



**STATE TAX COMMISSION OF MISSOURI**

CINEMA 16 LLC, ) Appeal No. 21-33011  
 ) Parcel/locator No(s): 18-12-305-147  
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 Complainant(s), )  
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 )  
 v. )  
 )  
 BRENT JOHNSON, ASSESSOR, )  
 )  
 GREENE COUNTY, MISSOURI, )  
 )  
 Respondent. )

**ORDER AFFIRMING HEARING OFFICER DECISION UPON  
APPLICATION FOR REVIEW**

**HOLDING**

On September 22, 2023, a State Tax Commission (STC) hearing officer (Hearing Officer) entered a Decision and Order (Decision) affirming the Greene County Board of Equalization’s (BOE) valuation of the subject property as of January 1, 2021. The BOE had affirmed the valuation of the subject property as determined by Brent Johnson, Assessor, Greene County, Missouri, (Respondent). Cinema 16 LLC, (Complainant) timely filed an Application for Review of the Decision and Order of the Hearing Officer.

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

## **FINDINGS OF FACT AND PROCEDURAL HISTORY**

The subject property consists of a 9.39 acre site improved by a big box retail building with 69,002 square-feet of gross building area built in 1996. The subject property operates as a movie theater and entertainment venue. The interior is typical finishing for a movie theater. The public area is divided into a ticket lobby, lounge, 14 movie screens, and restrooms. Supporting areas include a commercial kitchen, offices, and a catwalk. Additional improvements include three canopies; two porches; 579 off-street, asphalt surface parking spaces; and 16,500 square-feet of concrete paving. The property operated as of January 1, 2021, with Alamo Drafthouse Cinema as tenant. Complainant renovated the property in 2016-2017.

Respondent classified the subject property as commercial and determined the true value in money (TVM) on January 1, 2021, was \$6,670,700. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$6,670,700.

The Hearing Officer subsequently entered the Decision affirming the decision of the BOE. Complainant subsequently filed its application for review. Respondent filed a response.

## **CONCLUSIONS OF LAW**

### **Complainant's Points on Review**

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

- (1) Complainant’s appraiser’s highest and best use analysis was “arbitrarily and capriciously disregarded despite substantial supporting evidence and with no controverting evidence from Respondent;”
- (2) The “price per screen” methodology is inapplicable because there is no evidence in the record that the highest and best use of the subject property is a movie theater, and Missouri law does not require the “price per screen” methodology in valuing the subject property; and
- (3) Ignoring external obsolescence in the form of the COVID-19 pandemic and the decline of the theater industry is arbitrary, capricious, and contrary to substantial evidence in the record.

In his response, Respondent counter argues that Complainant’s points are intertwined and premised on an incorrect understanding of the law and burden of proof in *ad valorem* tax appeals, *to wit*:

- (1) Complainant’s own appraiser determined the highest and best use of the subject property was its current use as an improved retail commercial use;
- (2) The Hearing Officer did not err in using the price per screen methodology as has been shown to be an appropriate methodology in prior decisions before the STC valuing movie theaters; and
- (3) The Hearing Officer did not err in giving little or no weight to Complainant’s cost approach or external obsolescence calculations.

### **Standard of Review**

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

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

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

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary, or capricious." *See, Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial*

*Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

### **Commission's Ruling**

We find that all of Complainant's points on review are without merit.

Complainant asserts we should agree with Complainant's opinion of value on the grounds that the subject property was to be valued as the equivalent of any other retail big box store; should have been valued as though vacant on January 1, 2021; should not have been valued on a price-per-screen basis; and the valuation should have been reduced dramatically due to the COVID-19 pandemic. The evidence does not persuade us to make such conclusions. Upon reviewing the evidence in the record, we agree with the analysis in the Hearing Officer's Decision, specifically:

[Complainant's appraiser's] analysis of the property as a retail big box ignores the reality of the property. His broad definitions for the highest and best use for this property serve to mar every subsequent decision within the appraisal. The subsequent approaches TVMs are tantamount to speculation and simply lack credibility.

...

Complainant's evidence was substantial, but not persuasive. By utilizing [Complainant's appraiser's] concluded highest and best use, each

approach within Complainant's appraisal is less reliable due to the foundational issue of the Complainant's definition of the property's use. In Missouri, an appraisal for a movie theater should analyze the subject property through a method of price per screen rather than price per square-foot. *See St. Charles Cine LLC v. Shipman* [Appeal No. 11-32951, 2014 WL 1511544]. Here, both Complainant's sales and income approaches are less reliable due to the lack of price per screen analysis. Complainant offered no Missouri law that justifies [Complainant's] lack of following the STC's decisions in previous similar cases. Although not binding, prior STC decisions are persuasive. Complainant did not analyze the property in this manner and provided no evidence or reasoning as to why. "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). Both income and sales approaches lack credibility due to the failure to utilize the methodology from *St. Charles Cine*.

Further, Complainant's comparables are all properties that were vacant at the time of sale. By using no comparables currently leased, as the subject property is, the hypothetical "vacancy" becomes too dissimilar to the subject property to draw any real comparison. To assume that a subject property is vacant and should be compared to vacant sales of movie theaters that are no longer operating is not evidence of a current market analysis for a movie theater operating under a current lease. To find a market value, proper adjustments must be made to proper comparables. There was no substantial or persuasive evidence to support this TVM under the sales comparison approach.

...

[Complainant's appraiser] used two non-movie theater rent comparables and three non-movie theater listings to arrive at his income approach, with the rationalization that a potential investor would abandon the specific current use of the property and to assume it would remain a movie theater would be limiting for potential investment. . . . [Complainant's appraiser] uses market data, but his appraisal amounts to speculation when the appraisal methodology ignores the current use as a movie theater and likens the subject to a vacant big box retailer.

...

Complainant's appraiser utilized replacement cost new of the improvements using Marshall and Swift cost manuals. Complainant's usage of external obsolescence related to COVID-19 is the ultimate fact for which

this approach fails. External obsolescence is a temporary or permanent impairment of the utility or salability of an improvement or property due to negative influences outside the property. *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, Appraisal Institute, 2001, pg. 363. According to the facts in evidence, the property was not allowed to operate as a movie theater due to governmental restrictions. However, no evidence was submitted that the lessee decided to terminate their lease or failed to make payments during this time. In fact, Complainant failed to present any evidence as to how COVID-19 actually affected the subject property other than to generally have the appraiser testify that COVID-19 had national impacts. While a lack of operational business may be persuasive under the income approach, regarding the cost approach, the valuation is attempting to value what this property would be worth had it needed to be replaced. Economic obsolescence, also called external obsolescence, is a term of art within the appraisal industry and “is the impairment of desirability or useful life arising from economic forces, such as changes in highest and best use and legislative enactments that restrict or impair property rights and changes in supply and demand relationships. It is sometimes referred to as locational obsolescence.” Economic obsolescence is **generally not curable**. *Property Assessment Valuation*, International Association of Assessing Officers, 1977, p. 160 (*emphasis added*). External obsolescence of over three million dollars for the shut-down required by the COVID-19 pandemic is not a reasonable use of this reduction, as in the case, the record shows that Complainant provided no substantial and persuasive evidence that the shut-down actually affected the subject property. The appraiser’s cost approach does not contain substantial and persuasive evidence to rebut the BOE due to this. Thus, there was not substantial or persuasive evidence to support a TVM from Complainant.

The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer’s Decision and the application for review of Complainant and Respondent’s response, affirms the Hearing Officer’s Decision. The record supports the Hearing Officer’s findings. The Commission finds that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895- 96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err in affirming the BOE’s 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 the findings of fact and conclusions of law therein, may be incorporated herein, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this decision is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this decision and order is deemed final and the Collector of Greene 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 April 30<sup>th</sup>, 2024.  
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman



Debbi McGinnis, Commissioner

Greg Razer, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 3rd day of May, 2024, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector

Stacy M. Ingle  
Legal Assistant



## STATE TAX COMMISSION OF MISSOURI

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 BRENT JOHNSON, ASSESSOR, )  
 GREENE COUNTY, MISSOURI, )  
 Respondent. )

### DECISION AND ORDER

Cinema 16 LLC (Complainant) appeals the Greene County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$6,670,700. Complainant claims the property is overvalued and proposes a value of \$2,800,000. Complainant did not produce substantial and persuasive evidence establishing overvaluation. The BOE's decision is affirmed.<sup>1</sup>

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<sup>1</sup> 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.

Complainant was represented by counsel, Apollo Carey. Respondent was represented by counsel, Aaron Klusmeyer. The evidentiary hearing was conducted on September 6, 2022, via WebEx.

## **FINDINGS OF FACT**

**1. Subject Property.** The subject properties are located at 4005 South Ave., Springfield, Greene County, Missouri. The parcel/locator number is 18-12-305-147.

The subject property consists of a 9.39 acre site improved with an approximately 69,002 square-foot building built in 1991. The interior is typical finishing for a movie theater. The public area is divided into a ticket lobby, lounge, 14 movie screens, and restrooms. Supporting areas include a commercial kitchen, offices, and a catwalk. Additional improvements include three canopies, two porches, 229,000 square-feet of asphalt parking and 16,500 square-feet of concrete paving. The property operated as of January 1, 2021, with Alamo Drafthouse Cinema as tenant. Complainant renovated the property in 2016.

**2. Respondent and BOE.** Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was \$6,670,700. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$6,670,700.

**3. Official Notice Request by Respondent.** Respondent requests the State Tax Commission take official notice of the STC's decision in *St. Charles Cine LLC v. Shipman*, 2014 WL 1511544, where the SHO found the "methodology of defining unit value on a per screen basis properly reflects the valuation of theater properties by the market."

Agencies shall take official notice of all matters of which the courts take judicial notice. Section 536.070(6). Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts. *In re Murphy*, 732 S.W.2d 895, 902 (Mo. banc 1987); *State v. Gilmore*, 681 S.W.2d 934, 940 (Mo. banc 1984); *State v. Keeble*, 399 S.W.2d 118, 122 (Mo. 1966).

**4. Complainant's Evidence.** Complainant submitted Written Direct Testimony (WDT) of Appraiser Robert Becker and Exhibit A, Complainant's Appraisal. Complainant submitted a proposed TVM of the subject property on January 1, 2021, of \$2,800,000. Mr. Becker is a Missouri licensed real estate appraiser with over 30 years' experience in Missouri. Mr. Becker testified he developed all approaches to value the subject, finding the sales comparison approach was to be given primary weight, with support from the cost and income capitalization approaches.

Mr. Becker testified for his sales and income approaches, he used price per square-foot, rather than a price per screen, because price per square-foot is a better correlated method in producing a market transaction. He further testified his appraisal report was conducted as any big box retail, such as Walmart. His report concluded the highest and best use of the subject property as-vacant would be commercial or residential development. (Exhibit A at 47) His report concluded the highest and best use of the subject property as improved would be continued use as a retail intensive use. (Exhibit A at 47)

Mr. Becker testified his sales comparison approach used four sales from Texas, Illinois, Nebraska, and Ohio. He testified he found no sales comparables in Missouri that were fee simple, so he did look outside the local area for his appraisal. All of the

comparable sales Mr. Becker used were multi-screen movie theaters. He testified he used quantitative percentage adjustments to the comparables based on age, quality, size (by square-foot), condition, functional utility, office buildout and others. (Exhibit A at 61) His appraisal considered adjustments to property rights, financing terms, conditions of sale, expenditures after sale and market conditions and found 0% adjustment was necessary for all comparables. (Exhibit A at 61) Mr. Becker found a price per square-foot of \$41, multiplied by 69,002 and arrived at an indicated value of the improvements of \$2,800,000 (rounded). Mr. Becker testified all of the sales were vacant at the time of sale, with no adjustments being needed for property rights since he was valuing the property in fee simple, which in his opinion would be the finding a TVM as though vacant.

Mr. Becker developed the income approach to support the sales comparison approach. Under the income approach, Mr. Becker used two rent comparables and three listings. He utilized comparables in the local market, making concessions for lease terms and qualitative adjustments for location and physical features. He developed a net operating income of \$283,253 and found a capitalization rate of 10% based on national data. The TVM under the income approach was \$2,800,000.

Mr. Becker developed the cost approach to support the sales comparison approach. Mr. Becker used Marshall Valuation Services (MVS) for replacement cost new with two methods for depreciation, age/life and extraction. He found the weighted age of the subject to be 15 years. Mr. Becker concludes his cost approach using depreciation by age-life method supports a value of \$3,300,000 and using depreciation by extraction supports a value of \$3,400,000. He found that cost depreciation age/life method deserves primary

weight in the final reconciliation of value. (Exhibit A at 59) Mr. Becker developed the cost approach by calculating replacement cost new, applying adjustments for functional and external obsolescence and land values to develop a TVM. Under his age/life new depreciation method, he concludes 20% functional obsolescence is appropriate for a conversion cost because movie theaters have suffered the largest loss in demand as online movie providers continue to erode demand. (Exhibit A at 56) His appraisal reports conclude regarding External Obsolescence as follows:

“as the demand for big box stores continues to decline so does the demand for lease space. Additionally, the rapid increase in vacant departments’ stores have oversupplied the big box market. This has further depressed lease rates. Again, this is compounded by the subject’s current use as a movie theater. Movie theaters have suffered greater loss than standard big box stores. The government shuttered movie theaters due to the COVID-19 pandemic in 2020. Once reopened, they operated under restricted occupancy. In addition, Hollywood halted the release of major motion pictures causing the subject to close its doors again in October of 2020.” (Exhibit A at 56).

His extraction method of depreciation found an 82.5% depreciation when compared to the sales utilized in the comparable sales approach. In sum, Mr. Becker found the cost approach to support the sales comparison approach with a TVM of \$3,300,000.

**5. Respondent's Evidence.** Respondent submitted Exhibit 1, Appraisal Report, and the WDT of Andrea Burton, a staff appraiser for Greene County. Ms. Burton concludes in her exhibit the TVM of the subject property on January 1, 2021, was \$8,700,000 (rounded).

Exhibit 1 utilizes the cost, sales comparison, and income approaches to estimate the market value of the improved subject property. Ms. Burton testified the most reliance was placed on the income and cost approaches, with less weight placed on the sales comparison

approach because “there are limited local and national sales and most of the sales include leased fee investment scenarios.” (WDT at 7) Ms. Burton testified that Respondent did have a copy of the lease for the subject property and used for this report. She also testified that an appraisal from a third party submitted to the STC for a prior appeal for this property was utilized in assisting authoring her report.

In the cost approach, Ms. Burton estimated the value of the land using three comparable land sales. Ms. Burton found replacement cost new of the improvements using Marshall and Swift cost manuals. (WDT at 3) The total value of the land and its improvements was determined by adding the land value of \$2,300,000 to the depreciated cost of the improvements of \$7,327,644, to find a TVM of \$9,600,000 (rounded). (WDT at 4) Ms. Burton did not make any adjustment for economic obsolescence.

In the income approach, Ms. Burton concludes the loaded capitalization rate of 10.14%. The rent rate of \$18.45 per square foot was chosen for the subject by examining the rent rates of six comparable rentals, as well as the rent rate of the subject. (WDT at 7). Ms. Burton’s calculation of net operating income was \$881,875. (WDT at 8) Ms. Burton then divided the net operating income by the capitalization rate of 10.14%, to find a TVM of \$8,700,000 (rounded). (WDT at 8)

In the sales comparison approach, Ms. Burton uses sales of four comparable properties--all of which were multi-screen movie theaters. Adjustments were made for sale date, age, and size. Using a valuation method of price per screen, Ms. Burton concludes, “the sales prices of the comparable sales ranged from \$778,571 to \$1,025,000 per screen with an average of \$935,269 per screen, which supports the Assessor’s value of \$476,479

per screen. Using the lowest price per screen of the comparables (\$778,571) multiplied by 14 screens would indicate a value of \$11,000,000” (rounded). (WDT at 5-6)

**6. Value.** The TVM of the subject property on January 1, 2021, was \$6,670,700.

**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 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's Analysis of Highest and Best Use Did Not Reflect a Market Value for the Subject.**

True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future. *Aspenhof Corp. v. State Tax Commission*, 789 S.W. 2d 867, 869 (Mo. App. 1990). It is true that property can only be valued according to a use to which the property is readily available. But this does not mean that in order for a specific use to be the highest and best use for calculating the property's true value in money that particular use must be available to anyone deciding to purchase the property. . . .A determination of the true value in money cannot reject the property's highest and best use and value the property at a lesser economic use of the property. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W. 3d, 341, 348-349 (Mo. 2005).

Mr. Becker's analysis of the property as a retail big box ignores the reality of the property. His broad definitions for the highest and best use for this property serve to mar every subsequent decision within the appraisal. The subsequent approaches TVMs are tantamount to speculation and simply lack credibility.

#### **5. Complainant Did Not Prove Overvaluation.**

Complainant's evidence was substantial, but not persuasive. By utilizing Mr. Becker's concluded highest and best use, each approach within Complainant's appraisal is less reliable due to the foundational issue of the Complainant's definition of the property's use. In Missouri, an appraisal for a movie theater should analyze the subject property through a method of price per screen rather than price per square-foot. *See St. Charles Cine LLC v. Shipman*. Here, both Complainant's sales and income approaches are less reliable due to the lack of price per screen analysis. Complainant offered no Missouri law that justifies their lack of following the STC's decisions in previous similar cases. Although not binding, prior STC decisions are persuasive. Complainant did not analyze the property in this manner and provided no evidence or reasoning as to why. "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). Both income and sales approaches lack credibility due to the failure to utilize the methodology from *St. Charles Cine*.

Further, Complainant's comparables are all properties that were vacant at the time of sale. By using no comparables currently leased, as the subject property is, the hypothetical "vacancy" becomes too dissimilar to the subject property to draw any real comparison. To assume that a subject property is vacant and should be compared to vacant sales of movie theaters that are no longer operating is not evidence of a current market analysis for a movie theater operating under a current lease. To find a market value, proper adjustments must be made to proper comparables. There was no substantial or persuasive evidence to support this TVM under the sales comparison approach.

"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). Mr. Becker used two non-movie theater rent comparables and three non-movie theater listings to arrive at his income approach, with the rationalization that a potential investor would abandon the specific current use of the property and to assume it would remain a movie theater would be limiting for potential investment. Like the sales comparison and cost approach, the income approach is market-based and is aimed at estimating "the property's true value in money." *Snider*, 156 S.W.3d at 347; see also *The Appraisal of Real Estate* at 36 n.1 (noting "all three approaches to value are 'market' approaches in that they rely on market data") (emphasis added). Mr. Becker uses market data, but his appraisal amounts to speculation when the appraisal methodology ignores the current use as a movie theater and likens the subject to a vacant big box retailer.

Complainant's appraiser utilized replacement cost new of the improvements using Marshall and Swift cost manuals. Complainant's usage of external obsolescence related to COVID-19 is the ultimate fact for which this approach fails. External obsolescence is a temporary or permanent impairment of the utility or salability of an improvement or property due to negative influences outside the property. *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, Appraisal Institute, 2001, pg. 363. According to the facts in evidence, the property was not allowed to operate as a movie theater due to governmental restrictions. However, no evidence was submitted that the lessee decided to terminate their lease or failed to make payments during this time. In fact, Complainant failed to present any evidence as to how COVID-19 actually affected the subject property other than to generally have the appraiser testify that COVID-19 had national impacts. While a lack of operational business may be persuasive under the income approach, regarding the cost approach, the valuation is attempting to value what this property would be worth had it needed to be replaced. Economic obsolescence, also called external obsolescence, is a term of art within the appraisal industry and "is the impairment of desirability or useful life arising from economic forces, such as changes in highest and best use and legislative enactments that restrict or impair property rights and changes in supply and demand relationships. It is sometimes referred to as locational obsolescence." Economic obsolescence is **generally not curable**. *Property Assessment Valuation*, International Association of Assessing Officers, 1977, p. 160 (*emphasis added*). External obsolescence of over three million dollars for the shut-down required by the COVID-19 pandemic is not a reasonable use of this reduction, as in the case, the record shows that Complainant provided no substantial

and persuasive evidence that the shut-down actually affected the subject property. The appraiser's cost approach does not contain substantial and persuasive evidence to rebut the BOE due to this. Thus, there was not substantial or persuasive evidence to support a TVM from Complainant.

Complainant did not produce substantial and persuasive evidence of the alleged TVMs for the subject properties. Respondent's evidence serves to support the TVM of the BOE.

### **CONCLUSION AND ORDER**

The BOE decision is affirmed. The TVM of the subject property as of January 1, 2021, was \$6,670,700.

### **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 September 22, 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, September 22, 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