



STATE TAX COMMISSION OF MISSOURI

MARYVEE I, II, III 49% DANIELS	)	Appeal No. 22-74500
CHILDRENS INVESTMENT 51%,	)	Parcel No. 22-04-20-03-06-03-802
	)	
Complainant(s),	)	
	)	
v.	)	
	)	
REX WALLACE, ASSESSOR,	)	
NODAWAY COUNTY, MISSOURI,	)	
Respondent.	)	

DECISION AND ORDER

Maryvee I, II, III 49%, Daniels Childrens Investments 51%, (Complainant) appeals the Nodaway County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2022, was \$4,760,920. Complainant claims the subject property is overvalued and proposes a TVM of \$3,000,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.¹

Complainant was represented by counsel Robert D. Murphy. Respondent was not represented by counsel. The evidentiary hearing was conducted on March 14, 2023, via

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

Webex before Senior Hearing Officer Ben Slawson. This matter was assigned to Senior Hearing Officer Todd D. Wilson for Decision and Order on October 19, 2024.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 1217 S. Main Street, Maryville, MO 64468. The parcel/locator number is 22-04-20-03-06-03-802. The property is operated as Hy-Vee grocery store and is on a long-term lease from the owner. The store has approximately 54,551 square-feet of gross building area, not including the mezzanine area that is used for offices, and a convenience store of 2,250 square feet with canopy and pump islands. There are approximately 300 striped parking spaces. The improvements sit on approximately 5.19 acres of land. All building improvements were constructed in 2006 in accordance with an Ordinance passed by the City of Maryville, establishing Tax Increment Financing (TIF) for the project as set out partially in Respondent's Exhibit 1. The TIF was terminated by Ordinance of the City of Maryville as set out as Respondent's Exhibit 22-74500-8 on April 26, 2021. As a result, the taxes paid on the property for 2022 would no longer be redirected to pay the bonds issued by the City to redevelop the property and would be paid to the appropriate political subdivisions. The property was valued at \$4,760,920 for 2021 and that value was not challenged by Complainant.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2022, was \$4,760,920. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2022, was \$4,760,920.

3. Complainant's Evidence. Complainant's testimony and evidence submitted a TVM for the subject property on January 1, 2021, of \$3,000,000. Complainant submitted the following exhibits which were admitted without objection:

Exhibit	Description	Ruling
A	Written Direct Testimony of Thomas M. Scaletty, MAI	Admitted
B	Appraisal Report	Admitted

Thomas M. Scaletty is a state certified appraiser in multiple states, including Missouri, and holds an MAI designation. Mr. Scaletty testified and prepared Exhibit B, an appraisal report. Mr. Scaletty utilized the sales comparison approach and the income capitalization approach to value the property. Mr. Scaletty testified that he did not develop the cost approach as there were ample data for the other approaches and the building was not new or unique, so the cost approach was not appropriate. Also, in his experience, market participants do not use the cost approach to value this type of property.

In his approaches to value, Mr. Scaletty gave no value to the Mezzanine office area in the subject property. (Exhibit B at 28). He offered no explanation for this.

In his report, Mr. Scaletty states that the property is leased to Hy-Vee as part of a sale/leaseback transaction. The lease is for an initial term of 20 years with six (6) five-year options. The initial lease commenced in 2006. The rent due under the lease is \$394,942.80 or \$7.75 per square foot per year with Tenant paying all expenses. (Exhibit B at 9). Mr. Scaletty emphasized:

It should be noted that the lease involved a built-to-suit agreement whereby the landlord provided \$4,550,000 or \$89.25 per square foot of the grocery

store area towards the construction of the existing grocery store and convenience store improvements. The tenant (Hy-Vee) paid to demolish an existing grocery store and provided \$312,375 to the landlord for construction of future adjacent retail improvements.

In reference to build to suit leasebacks and the comparable sales method, Mr. Scaletty explained that: “these sales are not indicative of an investment in a fee simple estate in the subject. As such they have been excluded.” (Exhibit B at 37).

Mr. Scaletty valued the fee simple interest in the subject real property rather than a leased fee interest. In accordance with his understanding of this definition, the comparable sales that Mr. Scaletty used were all vacant, formerly occupied big box retail properties and assumed a long marketing period. (Exhibit B at 37) None of the 8 comparable sales were located in Missouri and none had a convenience store with gas pumps attached. To compensate for the convenience store, Mr. Scaletty calculated the value of the convenience store by comparable sales of other convenience stores to arrive at a value of \$250 per square foot. (Exhibit B at 41). Taking the value per square foot times the 2,250 square feet of the convenience store yields $250 \times 2,250 = \$562,500$. Rather than add this amount to the adjusted value of the sales, Mr. Scaletty calculated that the convenience store added \$10.31 of value per square foot of rentable space to the comparable sales. Taking that value times the square footage of Comparable Sale 1 renders a value of $10.31 \times 50,730 = \$523,026$; however, when this value is added to Comparable sales 5 or 6, the added value rendered is significantly less ($10.31 \times 25,860 = \$266,616$). The comparable sales samples ranged in price per square foot from \$21.62 to \$68.11, which after adjustments ranged from \$34.58 to \$66.27. Mr. Scaletty used \$55 per square foot to value the property using the Sales

Comparison method to arrive at a value of \$3,000,000.

Mr. Scaletty also completed the income capitalization approach using the Direct Capitalization method. Direct Capitalization makes use of a single year's income and a market derived factor or overall capitalization rate. *The Appraisal of Real Estate*, 14th edition, page 461. In his report, he states that there is no income history to report. (Exhibit B at 47). Earlier in the appraisal report, he stated that the property was under a 20 year lease with Hy-Vee for \$394,942.80 or \$7.75 per square foot per year with tenant paying all expenses. Mr. Scaletty did not use this income in his calculations. In his selection of leases to use to derive rent, he excluded any leases that were structured on a build-to-suit basis. Mr. Scaletty also excluded leases to second generation tenants in single tenant retail structures that were renovated by the owner for the tenant. (Exhibit B at 48).

In the Income approach, Mr. Scaletty determined that second generation leases for retail spaces that were taken by the tenants on an as is basis or with only minimal renovations/alterations were the leases appropriate to use to derive market rent for the subject property. With this determination, he used 6 leases, none of which were from Missouri, to arrive at a range of adjusted rents from \$3.50 to \$6.83 per square foot. A market rent of \$5.00 per square foot was used on a net basis; however, the income was adjusted to reflect projected vacancies that would occur.

Mr. Scaletty then derived a capitalization rate based on sales of retail properties in the region, adjusted for risk. A range of rates was derived from 8.00% to 9.50% as the property was considered to be a 2nd Tier market with a lack of potential users, therefore, a

rate of 9.00% was selected. Mr. Scaletty then derived a capitalization rate of 8.40% based on a Yield Rate calculation. (Exhibit B at 60). Mr. Scaletty determined that the market information used was representative of the market and, therefore, more applicable than a yield rate so the capitalization rate of 9.00% was used. Using this capitalization rate and the determined market rent of \$5 per square foot, Mr. Scaletty valued the property at \$3,000,000 in accordance with the Income method, which is the same value he derived from the Sales Comparison Approach to value.

4. Respondent's Evidence. Respondent submitted Exhibits 1 through 21, some of which have lettered subparts, which were received without objection; however, the exhibit marked 22-74500-6 contains settlement negotiations between the parties and is not considered. The Exhibits are as follows:

Exhibit	Description	Ruling
1	Tax Increment Financing Document	Admitted
2	Property Record Card	Admitted
3	Increase Notice	Admitted
4	Letter to Increase Value	Admitted
5	BOE Appeal Form	Admitted
6	Negotiation letter	Not considered
7	Income Approach	Admitted
8	Ordinance Terminating TIF	Admitted
9	2009 Deed of Trust	Admitted
10	2016 Deed of Trust	Admitted
11	Comparable Sale 1	Admitted
12	Comparable Sale 2	Admitted
13	Comparable Sale 3	Admitted
14	Comparable Sale 4	Admitted
15	Comparable Sale 5	Admitted
16	Comparable Sale 6	Admitted

17	Contact Information for Mr. Wallace	Admitted
18	Certificate of Service of Exhibits 1 -17	Admitted
19	Real Property Sale Survey - Walgreens	Admitted
20	Sales Comparison Grid	Admitted
21	Written direct testimony of Rex Wallace	Admitted

Respondent, as the Nodaway County Assessor, valued the property using his understanding of the Sales Comparison Approach to value using sales of commercial properties within Nodaway County and one sale in St. Joseph, Missouri. Based upon this, he determined that the value of the property should be \$8,631,700. On cross examination, Respondent admitted that the comparable sales used were significantly smaller properties than the subject property and that he was not an appraiser.

Respondent also used the cost method as that is the method most commonly used by assessors to value property. Respondent believed that it would be appropriate as the property is unique. Respondent referenced the TIF agreement in which it set out that the projected total assessed value of the completed building in the TIF agreement would be \$2,129,972 which would result in a TVM of \$6,656,160.

5. Value. The TVM of the subject property on January 1, 2022, was \$4,760,920.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1

of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. These three approaches are the cost approach, the comparable sales approach, and the income approach (also known as income capitalization). *Id.* at 346-48; *Missouri Baptist Children's Home v. State Tax Comm'n* ("MBCH"), 867 S.W.2d 510, 511 n.3 (Mo. banc 1993).

The cost approach may be based on either reproduction cost or replacement cost. 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 341, 347.

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id.* at 347-48 (internal quotation omitted). "Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character." *Id.* at 348.

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

2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107,

111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id.*

3. Complainant's Burden of Proof

The BOE's valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage*, 722 S.W.2d at 77 (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion

is the "party's duty to convince the fact-finder to view the facts in a way that favors that party"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

4. Complainant Did Not Prove Overvaluation.

Although Complainant presented substantial evidence to support its opinion of value, Complainant's evidence was not both substantial and persuasive to rebut the BOE's value and to establish the TVM of the subject property on January 1, 2022.

Mr. Scaletty testified that he gave no value to office space in the mezzanine area. Complainant's comparable sales consist completely of vacant properties and excluded built-to-suit or sale leaseback. The subject property, as Mr. Scaletty emphasized, was a built-to-suit lease that began in 2006 and goes for 20 years. As of January 1, 2022, there were 4 years remaining on the original lease with 6, 5 year extensions possible. To ignore this existing lease for both the sale and the rental of the property in his appraisal makes the appraisal relying on assumptions rather than information readily available. Mr. Scaletty states in one portion of his appraisal the amount of rent the owner receives on an annual basis, then states in another part of his report that the subject's income information was not available. Missouri law requires consideration of economic realities when estimating the TVM of real property for purposes of *ad valorem* taxation. *Mo. Baptist Children's Home*, 867 S.W.2d at 513. Direct Capitalization uses a year's income and a market derived factor or overall capitalization rate to determine value. Mr. Scaletty chose to ignore the income

information presented to him knowing that it would continue for an extended time. His analysis excluded built to suit leases and sale leasebacks, but, in so doing, he did not develop an accurate measure for the market value of this subject property. When the appraiser determines dollar adjustments are warranted for property rights, financing terms, conditions of sale, or market conditions, those adjustments are to be made and should be reflected in the appraisal report. The theory that a leased property is encumbered, and therefore not a preferable comparable, is unpersuasive, is speculative, and not a methodology utilized by Missouri Courts to value property. Courts have addressed a leasehold's non-impact on the transferability of a fee simple estate, stating, "Cases and treatises frequently describe a conveyance of real estate subject to a leasehold estate as a conveyance of a 'remainder' interest, *notwithstanding that fee simple title is what is conveyed.*" *Cooper v. Ratley*, 916 S. W.2d 868, 870 n. 3 (Mo. App. 1996) (emphasis added). While Mr. Scaletty's appraisal may conform with the latest policy of IAAO, the STC is bound to follow Missouri law not the opinion of IAAO.

"While the Commission has some discretion in deciding which approach best estimates the value of a particular property," the Commission's choice of valuation approach "must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors." *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). To assume that a vacant property is the best or most accurate measure for a value of the subject properties doesn't equate to the evidence. The present record contains no evidence to support Complainant's

theory. The record indicates a lack of sufficient comparable sales for the subject properties.

Complainant failed to provide substantial and persuasive evidence, therefore, the presumption that the BOE determination was correct has not been overcome and Respondent's evidence of value need not be considered.

CONCLUSION AND ORDER

The BOE's decision is affirmed. The TVM of the subject property as of January 1, 2022, was \$4,760,920.

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 Nodaway 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 February 19th, 2025.

STATE TAX COMMISSION OF MISSOURI

Todd D. Wilson
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 February 21st, 2025, 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