearing Officer found Complainant's appraisal to be more persuasive than Respondent's. Complainant's appraisal relied upon a projection that the occupancy rate at the subject property would not rebound to the same levels as before the valuation date because the number of students attending the University had declined and because students preferred downtown rentals over off-campus student housing complexes. Complainant's appraiser used a capitalization rate that, while it exceeded other comparable capitalization rates of comparable properties, was reasonable in light of the facts based upon the risk associated with off-campus student housing. In the Decision, the Hearing Officer specifically found:

> In addition to the unpersuasive assumptions regarding enrollment and market cycles, [Respondent's Appraiser] buttressed his analysis by relying on May 2020 occupancy data. By May 2020, the subject property was over 90% occupied. . . . However, the increase in occupancy subsequent to January 1, 2019, was due to the two-year, below-market, master lease agreement with the University. . . . The subject property was the only off-campus complex awarded a master lease agreement. These facts show the income from the master lease agreement is not durable and is not representative of the off-campus market as of the valuation date.

The Hearing Officer went on to find that the subject property's May 2020 occupancy was minimally relevant to the TVM as of January 1, 2019, because the master lease agreement was not known or reasonably predictable as of the valuation date. The Hearing

Officer also found Respondent's Appraiser's lack of concessions in the analysis under the income approach was unpersuasive while the facts in evidence supported Complainant's Appraiser's concessions estimate. Respondent's third point is denied.

The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision and the application for review of Respondent and the response 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 his determination of value and finding the TVM of the subject property 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 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 Order 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 Order is deemed final and the Collector of Boone 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 March 29, 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 sent electronically or mailed postage prepaid this 29th day of March, 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

CAMPUS LODGE,	)	
	)	
Complainant,	)	
	)	Appeal No. 19-44513
v.	)	Parcel No. 17-701-00-20-001.00
	)	
KENNETH MOHR, ASSESSOR,	)	
BOONE COUNTY, MISSOURI,	)	
	)	
Respondent.	)	

DECISION AND ORDER

Campus Lodge[1] (Complainant) appeals the Boone County Board of Equalization's (BOE) decision finding the subject property's market value was $14,679,700 as of January 1, 2019.[2] Complainant alleges overvaluation and asserts value of the subject's real property was $8,600,000. Respondent asserts the value was $14,200,000. The BOE decision is set aside. The true value in money (TVM) of the subject real property as of January 1, 2019, was $8,600,000.

---

[1] The complaint for review of assessment lists "Campus Lodge" as the Complainant. The actual owner is LSH 2900 Old 63 South LP.

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

Complainant is represented by counsel John Lentell. Respondent is represented by counsel Jennifer Rodewald. Respondent filed a post-hearing brief. Complainant did not file a brief.

Background

This appeal involves an off-campus apartment complex in which most tenants are students at the University of Missouri-Columbia (University). Following campus protests during the Fall 2015 semester, student enrollment declined by approximately 16% from the Fall 2016 semester to the Fall 2018 semester. The enrollment decline resulted in increased vacancy at off-campus student apartment complexes, including the subject property, where the vacancy rate was 48% as of January 1, 2019.

The dispute centers on competing estimates of prospective market recovery in the off-campus student housing market as of January 1, 2019. Because occupancy drives income, the dispute distills to whether the decreased occupancy in the off-campus student apartment market is a transitory fluctuation preceding a predictable recovery or a persistent risk justifying a lower value as of January 1, 2019. Respondent's appraiser estimated the subject's stabilized vacancy rate as of January 1, 2019, was 15%, "which is more than the January 2019 occupancy and less than the May 2020 occupancy rate." (Ex. A at 59) Complainant's appraiser estimated the stabilized vacancy rate was 30% based on decreased student enrollment, increased supply in the more desirable downtown student apartment market, increased vacancy in the off-campus student market, and the "speculative" nature of projecting significant reversals in these trends. (Ex. 1 at 33, 70)

As established below, the substantial and persuasive evidence in the record shows the 70% occupancy rate advocated by Complainant represents the reasonable expectations of an informed buyer and seller as of January 1, 2019. Respondent's estimated 85% occupancy rate assumes student enrollment and demand will inevitably revert to an historical mean, relies on post-valuation data, and inadequately accounts for increased supply in the more desirable downtown market.

Respondent's assumptions may prove true. But the subject's TVM as of January 1, 2019, was "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). As of January 1, 2019, the enrollment decline and increased competition from the downtown student apartment market resulted in occupancy rates significantly below 85%. The substantial and persuasive evidence in the record indicates that as of January 1, 2019, reasonable projections of future occupancy rates are closer to Complainant's proposed 70% occupancy rate. The persistent risks supporting a 70% occupancy rate also support Complainant's estimated rent concessions and capitalization rate. The substantial and persuasive evidence in the record shows the TVM of the subject property as of January 1, 2019, was $8,600,000.

FINDINGS OF FACT

1. The Subject Property. The subject residential property is located in Columbia, Missouri, and consists of a 22.62 acre lot improved with 13 three-story apartment buildings and a clubhouse. There are 192 four-bedroom apartments, for a total of 768 beds. The property is configured to serve the student market, and most tenants are University students. As of January 1, 2019, the improvements were 14 years old and in average condition. (Ex. A at 53; Ex. 2 at 22)[3] Complainant purchased the subject property in January 2015 for $35,250,000. (Ex. A at 9)

2. Assessment and Valuation. The BOE classified the subject property as residential with a fair market value of $14,679,700 as of January 1, 2019.

3. Complainant's Evidence. Complainant introduced Exhibits A and B. Exhibit A is an appraisal report prepared by John D. Moran, MAI. Exhibit B is Moran's written direct testimony. Moran concluded the highest and best use of the subject property as improved is its current use as multifamily student housing. (Ex. A at 50; Ex. B at 51)[4]

<u>Income Approach</u>

Moran emphasized the income approach and concluded the TVM of the subject property as of January 1, 2019, was $9,700,000. (Ex. A at 72-73)

The Columbia apartment market has "two distinct market segments: the conventional

[3] Complainant submitted a corrected version of Exhibit A to remedy a computational error. The corrected version of Exhibit A concludes the value of the subject's real and personal property as of January 1, 2019, was $9,700,000, not $9,400,000 as set forth in the initial version of Exhibit A. All citations are to the corrected version of Exhibit A.

[4] All citations to written testimony are to the numbered question and answer.

market and student market." (Ex. A at 20; Ex. B at 43) The student market is divided into the downtown and off-campus markets. (Id.) The subject property is in the off-campus market. As of Fall 2018, the off-campus market had a 36% vacancy rate. (Id. at 29-30) As of January 1, 2019, the subject had a 48% vacancy rate. (Id. at 34, 65) Meanwhile, the downtown market, comprising approximately 25% of the student market, had a 2.87% vacancy rate and substantially higher rental rates as of January 1, 2019. (Id. at 29, 32)

University enrollment significantly influences occupancy in the student housing market. (Ex. A at 29, 33) Following campus protests during the Fall 2015 semester, University enrollment declined from 35,448 students in 2015, to 29,866 students in 2018, a decline of approximately 16%. The decline was most pronounced for incoming freshmen. Freshman enrollment indicates future enrollment. Freshman enrollment declined approximately 35%, from a high of 7,864 in 2014 to 5,065 in 2017. (Id. at 29) Online enrollment has increased in recent years. The majority of online students do not seek student housing. (Id. at 35)

The decreased enrollment impacted the downtown and off-campus markets differently. In the five years preceding January 1, 2019, the downtown market added three complexes with 1,413 new beds. (Ex. A at 20, 26, 30, 65) The downtown market attracted more tenants at "significantly higher" rents than the off-campus market while maintaining a vacancy rate of less than 3%. (Ex. A at 26, 32) By contrast, off-campus market vacancy increased from 10.43% in 2016 to 36.01% in 2018. (Id. at 31) The subject's vacancy was consistently higher than market, increasing from 32% in 2016 to 48% in 2018. (Id. at 34) "The high vacancy is the result of the large supply of downtown student housing absorbing a proportionally higher number of students coupled with a decline in student enrollment." (Id. at 33) The subject's higher vacancy is also influenced by the fact it consists entirely of four-bedroom units, which "has the highest vacancy per type in this market." (Id.)

As of January, 1, 2019, University enrollment began to stabilize. Fall 2018 enrollment was down 3.3% compared to 2017, but freshman enrollment increased by nearly 9%. (Ex. A at 29) The increase in freshman enrollment was still 30% less than the freshman class of 2014. Moran noted "[g]rowth to the level achieved before 2016 is not projected at this time" and "[t]he data available supports a best case scenario of slow improvement in student housing occupancy over the next several years." (Id. at 49) Further, because of "the downtown units added, the market occupancy will not approach historical occupancy in the foreseeable future." (Id.) "[A]ny significant increase in off campus occupancy is highly speculative at this time." (Id.)

Based on the increased supply in the more desirable downtown market and uncertain demand due to decreased University enrollment, Moran determined "[c]urrent trends suggest that it is reasonable to predict that the off campus market has significant risk and will not improve significantly in the near term." (Ex. A at 33) Given these facts, Moran concluded:

> "In our opinion, a stabilized vacancy rate of 30% is supportable for this property considering projected rents and concessions. While this is significantly lower than the current vacancy, it is our opinion with proper

> management and rental rate adjustments, as well as continued competitive use of concessions, the subject has the potential to compete better and achieve an occupancy rate of 70% as of August 1, 2021. While this is higher than the current market average, this also considers somewhat larger freshmen classes anticipated in upcoming years. The significant risk associated with achieving these projections is accounted for in the overall rate analysis."

(Ex. A at 65) The subject's market occupancy is 70%.

After the January 1, 2019, valuation date, the University entered into a "master lease" agreement with Complainant to lease 480 beds at the subject property for the 2019 and 2020 academic years. (Ex. A at 36) The master lease rental rate was below market. (Id.) The subject property was the only off-campus facility to obtain a master lease agreement. (Id.) The master lease agreement increased the subject's occupancy from 52% as of January 1, 2019, to 96% in Fall 2019. (Id.) There is no guarantee the lease will be extended. Moran gave the master lease "minimal consideration" because it was "made after the effective date of this appraisal [.]" (Id.) "[T]he current trends of the off-campus student apartment market" indicate "it is likely the subject would operate near 50% without the master leases." (Id.)

Moran analyzed nine off campus student apartment complexes to determine market rent. (Ex. A at 58) For Fall 2018, rents for comparable four bedroom units ranged from $374 per bed to $599 per bed. (Id.) The subject's Fall 2018 actual rental rate of $465 per bed is consistent with market rates. (Id.) Given the subject's 768 beds, the monthly rental rate of $465 equates to an annual potential gross rent of $4,285,440. (Id.) The subject generates $600,000 of income in addition to rent. (Ex. A at 64)

Rent concessions are common in the student apartment market. Concessions range from $0 to $3,000. (Ex. A at 66) In 2018, Complainant offered concessions of $1,470 per occupied bed. Moran concluded a concession of $1,400 per occupied bed was reasonable in order for the subject to attain the projected 70% occupancy. (Id.; Ex. B at 18, 101).

Expenses for comparable properties ranged from $2,172 to $3,606 per bed from 2016 through 2018. The subject's expenses ranged from $2,403 to $2,461, and were projected be $2,378 per bed in 2019. Moran concluded the subject's projected actual expense of $2,378 per bed in 2019 represented a reasonable market-based expense rate. (Ex. A at 69; Ex. B at 117) Based on the foregoing, the estimated net operating income as of January 1, 2019, was $1,009,385. (Ex. A at 68)

Moran estimated an unloaded 7.5% capitalization rate based on four sales of comparable student apartment complexes in Columbia, three out-of-state sales, and survey data for "first and second tier student apartment properties in the Midwest[.]" (Ex. A at 70). The four local sales closed in 2016 at capitalization rates ranging from 6.02% to 7.09%. (Id. at 69) The out-of-state sales sold at rates ranging from 5.38% to 6.09%. The survey data showed rates ranging from 6.5% for "first-tier" apartment complexes and 7.3% for "second-tier" complexes. Although Moran's estimated 7.5% capitalization rate exceeds the sales and survey data, he concluded the higher rate accounts for the market-specific risks of lower demand due to decreased student enrollment, increased supply from competing complexes, and the risk in realizing the estimated 70% market occupancy. Adding the effective tax rate of 1.36% to the 7.5% capitalization rate results in a loaded capitalization rate of 8.86%. (Ex. A at 70)

Dividing the stabilized NOI estimate of $1,009,385 by the loaded capitalization rate of 8.86% equates to a rounded market value of $11,400,000. (Ex. A at 71; Ex. B at 132) Moran deducted $800,000 in lost income to account for the lease-up period, $570,000 in entrepreneurial incentive, and $300,000 in painting expenses, for a total discount of $1,670,000, (Ex. B at 142), resulting in an estimated aggregate market value of $9,700,000. Moran depreciated the replacement cost of furniture, fixtures and equipment by 50% to estimate value of the subject's personal property at $1,100,000, resulting in a total real property value of $8,600,000. (Ex. A at 1, 73)

Sales Comparison Approach

Moran compiled data for a sales comparison approach. However, because "there have been no sales of student off campus properties since the market downturn, this approach is given nominal weight and considered inconclusive." (Id. at 55)

4. Respondent's Evidence. Respondent submitted Exhibits 1 through 4. Exhibit 1 is the written direct testimony of Daniel Kann, MAI. Exhibit 2 is Kann's appraisal report. Exhibit 3 is Kann's rebuttal testimony. Exhibit 4 is Kann's review of Moran's appraisal report.

Exhibits 1 and 2: Kann WDT and Appraisal Report

Consistent with Moran's appraisal report, Kann noted the "average rent is higher for projects closer to campus." (Ex. 2 at 11) Like Moran, Kann emphasized student enrollment is a primary driver of occupancy for the subject property, (Id. at 12-13; 41-42), and concluded the highest and best use of the subject is continued "use as an off-campus student housing project." (Id. at 42)

Kann cited University enrollment data from 2009 through 2019. (Ex. 2 at 12) From 2009 to 2015, enrollment increased from 31,314 to 35,448, an increase of 13.2 %. (Id.) Consistent with Moran's data, Kann noted enrollment declined to 29,886 in 2018, a decline of 15.7 % from 2015. (Id.) Beginning with the Fall 2019 academic term – after the January 1, 2019, valuation date – University enrollment increased from 29,886 to 30,046, an increase of 0.5%. (Id. at 13) Freshman enrollment for the Fall 2019 academic term increased to 6,537 from 5,517 in 2018, an increase of 18.4 %. (Id.) Kann concluded the Fall 2019 enrollment figures confirmed the enrollment decline was temporary. (Id. at 12)

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

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

(Ex. 2 at 13) Kann settled on a 15% vacancy rate because it "is more than the January 2019 occupancy and less than the May 2020 occupancy rate of 92.0% to account for our estimate of market rent." (Id. at 59)

Kann determined the subject's "stabilized market rent" was "$400 per month at 85% occupancy." (Ex. 2 at 42) The estimated market rent was based on the subject's contract rent of $471 per bed, asking rent of $465 per bed, and the adjusted rents in five comparable off-campus student apartment complexes ranging from $224 to $550 per month. (Id. at 58) The estimated market rent is "less than the current contract to allow for stabilized occupancy at the subject property post recovery from the prior stigmatization." (Id.) Applying the $400 per bed monthly market rent to the subject's 768 beds yields a potential gross income of $3,686,400. (Id.)

After deducting vacancy loss and concessions at an annual rate of $96 per bed, Kann estimated an effective gross income of $3,647,232. (Ex. 2 at 66)   Kann deducted annual expenses of $2,690 per bed, for a total of $2,065,889. (Ex. 2 at 66) Deducting the estimated expenses from the effective gross income yielded an NOI of $1,581,343. (Id.)

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

> There has been a lack of sales activity in 2017 to 2018 due to the declining enrollment. Based on the comparable sales with consideration given to declining demand and fewer transactions, a higher overall capitalization rate is warranted for the subject. We estimate an overall capitalization rate of 7.00% for the subject property.

(Ex. 2 at 68) Adding the effective tax rate of 1.36% results in an 8.36% loaded capitalization rate.

Dividing the NOI of $1,581,343 by the 8.36% loaded capitalization rate yields an estimated value of $18,915,583, rounded to $18,920,000. This value is premised on the NOI generated from the estimated 85% occupancy. Kann accounted for the fact the subject's occupancy as of January 1, 2019, was 52% rather than 85%, by deducting $4,140,000 in lost rent and entrepreneurial incentive necessary to achieve stabilized occupancy. Finally, Kann deducted $580,000 for furniture, fixtures and equipment, resulting in a final, rounded value estimate of $14,200,000 for the subject's real property. (Ex. 2 at 71)

Kann developed a brief sales comparison approach analysis. (Ex. 2 at 43-44) The sales comparison approach was used only as "a test of reasonableness" of the income approach. (Id. at 71) Kann determined there were "no market-oriented sales of student housing projects since November 2016." (Id. at 44) Kann analyzed four sales, including the sale of the subject property in 2015. Although two of the transactions were bankruptcy sales, Kann concluded both represented "good indicator of pricing in the current environment." (Id. at 43) "Based on the comparable sales, a price ranging from $16,800,000 to $24,500,000, or $21,875 to $31,901 per bedroom is reasonable for the subject." (Id.) Multiplying Kann's estimated per-bedroom value of $31,901 by the subject's 768 bedrooms yields an indicated, rounded value of $24,500,000.

Exhibits 3 and 4: Rebuttal WDT and Appraisal Review

Kann critiqued Moran's conclusions regarding market occupancy, concessions, and the capitalization rate. Kann asserted Moran underestimated the subject's value because his analysis is not based on "stabilized" market conditions. (Ex. 3 at 3) Stabilized market conditions represent the average conditions expected over a specific period or the economic life of the property. (Id. at 3-4; Ex. 4 at 4, 7-8)

Kann concluded Moran's 70% occupancy rate underestimates stabilized market occupancy because the enrollment decline following the 2015 campus protests was a "temporary disruption" causing "a shift to the recession stage of the [market] cycle." (Ex. 4 at 4) Kann supported this conclusion with a graph depicting "four stages of the market cycle according to the Appraisal Institute." The four stages are expansion, decline, recession, and recovery. (Id. at 5) The graph depicts an oscillating line representing "price," with the highest price in the expansion stage, followed by decreasing price in the decline stage, a low point in the recession stage, followed by increasing price in the recovery stage.

Kann asserted that as of January 1, 2019, the subject property was "in the recession phase nearing the recovery stage." (Id. at 4) Kann used the graph to illustrate his assertion that "[a]s new supply is limited (cost is greater than value) and student enrollment returns to a normalized level (35,000 students vs 30,000 in 2018), occupancy and rents will revert towards the long-term average (recovery and expansion phase of the market cycle shown above)." (Id. at 5) Kann concluded:

> Based on the various definitions, historical enrollment, and the prior performance of the off-campus student housing market, it is reasonable to assume the market will eventually recover to reflect a normalized long-term level of occupancy. This is supported by a survey of comparable and competitive off-campus student housing properties in May 2020, which supports a recovering market.

(Id. at 6)

Kann utilized the same rationale to conclude Moran's estimated annual concessions of $1,400 per bed are excessive:

> Prior to the downturn of the Columbia student housing market, the subject and comparable properties were offering limited concessions. Concessions at the subject property in 2015 and 2016, which reflects a normalized market, averaged $34 per bed. Concessions increased in 2017 and 2018 to reflect less demand from fewer student tenants and increased supply. Concessions offered at the time of value, which is when the market cycle was at its low and nearing its recovery stage, were $1,470 per bed. As enrollment returns to its long-term average and no new supply is added due to feasibility issues (value is less than cost), market demand will increase allowing for the reduction and phase-out of concessions.

(Ex. 4 at 7)

Finally, Kann concluded Moran's 7.5% capitalization rate is excessive because "comparable student housing sales in Columbia reported an overall capitation rate ranging from 6.02% to 7.09%." (Ex. 4 at 8) Kann reasoned the higher capitalization rate resulted in an artificially low value estimate because Moran also included deductions for lease-up costs, entrepreneurial incentive, "above market concessions" and "below market occupancy[.]"

(Id.)

5. Value. The TVM of the subject real property as of January 1, 2019, was $8,600,000.

CONCLUSIONS OF LAW

1. Assessment and Valuation. Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). The TVM is "the fair market value of the property on the valuation date[.]" *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). "True value in money is defined in terms of value in exchange not value in use." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). "Determining the true value in money is an issue of fact for the STC." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48.

"The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Snider*, 156 S.W.3d at 347; *see also Equitable Life Assur. Soc. of U.S./Marriott Hotels, Inc. v. State Tax Comm'n*, 852 S.W.2d 376, 380 (Mo. App. E.D. 1993) (noting the income approach discounts "future dollars to present levels in order to compensate for risk and the elapsed time required to recapture the initial investment"). "This approach is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Snider*, 156 S.W.3d at 347. As both appraisers concluded, the income approach is the preferable valuation method for the subject property.

To estimate the present worth of future income, the income approach employs "a capitalization method of valuation … derived from the market, which reduces the need for unsubstantiated, subjective judgments." *Drury Chesterfield, Inc. v. Muehlheausler*, 347 S.W.3d 107, 113 (Mo. App. E.D. 2011). The income approach "is applied in three steps: (1) net income is forecasted for a specified number of years; (2) an appropriate discount factor or capitalization rate is selected; and (3) the proper discounting and/or capitalization procedure is applied." *Id.*

2. Evidence. The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax Comm'n*, 560 S.W.2d 837, 839 (Mo. banc 1977).

3. Complainant's Burden of Proof. The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE value is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party").

4. Complainant Produced Substantial and Persuasive Evidence of Overvaluation.

Complainant produced substantial and persuasive evidence showing a significant, multi-year decline in University enrollment coupled with increased supply in the more desirable downtown student housing market. Value typically varies "directly with changes in demand and inversely with changes in supply." Appraisal Institute, *The Appraisal of Real Estate* 28 (14th ed. 2013). There is no evidence the subject's market reacts atypically to supply and demand constraints. Thus, as demand decreases and supply increases, the subject's value decreases. As of January 1, 2019, the substantial and persuasive evidence in the record shows there was persistent decreased demand due to decreased student enrollment and persistent increased supply due to the addition of beds in the more desirable downtown market. Complainant's analysis captures this current and prospective market reality, while persuasively showing these factors substantially reduced the expected market-based occupancy and income in the subject's off-campus student housing market, with an attendant increase in investment risk. Complainant's projected 70% occupancy rate, concessions, and 7.5% capitalization rate are supported by substantial and persuasive evidence showing a prospective and persistent lag in demand coupled with increased competition from the more desirable downtown student housing market. The substantial and persuasive evidence in the record shows the TVM of the subject's real property was $8,600,000 as of January 1, 2019.

<u>Occupancy</u>

The substantial and persuasive evidence shows that as of January 1, 2019, prospective University enrollment was likely to be less than 35,000 students. The decrease in University enrollment relative to the record-high 2015 level dovetails with the fact the addition of over 1,400 beds in the more desirable downtown market created persistent excess supply. Given the relatively inelastic demand from finite student enrollment, and the increased supply in the more desirable downtown market, the subject property faces a risk that "the growth of one market area may lead to the downfall of a competing market area." *The Appraisal of Real Estate* 137. These facts show the most reasonable long-term projection is for less demand than in 2014 and 2015, coupled with increased supply in the downtown student market. Moran's estimated 70% occupancy captures these market-specific supply and demand dynamics and is a persuasive estimate of the subject's stabilized market occupancy as of January 1, 2019.

Respondent asserts Moran "disregards the principle of anticipation, a fundamental principle of appraisal theory[.]" (Resp. Br. at 3)[5] Respondent contends Moran's analysis is "based solely on the static economic conditions of the property as of the date of valuation" and ignores market cycles and market-specific evidence of recovery. (Resp. Br. at 4) The record refutes Respondent's argument.

As of January 1, 2019, the off-campus market occupancy rate was approximately 64% and the subject's actual occupancy was 52%. (Ex. A at 26, 33) If, as Respondent asserts, Moran wholly disregarded the principle of anticipation and based his appraisal "solely on the static economic conditions" as of the January 1, 2019, he would have, at most, estimated market occupancy at 64%. Instead, Moran estimated market occupancy of 70%, thus factoring in the reasonable anticipation of increased occupancy and income in the reasonably foreseeable future. Moran did not disregard the principle of anticipation. He simply drew

[5] The anticipation principle recognizes value is created by the anticipation of future benefits. *The Appraisal of Real Estate* at 27. However, "[t]he anticipation of receiving future benefits creates value, but the possibility of not receiving or losing future benefits reduces value and creates risk." *Id*. at 458. Respondent's argument emphasizes anticipation while downplaying the evident risk of achieving 85% occupancy despite the trend of decreased student enrollment and increased supply in the more desirable downtown market.

different conclusion than Respondent.

Respondent's proposed 85% market occupancy is premised on two main assumptions: (1) that University enrollment would revert to a "normalized" level of 35,000 students, (Ex. 3 at 4-6; Ex. 4 at 4-5); and (2) that new supply would be limited as the market inevitably progressed through the market cycle and returned to equilibrium. (Ex. 3 at 6; Ex. 4 at 5-6) The record does not persuasively support these assumptions.

On this record, Kann's assumption that "normalized" enrollment is 35,000 students represents a high-water mark for student enrollment, not the norm. University enrollment met the 35,000 threshold in only ***two*** of the 10 years preceding January 1, 2019. Enrollment exceeded 34,000 in 2012 and 2013, and in the remaining six years ranged from 29,866 to 33,805. Enrollment declined from 35,488 in 2015 to 29,866 in 2018, a decline of 16%. (Ex. A at 14, Ex. 2 at 12) The fact enrollment met the 35,000 threshold in only two of preceding 10 years, coupled with the sustained decline in the three years immediately preceding the valuation date, does not provide a persuasive basis for concluding "normalized" University enrollment is 35,000. Instead, the data persuasively support Moran's assertion that "[f]uture enrollment numbers are unknown, but expected to rebound at levels lower than historical highs, but higher than recent years." (Ex. A at 48) Finally, even if enrollment increased to 35,000, the enrollment growth "would have only a small impact on the large number of vacant beds in this market." (Ex. A at 35)

Kann's assertion that market cycles show the subject's market will revert to 85%

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

In addition to the unpersuasive assumptions regarding enrollment and market cycles, Kann buttressed his analysis by relying on May 2020 occupancy data. By May 2020, the subject property was over 90% occupied. (Ex. 2 at 13) However, the increase in occupancy subsequent to the January 1, 2019, was due to the two-year, below-market, master lease agreement with the University. (Ex. A at 9, 36) The subject property was the only off-campus complex awarded a master lease agreement. (Id. at 36) These facts show the income from

[6] Respondent also asserts that as of January 1, 2019, the "market had experienced four years of no supply growth, leading to a recovery of the market and a shift from the recession phase to the recovery stage of the market cycle." (Resp. Br. at 2, citing Ex. 4 at 4-5) Respondent's Exhibit 4 does not support the assertion the market had transitioned to the recovery stage. Instead, Kann stated "[o]n the date of value the subject ***was in the recession phase*** nearing the recovery stage." (Ex. 4 at 4) (Emphasis added) A salient feature of a recessionary market is a reduction in market value. (Ex. 4 at 5)

the master lease is not durable and is not representative of the off-campus market as of the valuation date.

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

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

Id. (Internal citations omitted).[7]

---

[7] *See also Paloian v. LaSalle Bank, N.A.*, 619 F.3d 688, 693 (7th Cir. 2010) (holding when value is determined as of a certain date "[h]indsight bias is to be fought rather than embraced"); *First Nat. Bank of Kenosha v. United States*, 763 F.2d 891, 893–94 (7th Cir. 1985) (citing *Ithaca Trust* and holding "[b]ecause property is valued as of the date of death, the only relevant facts are those that this hypothetical buyer and seller could reasonably have been expected to know at that time"); *Bos. Gas Co. v. Bd. of Assessors of Bos.*, 941 N.E.2d 595, 611 (Mass. 2011) (holding post-valuation facts risk "hindsight bias" and are admissible only if the "information … would be knowable to a hypothetical buyer and seller of the subject property as of the assessment date"); *Eop-Nicollet Mall, L.L.C. v. Cnty. of*

The logic of *Ithaca Trust* applies with equal force here, where the benchmark is the subject's TVM as of January 1, 2019. The relevance of the May 2020 survey data and master lease agreement depends on the reasonable expectations of a willing buyer and seller on the valuation date. *Mo. Baptist Children's Home*, 867 S.W.2d at 512 (holding fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller"). There is no indication that on January 1, 2019, the May 2020 occupancy data or existence of the master lease agreement was known or reasonably predictable. Instead, the substantial and persuasive evidence in the record shows that as of January 1, 2019, the current reality and prospective outlook indicated the subject's off-campus market would experience a persistent reduction in demand due to decreased enrollment and a

---

Hennepin, 2005 WL 443844, at *10 (Minn. Tax Feb. 11, 2005) (holding evidence of market decline following the Enron bankruptcy and September 11, 2001 attacks had "no relevance" to the property's value as of January 1, 2000, or January 1, 2001, because "[w]hile hindsight may give us a better indication of how the market has indeed performed since the assessment date, we are bound to make a determination as to the value of the properties as of the assessment date and not in retrospect"); *In re Appeal of ANR Pipeline Co.*, 79 P.3d 751, 764 (Kan. 2003) (holding the "admission of actual income figures for future years beyond the valuation date contradicts the principle of anticipation and undermines and distorts an income approach to value"); *Sabin v. Dep't of Revenue*, 528 P.2d 69, 72 n.11 (Or. 1974) (noting "[w]here facts relating to the value of the assessed property are not known at the time of the assessment, and if known at that time would have affected the market value of the property as, for example, where it is later discovered that the property contains valuable minerals, hindsight acquired by a later discovery of such facts should not be employed to change the valuation found on the assessment date"); *City of New Brunswick v. State Div. of Tax Appeals,* 189 A.2d 702, 706 (N.J. 1963) (holding lease terms renegotiated after the assessment date should not be considered because value must be based "upon what was known and anticipated as of the assessing date, unaided by hindsight").

persistent increase in supply due to competition from the downtown market. For this reason, Moran acknowledged the master lease agreement, but correctly concluded it "was made after the effective date of this appraisal and is therefore given minimal consideration in developing an opinion of value as of January 1, 2019[.]" (Ex. A at 36) Moran's analysis is persuasive.

The decision in *St. Louis Cnty. v. State Tax Comm'n*, 515 S.W.2d 446 (Mo. 1974), does not alter the analysis. In *St. Louis County*, the subject property was an apartment complex under construction in the year preceding the valuation date. The Court held the STC's findings of fact were insufficient and remanded the case to the STC for entry of adequate findings of fact. *Id*. at 451.[8] A central unresolved issue was property's income potential once it was fully constructed. *Id*. at 452. Under these specific circumstances, the Court's remand provided:

> If it be determined that the apartment complex was completed or substantially completed on January 1, 1972 and the income approach to valuation is to be taken into consideration the parties and commission ***may be interested*** in exploring the question what income could have been expected to be received by 1972 under a reasonably economical and prudent management of the property. 72 Am.Jur.2d State and Local Taxation, s 755, and cases cited fn. 24. The commission is ***authorized*** to take additional testimony on this as well as all other phases of the case and the records of rents actually received and expenses actually incurred during the year 1972 ***may be considered*** as bearing on this question. This will afford the inquiry the advantage of hindsight, an advantage not enjoyed by the assessor on January 1, 1972, at which time only the partial and limited experience of 1971 was available, or by the parties at the

[8] The STC decision "gave 'due deference' to the testimony of both parties." *St. Louis Cnty.*, 515 S.W.2d at 450. The Court held that finding both parties' evidence received "due deference" was "so vague, indefinite and inconclusive as to be meaningless[,]" thus making it "impossible to determine" which party's evidence was persuasive. *Id*.

> commission hearing in September, 1972, at which time the property had been operated only 8 months in 1972.

Id. at 453. (Emphasis added).

Critically, the permissive remand in *St. Louis County* simply "authorized" the STC to consider post-valuation facts to the extent the agency "may be interested" in the subject's income-producing capacity once fully constructed. The permissive remand was consistent with the Court's earlier recognition the STC "is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to." *St. Louis Cnty.*, 515 S.W.2d at 450. Thus, *St. Louis County* does not require consideration of subsequent events and, instead, permits their consideration to the extent such events are relevant to value as of the valuation date.[9]

The May 2020 occupancy data is minimally relevant because it was not known or reasonably predictable as of January 1, 2019. Unlike an arm's-length sale shortly after the

---

[9] Unlike most post-valuation facts, evidence of a subsequent arm's-length sale of the subject property within reasonable proximity of the valuation date and under similar market conditions may serve as persuasive evidence of value. *First Nat. Bank of Kenosha*, 763 F.2d at 893–94; *see also Snider*, 156 S.W.3d at 348 (explaining "[c]omparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character"). A subsequent arm's-length sale of a property soon after the valuation date may be relevant to a retrospective valuation because it replicates the hypothetical transaction underlying the determination of the TVM as of the valuation date. *Cf. Robinson v. Langenbach*, 599 S.W.3d 167, 183 (Mo. banc 2020) (explaining "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").

valuation date, the May 2020 occupancy data does not replicate the hypothetical transaction underlying the determination of the subject's TVM as of the valuation date. Finally, unlike *St. Louis County*, the subject property was not partially constructed as of the valuation date, so the May 2020 occupancy data does not enable confirmation of the subject's income-producing potential once it is fully constructed. Instead, the relevance of the May 2020 occupancy data is premised on the type of hindsight bias inconsistent with the STC's statutory obligation to determine the "fair market value of the property on the valuation date[.]" *Snider*, 156 S.W.3d at 346. Therefore, Moran properly gave the May 2020 occupancy data "minimal consideration in developing an opinion of value as of January 1, 2019[.]" (Ex. A at 36) The substantial and persuasive evidence in the record supports Moran's estimated market occupancy of 70%.

<u>Concessions</u>

Moran estimated the subject property would require concessions of $1,400 per occupied bed to achieve 70% occupancy. The data support this estimate. When, as in the subject's market, supply exceeds demand, rent concessions are commonly offered to procure tenants. *The Appraisal of Real Estate* at 469; Ex. A at 66. Concessions in the subject's market ranged from $0 to $3,000. (Ex. A at 66) In 2018, Complainant offered concessions of $1,470 per occupied bed. (Id.) Given the reasonable projections of fewer students than in 2014 and 2015, and the persistent, increased competition from the more desirable downtown market, concessions of $1,400 per bed are reasonable. (Ex. B at 18, 99-101) The substantial and persuasive evidence in the record supports Moran's concessions estimate.

Respondent asserts that prior to 2015, the "market operated with little to no concessions" and the "historical performance of the off-campus student housing market suggests similar performances for off-campus student housing complexes such as the subject property once the market returns to a recovery phase, and the evidence is that the market had, in fact, entered that recovery phase as of January 1, 2019." (Resp. Br. at 2) Similarly, Kann asserted "[a]s enrollment returns to its long-term average and no new supply is added due to feasibility issues (value is less than cost), market demand will increase allowing for the reduction and phase-out of concessions." (Ex. 4 at 7) Neither assertion is persuasive.

Respondent and Kann both assume future University enrollment will consistently meet or exceed 35,000 students and that the attendant demand for student housing will consistently result in 85% occupancy of the existing supply. As established, the 85% occupancy estimate is unpersuasive. Further, even if enrollment increased to 35,000, the enrollment growth "would have only a small impact on the large number of vacant beds in this market." (Ex. A at 35) Finally, the trend to increased online enrollment is reflected in University enrollment but generally does not create additional demand for student housing. (Id.) Respondent's assumption the subject property will revert to pre-2015 concessions is not supported by substantial and persuasive evidence.

Capitalization Rate

Complainant asserts the subject's unloaded capitalization rate was 7.5% as of January

1, 2019. Respondent asserts the rate was 7.0%. The substantial and persuasive evidence in the record supports Complainant's 7.5% rate.

In 2016, there were four sales of student apartments in the subject's market. The capitalization rates ranged from 6.02% to 7.09%. (Ex. A at 69) Surveyed rates ranged from 6.5% to 7.3%. Although Complainant's 7.5% capitalization rate slightly exceeds the sales and survey data, it accounts for the market-specific risks of lower demand due of decreased student enrollment, increased supply from competing complexes, and the risk in realizing the estimated 70% market occupancy. (Ex. A at 70) The substantial and persuasive evidence in the record supports Complainant's 7.5% capitalization rate.

CONCLUSION AND ORDER

The BOE's decision is set aside. The TVM of the subject property as of January 1, 2019, was $8,600,000.

Application for Review

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

review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of Boone County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED September 23, 2022.

Eric S. Peterson
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 23, 2022, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Noah Shepard
Legal Coordinator