



STATE TAX COMMISSION OF MISSOURI

MENARD INC.,) Appeal No. 21-33004 and 21-33005
) Parcel/locator No(s): 1215301011 and
) 1329400231
 Complainant(s),)
)
 v.)
)
 BRENT JOHNSON, ASSESSOR,)
 GREENE COUNTY, MISSOURI,)
 Respondent.)

DECISION AND ORDER

Menard Inc. (Complainant) appeals the Greene County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject properties on January 1, 2021, was \$16,274,300 and \$15,369,400. Complainant claims the subject properties are overvalued and proposes TVMs of \$12,080,000 and \$13,000,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation for either of the subject properties. The BOE's decisions are affirmed.¹

Complainant was represented by counsels Chris Mattix and Kevin Mason. Respondent was represented by counsel Aaron Klusmeyer. The evidentiary hearing was

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.

conducted on April 21, 2022, via WebEx.

FINDINGS OF FACT

1. Subject Property. The subject properties are located at 3803 W. University St. (Menards West) and 500 N. Eastgate Ave. (Menards East) Springfield, Greene County, Missouri. The parcel/locator numbers are 1215301011 and 1329400231.

The subject properties consist of two nearly identical, owner-occupied home improvement stores. For ease of analysis and administrative efficiency, Appeal No. 21-33004 is reviewed as Menards West and Appeal No. 21-33005 is reviewed as Menards East.

Menards West is an owner-occupied big box retail store that has 177,190 square feet of gross building area and sits on approximately 22.64 acres of land. Within the building there is a 42,153 square-foot of mezzanine area. Attached to the primary structure is a 25,176 square-foot garden center, and adjacent to the primary structure is a lumber shed/storage building that is approximately 45,552 square feet. All building improvements were constructed in 2018.

Menards East is an owner-occupied big box retail store that has 177,190 square-feet of gross building area and sits on approximately 24.46 acres of land. Within the building there is a 42,153 square-foot mezzanine area. Attached to the primary structure is a 25,176 square-foot garden center, and adjacent to the primary structure is a lumber shed/storage building that is approximately 42,368 square-feet. All building improvements were constructed in 2018.

2. Respondent and BOE. Respondent classified the subject properties as commercial and

determined the TVMs on January 1, 2021, were \$16,274,300 and \$15,369,400. The BOE classified the subject properties as commercial and independently determined the TVMs on January 1, 2021, were \$16,274,300 and \$15,369,400.

3. Official Notice Request by Respondent. Respondent requested the Senior Hearing Officer take Official Notice of the STC decision in *May v. Bushmeyer*, Appeal Nos. 08-20005, 08-20006, 08-20007 & 08-20008 (finding sales occurring after valuation date cannot be considered). Agencies shall take official notice of all matters of which the courts take judicial notice. Section 536.070(6). Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke*, 129 S.W.2d 866, 869 (1939); *Barth v. Kansas City Elevated Railway Company*, 44 S.W. 788, 781 (1898).

4. Complainant's Evidence. Complainant's testimony and evidence submitted TVMs for the subject properties on January 1, 2021, of \$12,080,000 for Menards West and \$13,000,000 for Menards East. Complainant submitted the following exhibits:

Exhibit	Description	Ruling
A	Written Direct Testimony of Dan Michlig	Admitted
B	Menards West Title Sheet	Admitted
C	Menards West Overall Floor Plan	Admitted
D	Menards West Site Plan	Admitted
E	Menards West Settlement Statement	Admitted
F	Menards West Construction Costs	Admitted
G	Menards East Title Sheet	Admitted
H	Menards East Overall Floor Plan	Admitted
I	Menards East Site Plan	Admitted
J	Menards East Settlement Statement	Admitted
K	Menards East Construction Costs	Admitted
L	Written Direct Testimony of Brock Heyde	Admitted
M	Menards West Appraisal Report	Admitted
N	Menards East Appraisal Report	Admitted

Respondent submitted pre-filed written objections to Complainant's evidence. Objections to B, C, D, F, G, H, and I were withdrawn at the hearing. Respondent's objection to Exhibits E and J, based on hearsay, are overruled. The Exhibits are all admitted into evidence and given the weight deemed appropriate.

Dan Michlig is employed by Complainant as the manager of tax and audit. Mr. Michlig testified to the specifics of the improvements on the subject properties. Mr. Michlig testified to the settlement statement, dated July 24, 2015, identifying the purchase price Menards paid to acquire the land for Menards West. The total price paid for the land was \$6,400,001. Total construction costs paid were \$16,309,472 and the Menards West store was opened on August 20, 2018. (WDT at 3-4)

Mr. Michlig testified to the settlement statement, dated May 15, 2015, in which, Menards paid \$8,200,000 for the land to build Menards East. Mr. Michlig presented evidence and testimony that the total construction costs paid for Menards East were \$18,247,146. (WDT at 4)

Brock Heyde is an MAI certified and Missouri Licensed real estate appraiser. Mr. Heyde utilized all three approaches to value: the cost approach, the sales comparison approach, and the income capitalization approach. Mr. Heyde testified he reconciled the three approaches and because the subject is owner occupied and because there is an active market and sufficient quantity of comparable sales data, the sales comparison approach was given the greatest weight in the value conclusion. (WDT at 8 and 12) Mr. Heyde testified the cost approach was given secondary weight "as it does not directly reflect market behavior" and the income capitalization approach was given secondary weight

“because this property is not an income producing property and it does not represent the primary analysis undertaken by the typical owner-user in a fee simple transaction.” (WDT)

Mr. Heyde calculated the square footage of the main building for each subject property and excluded the mezzanine, garden center, and lumber shed. (WDT at 2-3) He gave various reasons for the mezzanine’s exclusion: “minimal finish and reduces the clearance height and functional utility of the main floor retail space” there is “ample storage areas in the rear of the building”, “mezzanines are not typically featured or considered necessary for comparable big box retail” and “market participants don’t typically include or report mezzanine areas when reporting gross building or net leasable areas”. (WDT at 2-3) The garden center was also excluded because “its southern and eastern walls are comprised of different building materials, primarily metal siding” and the “northern end of the garden center is open to the elements with drive-in access”. (WDT at 2-3) The lumber shed was excluded due to the “lower quality Class D” finishes; “wood frame with metal siding, metal roof, and concrete floors” and is not “fully enclosed on all sides and lacks heating and cooling”. (WDT at 2-3)

For his sales comparison approach Mr. Heyde used the same five comparables in each report but made adjustments specific to each property. He adjusted for differences in property rights, market conditions, location, access, size, building quality, age/condition, and additional covered storage. He concluded a range of adjusted comparable sales prices and concluded a \$68.00 per square-foot value for Menards West and \$73.00 per square-foot value for Menards East. (WDT) Mr. Heyde testified fee simple sales are vacant sales and he did not use sales that were leased at the time of purchase. (WDT) Additionally, Mr.

Heyde testified because those inflate sales and as the subject was owner occupied, those are not true comparables. (WDT).

Mr. Heyde used six rent comparables for the income capitalization approach. He made adjustments for conditions of lease terms, market conditions, location, access/exposure, size, building quality, age/condition and additional covered storage. (WDT at 6) Mr. Heyde developed a loaded capitalization rate of 7.86% for both subject properties. (WDT at 6)

In the cost approach, for both Menards East and Menards West, Mr. Heyde took into account differences in size and building features to classify the building components and to determine replacement cost new. His cost approach combines the land value with the depreciated replacement cost of the improvements and made adjustments for external obsolescence.

Complainant's final opinion of value as of January 1, 2021, for Menards West was \$12,080,000 and for Menards East was \$13,000,000.

5. Respondent's Evidence. Respondent submitted Exhibits 1A (corrected) as well as the WDT of Melissa Davidson and John Stieber.² Exhibits 1A are the appraisal reports concluding the TVMs of the subject properties on January 1, 2021, were \$16,274,300 for Menards West and \$15,369,400 for Menards East. Complainant pre-filed written objections to the Addendums A-C of Exhibits 1 and 1A as irrelevant, immaterial, hearsay, lacking sufficient foundation and authentication, and unfairly prejudicial while lacking in

² Employees of the Assessor are exempt from licensure and certification under RSMo Section 339.500 to 339.549.

probative value. Respondent pre-filed his response to Complainant's objections. Respondent's exhibits and the attached addendum are admitted into evidence and will be given the weight appropriate.

Ms. Davidson testified she has been a Greene County employee since 2019 as a commercial appraiser. Ms. Davidson testified she is a member of IAAO and the Missouri State Assessors Association Designee Level I. (WDT) Mr. Stiber testified he has been a full-time employee within the Greene County Assessor's Office since 2005 and has been a Commercial Appraiser in that office since 2020 and a Residential Appraiser since 2006. (WDT) He testified he is a member of IAAO. (WDT)

Regarding Menards West, Ms. Davidson utilized all three approaches to value, but found the income approach was the best indicator of what investors are doing within the local income producing property market and thus given the most weight. (WDT) Her reconciled TVM of the subject property as of January 1, 2021, is \$15,369,400.

Regarding Menards East, Mr. Stiber utilized all three approaches to value. Supportive consideration was given to the income approach "because this approach provides an indication of what investors are doing with the local income producing property market" and sales comparison approach was given the least amount of weight "due to the limited availability of sales data for comparable properties". (WDT at 6) He testified the cost approach was supported by using the Greene County Assessor's Office Computer Assisted Mass Appraisal (CAMA) system. His cost approach found the value based on the Greene County CAMA system's record of the square footage of the property of 244,519. His TVM of \$16,274,300 was found by adding the depreciated building value,

depreciated site improvements, and the land area. (Exhibit 1A at 25) His reconciled TVM of the subject property as of January 1, 2021, is \$16,274,300.

6. Value. The TVMs of the subject properties on January 1, 2021, were \$16,274,300 and \$15,369,400.

7. No Evidence of New Construction & Improvement. There was no evidence of new construction and improvement from January 1, 2021, to January 1, 2022, therefore the assessed value for 2021 remains the assessed value for 2022. Section 137.115.1.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of

property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48; *see also St. Louis Cty. v. Sec. Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977).

The 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 v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W. 3d, 341, 347 (Mo. 2005). (citations omitted).

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, 2021. Additionally, even though Respondent was not required to present evidence, Respondent presented evidence supporting the BOE's values.

For property tax purposes, real property is generally valued using "one or more of

three generally accepted approaches.” *Snider*, 156 S.W.3d at 346. These three approaches include 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 evidence established that Complainant’s Appraiser gave the most weight to a sales comparison approach in which sales data for five comparable properties were reviewed: four vacant at the time of sale and one under a lease. Complainant’s comparables consist primarily of vacant properties and exclude built-to-suit or sale leaseback. However, Mr. Heyde testified his preference for fee simple (vacant) sales to compare with the subject properties was based on the fact that the subject properties are owner occupied. He testified sales leased at the time of purchase are inflated and not true comparables. His analysis excluded these categories, but, in so doing, he did not develop an accurate measure for the market value. 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. Complainant presented no substantial and persuasive evidence indicating the property rights cannot be adjusted properly under USPAP standards or appraisal practice as to each of the subject properties. 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). The STC has recently decided *St. Louis BOA Plaza, LLC, et al. v. Stephen Conway, Assessor, City of St. Louis*, 17-20066, 17-20067, and 17-20068 (2019) and the Commission, in affirming the decision of the hearing officer, stated:

“The assessor values property in fee simple interest. An estate in fee simple is ownership of all the rights in a property. A lease conveys property rights to another. The tenant receives a leasehold interest that allows the tenant the right to use and occupy the property under conditions. *The fee ownership remains with the owner of the property.* For ad valorem purposes, the property to be assessed consists of the land and improvements and the possessory interests in the property. Section 137.115.1 RSMo. In most cases, the value of the leased fee and the value of the leasehold should approximate the value of the fee simple unencumbered by a lease.” (emphasis added).

“While the Commission has some discretion in deciding which approach best estimates the value of a particular property,” the Commission's choice of valuation approach “must comply with the law, and once the Commission decides to use a particular approach, it must apply that approach properly and consider all relevant factors.” *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). To assume that a vacant property is the best or most accurate measure for a value of the subject 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.

Furthermore, Mr. Heyde's analysis drew a conclusion that the TVM must be calculated without a significant portion of the square footage of the subject properties. Complainant's witnesses testified that the subject property was much larger than and was customized in a manner different from typical big-box retail stores, which impacted the

subject property's TVM. However, in his testimony, Mr. Heyde justified the exclusion of customized square footage in order to calculate his TVM. Evidence was presented that Complainant currently uses the areas, so to conclude that a potential investor would not consider this a rentable or usable area is not supported by evidence and to exclude such area from any calculations is speculative and does not provide a reliable TVM for the subject properties. (Exhibit N at 95, M at 93) In calculating a TVM without using the actual square footage of the properties, Complainant's valuation is not persuasive. Consequently, one would be forced to engage in speculation to conclude that the presumption of correct assessment was rebutted using Complainant's comparable sales analysis. The Hearing Officer will not engage in such speculation. There was no substantial and persuasive evidence to support Complainant's TVM under the sales comparison approach.

CONCLUSION AND ORDER

The BOE decision is affirmed. The TVMs of the subject properties as of January 1, 2021, were \$16,274,300 for Menards East and \$15,369,400 for Menards West.

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 Greene 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 August 11, 2023.
STATE TAX COMMISSION OF MISSOURI

ERICA M. GAGE
Senior Hearing Officer
State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on August 11, 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