# In the Missouri Court of Appeals Western District

| | | |
|---|---|---|
| **ROBERT AND DONNA BATEMAN,** | ) | |
| | ) | |
| **Appellants,** | ) | **WD73947** |
| | ) | |
| **v.** | ) | **OPINION FILED: February 21, 2012** |
| | ) | |
| **CATHY RINEHART, ASSESSOR,** | ) | |
| | ) | |
| **Respondent.** | ) | |

**Appeal from the Circuit Court of Clay County, Missouri**
The Honorable Larry D. Harman, Judge

Before Special Division: James E. Welsh, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Robert and Donna Bateman (collectively, "the Batemans") appeal from the judgment of the trial court affirming the State Tax Commission's (the "STC") classification of their property (the "Property"). For their sole point on appeal, the Batemans contend that the STC erred in determining that the immediate most suitable economic use of the Property required its classification as commercial rather than residential.

We find that the STC did not err in concluding that the Property, which all parties agree was vacant and unused and thus subject to classification pursuant to section 137.016.5,[1] should be classified as commercial. We affirm the judgment of the trial court which affirmed the decision of the STC.

**Factual and Procedural History**

The material facts are not in dispute. In approximately 2001, the Batemans purchased the Property. The Property is comprised of two platted lots--lots 21 and 23--in the Bolling Heights subdivision in the City of Gladstone.[2] The lots are contiguous and total approximately 1.22 acres in size. The Property is located at Northeast 68th Street and North Oak Trafficway. Lot 23 abuts North Oak Trafficway. Lot 21 abuts Northeast 68th Street. Lot 21 was vacant at the time of the Batemans' purchase. Though lot 23 was improved with a residential structure at the time of purchase, the Batemans tore down the structure almost immediately as it was in very poor condition. The Property is zoned residential.

In 2000, before the Batemans purchased the Property, an unrelated applicant sought to rezone the Property from residential to commercial (CP-3) for use as a gas station. The City of Gladstone Planning Commission rejected the application. Minutes from the Planning Commission's public hearing on the application indicate several concerns, including: (i) that Northeast 68th Street is not a public right-of-way, but is

---

[1]All statutory references are to RSMo 2000 as supplemented unless otherwise indicated.

[2]Though the Property is comprised of two separate parcels, and the proceedings before the STC were assigned two separate case numbers, the cases were heard at the same time, and the evidence submitted applied, by and large, to both parcels. Thus, for purposes of this appeal, we treat the two parcels as one, and collectively refer to the two parcels as the Property.

instead a private, vacated right-of-way requiring the negotiation of access easements for any commercial use of the Property; (ii) that a gas station is too intense a use "right in the back yard of residents' houses;" and (iii) that providing a variance for the City's buffer zone requirements "on the southeast corner [of the Property] is not a good idea for this area." The application to rezone was defeated by the Planning Commission by a unanimous vote.

In July, 2008, the Batemans listed the Property for sale with a realtor for $450,000. The realtor's listing described the Property as "retail-pad." No offers were received for the Property. The listing agreement expired in approximately October, 2009.

Effective January 1, 2009, Cathy Rinehart, Clay County Assessor ("the Assessor"), reclassified the Property from residential to agricultural, and assessed the Property at the agricultural rate of 12% of fair market value, though she placed a fair market value on the Property of $322,100 assuming a commercial use. The Batemans appealed the assessment to the Clay County Board of Equalization which affirmed the Assessor's determination on July 16, 2009. The Batemans then filed a complaint for review of assessment with the STC.

An evidentiary hearing was held before the STC's Senior Hearing Officer Luann Johnson ("Hearing Officer Johnson"). At the hearing, the Assessor and the Batemans agreed that the Property was "vacant and unused," and thus subject to classification based on its "immediate most suitable economic use" pursuant to section 137.016.5. The parties disagreed, however, about what the classification of the Property should be. The Batemans argued the Property should remain classified as residential, as it had been for

many years. The Assessor argued the Property should be ***valued*** as commercial, but ***assessed*** and ***classified***, as agricultural.[3]

The Assessor presented the expert testimony of Gary Maurer ("Maurer"), a commercial appraiser. Maurer testified that after taking into consideration the factors set forth in section 137.016.5, the Property's "immediate most suitable economic use" was commercial. Maurer testified that the Property should be assigned a fair market value of $345,400 based upon sales of comparable commercial property.[4] However, Maurer felt the agricultural assessment rate of 12% should be applied to this commercial fair market value.[5]

The Batemans offered evidence of the obstacles to commercial development of the Property, including the current residential zoning, the buffer and set-back requirements which would require variances before the Property could be developed as commercial, the requirement to negotiate access easements to Northeast 68th Street, a private right-of-way, the limited access to North Oak Trafficway, the City's rejection of a commercial zoning application in 2000, and the fact that although the Batemans had listed the Property for sale as commercial from July 2008 until about a month before the STC hearing, they had received no offers of any kind. The Batemans argued that the factors described in section 137.016.5 required classification of the Property to remain

---

[3] *See* our discussion, *infra*, addressing this suspect practice.

[4] Despite this evidence, the Assessor continues to claim (consistent with her initial assessment of the Property) that the fair market value of the Property is $322,100.

[5] In effect, Maurer testified the Property should be classified as commercial, though assessed at the agricultural rate. This may explain why the Assessor initially classified the Property as agricultural, and argued before the STC for an agricultural classification. As discussed, *infra*, we do not agree with Maurer that the law permits the Assessor to technically classify (or value) property in a commercial classification while assessing it at the agricultural rate, a practice which is contrary to the plain language of section 137.115.5.

residential. They argued the Property, classified as residential, had a fair market value of $21,100, and an assessed value of $4,010.[6]

Hearing Officer Johnson found that the Property's classification for 2009 and 2010 should be commercial. Hearing Officer Johnson thus set aside the Board of Equalization's decision affirming the Assessor's agricultural classification of the Property. Hearing Officer Johnson agreed, however, with the Board of Equalization's decision to affirm the Assessor's valuation of the Property as $322,100. Hearing Officer Johnson rejected the Assessor's position that the Property could be assessed at the 12% agricultural rate though valued (or classified) as commercial property. As such, Hearing Officer Johnson applied section 137.115.5's commercial assessment rate of 32% to the fair market value of the Property, and concluded the Property had an assessed value of $103,080 for 2009 and 2010. Hearing Officer Johnson found that the Batemans failed to rebut the presumption of correct valuation of the Property by the Board of Equalization.

The Batemans filed an application for review of Hearing Officer Johnson's decision with the STC. On April 13, 2010, the STC entered its order affirming Hearing Officer Johnson's decision.

On May 12, 2010, the Batemans filed a petition for judicial review of the STC's decision in the Circuit Court of Clay County. The Batemans then filed a motion for summary judgment. After a hearing on the Batemans' motion for summary judgment, the

[6]The evidence suggests this was both the fair market value and the assessed value of the Property in 2008, the year preceding the Assessor's reassessment.

trial court entered judgment denying the Batemans' motion and affirming the STC's decision.

This appeal followed.

**Standard of Review**

On an appeal from a judgment of a trial court addressing the decision of an administrative agency, we review the decision of the administrative agency and not the judgment of the trial court. *Bird v. Mo. Bd. of Architects*, 259 S.W.3d 516, 520 n.7 (Mo. banc 2008). Notwithstanding, in our mandate, we reverse, affirm or otherwise act upon the judgment of the trial court. *Id.*

"Pursuant to Mo. Const. art. V, section 18 and section 536.140, we must determine 'whether the agency's findings are supported by competent and substantial evidence on the record as a whole; whether the decision is arbitrary, capricious, unreasonable or involves an abuse of discretion; or whether the decision is unauthorized by law.'" *Henry v. Mo. Dept. of Mental Health*, 351 S.W.3d 707, 712 (Mo. App. W.D. 2011) (quoting *Coffer v. Wasson-Hunt*, 281 S.W.3d 308, 310 (Mo. banc 2009)).

"[A] court reviewing the actions of an administrative agency should make a 'single determination whether, considering the whole record, there is sufficient competent and substantial evidence to support the award.'" *Albanna v. State Bd. of Registration for Healing Arts,* 293 S.W.3d 423, 428 (Mo. banc 2009) (quoting *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003)). Though we "consider[] the entire record to determine whether the decision is supported by competent and substantial evidence, . . . '[w]e may not substitute our judgment on the evidence for that of the

agency, and we must defer to the agency's determinations on the weight of the evidence and the credibility of witnesses.'" *Henry*, 351 S.W.3d at 712 (quoting *Stacy v. Harris,* 321 S.W.3d 388, 393–94 (Mo. App. S.D. 2010)). "We 'must look to the whole record in reviewing the Board's decision, not merely at that evidence that supports its decision, '***and we no longer view the evidence in the light most favorable to the agency's decision.***'"[7] *Id.* (quoting *Lagud v. Kansas City Bd. of Police Comm'rs,* 136 S.W.3d 786, 791 (Mo. banc 2004) (emphasis added)).

When an administrative agency decision is based on the agency's interpretation and application of the law, we review the administrative agency's conclusions of law and its decision *de novo,* and we make corrections to erroneous interpretations of the law. *Algonquin Golf Club v. State Tax Commission,* 220 S.W.3d 415, 418 (Mo. App. E.D. 2007).

In this case, the STC incorporated the decision of Hearing Officer Johnson into its order. "This court reviews the decision of the STC and not the hearing officer, *Cohen v. Bushmeyer,* 251 S.W.3d 345, 350 n. 4 (Mo. App. E.D. 2008), unless, as here, the STC incorporated the decision of hearing officer, in which case we consider both together, *Loven v. Greene County,* 94 S.W.3d 475, 477 (Mo. App. S.D. 2003)." *Peruque, LLC v. Shipman*, 352 S.W.3d 370, 374 (Mo. App. E.D. 2011).

---

[7]As a point of clarity, we note that the case relied upon by the Batemans to describe our standard of review, *Algonquin Golf Club v. State Tax Commission*, 220 S.W.3d 415, 418 (Mo. App. E.D. 2007), incorrectly holds that "[w]e consider the evidence in the light most favorable to the Commission, together with all reasonable inferences therefrom" citing to authority decided prior *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003).

## Analysis

For their sole point on appeal, the Batemans contend that the STC erred in holding that the "immediate most suitable economic use" of the Batemans' vacant and unused Property was commercial rather than residential. The Batemans have not contested the fair market value assigned the Property assuming a commercial classification.[8] Thus, the only question presented is whether the Property has been properly classified as commercial.

Article 10, section 4(b) of the Missouri Constitution provides that real property "shall be subclassed in the following classifications: (1) Residential property; (2) Agricultural and horticultural property; (3) Utility, industrial, commercial, railroad, and all other property not included in subclasses (1) and (2) of class 1." Article 10, section 4(b) further provides that "[p]roperty in the subclasses . . . ***may be defined by law***." Consistent with this authority, the legislature has defined the three subclassifications of real property in section 137.016.1.

Anticipating that the use (or nonuse) of some property may not fit precisely within one of the definitions set forth in section 137.016.1, the legislature also enacted section 137.016.5. That section provides that:

> All real property which is vacant, unused, or held for future use; . . . or for which a determination as to its classification cannot be made under the definitions set out in subsection 1 of this section, ***shall be classified according to its immediate most suitable economic use*** . . . .

[8]The Batemans' offered evidence about the Property's fair market value assumed a residential classification.

(Emphasis added.) Section 137.016.5 does not elevate "vacant and unused" property into an additional subclassification of real property. Instead, section 137.016.5 provides for a means of classifying real property into one of the three constitutionally authorized subclassifications if the property does not otherwise fit within one of the definitions set forth at section 137.016.1.

Here, the Batemans and the Assessor agree that the Property does not fall within the definition of residential property set forth at section 137.016.1(1)[9] as that definition would require the Property to be improved by a residential structure. The parties also agree that the Property does not fall within the definition of commercial property set forth at section 137.016.1(3) as that definition would require the Property to be used directly or indirectly for a commercial purpose. The parties thus agree that the Property is vacant and unused, and that its classification cannot be determined by the definitions set forth in section 137.016.1, requiring its classification to be determined by its "immediate most suitable economic use" pursuant to section 137.016.5.

Section 137.016.5 directs that a vacant and unused property's "immediate most suitable economic use," and thus its classification, shall be determined after consideration of eight factors as follows:

(1) Immediate prior use, if any, of such property;

---

[9]The parties cite to section 137.016.1(2) for the definition of "Residential property" and per section 137.016.1(2) RSMo Cum. Supp 2009 and 2010, and the 2011 session laws, Vernon's Missouri Session Laws, Laws of the 96th General Assembly, 2011 First Regular Session, at 843 (2011), that would be correct. However, the most current online version of section 137.016, provided by the website of the Missouri General Assembly, provides for the definition of "Residential property" in section 137.016.1(1). Section 137.016 (2011) *available at* http://moga.mo.gov/statutes/C100-199/1370000016.HTM. In this opinion, we refer to the section 137.016.1(1), when referring to the definition of "Residential property" as that numbering correlates to article 10, section 4(b)'s numbering of property classifications.

(2) Location of such property;

(3) Zoning classification of such property; except that, such zoning classification shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property;

(4) Other legal restrictions on the use of such property;

(5) Availability of water, electricity, gas, sewers, street lighting, and other public services for such property;

(6) Size of such property;

(7) Access of such property to public thoroughfares; and

(8) Any other factors relevant to a determination of the immediate most suitable economic use of such property.

Given the nature of these factors, it follows that the classification of vacant and unused property is a factual determination.

The STC found that the application of the eight factors described in section 137.016.5 warranted the conclusion that the Property's immediate most suitable economic use, and thus its classification, is commercial. Our role in reviewing this factual determination is to "consider[] the entire record to determine whether the decision is supported by competent and substantial evidence[.]"[10] *Henry*, 351 S.W.3d at 712.

---

[10]We are mindful that in the ordinary case, "[a] presumption exists that the assessed value fixed by the [Board of Equalization] is correct." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). If the presumption exists, the burden of proof rests on the taxpayer to rebut it with substantial and persuasive evidence. We do not believe this presumption influences our review of the STC's factual determination in this case for two reasons. First the Board of Equalization's agricultural classification of the Property was ***set aside*** by the STC in favor of a commercial classification--a classification that had not been advanced by either the Assessor or the Bateman's. Second, the fair market value of the Property set by the Board of Equalization, and accepted by the STC, is not at issue on this appeal ***assuming*** a commercial classification is correct. Thus, we believe it appropriate in this case to review the STC's factual determination about the proper classification of the Property without affording the determination the benefit of a presumption of correctness.

The STC made the following findings[11] regarding the factors set out in section 137.016.5:

(1) **Immediate prior use, if any, of the Property**:

Lot 21 has always been vacant. Residential use of lot 23 ended in 2001. The Property was marketed by the Batemans in 2008 and 2009 "as an assemblage for commercial development." Because the prior actual use of a portion of the Property as residential was separated from the present by a long period of dormancy, the STC concluded that it could not find the immediate prior use of the property to be residential. In this context, the STC defined "immediate" as "[o]ccurring without delay [or] not separated by other persons or things [or] having a direct impact." BLACK'S LAW DICTIONARY 751 (7th ed. 1999). The STC thus found the Property had no immediate prior use.

(2) **Location of the Property**:

The Property is surrounded by commercial property with the exception of residential property to the southeast. The Property is located on North Oak Trafficway, a major five lane thoroughfare.

(3) **Zoning classification of the Property**:

The Property is zoned residential. Though an application for commercial zoning (CP-3) for a gas station was denied in 2000, the Assessor introduced evidence that the

---

[11] Most of these findings were actually made by Hearing Officer Johnson, and incorporated by reference in to the STC's order.

City of Gladstone has advised that it would favorably entertain a rezoning application for a less intensive commercial use of the Property.

(4) **Other legal restrictions on the use of the Property**:

According to the STC, no evidence was presented of other legal restrictions prohibiting any particular use of the Property. Though a private development agreement would have to be negotiated for access on the north side of the Property (where Lot 21 abuts Northeast 68th Street), the Property has access to North Oak Trafficway through the contiguous parcel, Lot 23.

(5) **Availability of water, electricity, gas, sewers, street lighting, and other public services for the Property**:

The Property is improved with a sidewalk, curb, and curb cut with a gravel pad. All utilities are available. These improvements are suitable for either commercial or residential development.

(6) **Size of the Property**:

The size of the Property would permit either residential or commercial development.

(7) **Access of the Property to public thoroughfares**:

The Property has access to North Oak Trafficway, a major five lane thoroughfare.

(8) **Any other factors relevant to a determination of the immediate most suitable economic use of the Property**:

The STC did not make specific factual findings with respect to this factor. However, the STC did otherwise find that the Batemans had, as recently as a month before the STC hearing, been marketing the Property as an assemblage for commercial

development.[12] The STC concluded that the Batemans' "own actions suggest that [their] current assertion of a most suitable economic use as residential is without credibility."

After considering the eight factors described in section 137.016.5, the STC concluded that the "immediate most suitable economic use" of the Property is commercial. The STC is the judge of credibility of the witnesses appearing before it, and of the evidence. *Cohen*, 251 S.W.3d at 348. We defer to the STC on the weight of the evidence and the credibility of witnesses. *Henry*, 351 S.W.3d at 712. Our review of the record as a whole suggests that the STC's factual conclusion that the Property's "immediate most suitable economic use," (and thus its classification), is commercial is supported by competent and substantial evidence, and is not arbitrary, capricious, or unreasonable.

The Batemans disagree. They place heavy weight on the fact that the Property is currently zoned residential, and argue that impediments to commercial zoning, along with the fact that no meaningful interest was expressed in the Property while it was marketed as commercial, suggest the Property could not have been used for a commercial purpose during the current assessment cycle. The Batemans argue that the legislature's use of the word "immediate" to qualify the phrase "most suitable economic use" necessarily implies a temporal requirement that the use anticipated by a classification be either immediately possible, or possible, at a minimum, within the current assessment cycle. To support this construction of section 137.016.5, the Batemans rely on the decisions in *Algonquin Golf*

---

[12]The Batemans' listing for the Property marketed the Property as an "[e]xcellent corner pad site in the city of Gladstone with 325' frontage on North Oak Trafficway . . . . Across from Hyundai and Volkswagon Dealerships."

*Club v. State Tax Commission*, 220 S.W.3d 415 (Mo. App. E.D. 2007) and *Zimmerman v. Missouri Bluffs Golf Joint Venture*, 50 S.W.3d 907 (Mo. App. E.D. 2001). The Batemans' reliance on these cases for the proposition that the word "immediate" means a lawful use of property within a defined temporal period not beyond the current assessment cycle is wholly misplaced.

In *Zimmerman*, several private golf and country clubs contested the classification of the improved portions of their properties[13] as commercial pursuant to section 137.016.5.[14] 50 S.W.3d at 909. The Eastern District concluded that the STC correctly classified the improved portions of the country club/golf courses as commercial because the country clubs "have the equipment and facilities needed to convert from private golf clubs to public golf clubs." *Id.* at 914. The court concluded that this meant the "***immediate*** most suitable economic use" of the properties would be as public golf courses. *Id.* In placing emphasis on the word "immediate," the Eastern District in *Zimmerman* relied on its decision in *Village North, Inc. v. State Tax Commission of Missouri*, 799 S.W.2d 197 (Mo. App. E.D. 1990). *Id.* at 913. In *Village North*, the court applied section 137.016.5 to determine the "immediate most suitable economic use" of a two hundred fourteen apartments/sixty-bed skilled nursing facility.[15] 799 S.W.2d at 201. The court concluded that the immediate most suitable economic use of the property was

[13]Generally, the improved portions of the involved properties were in use as clubhouses, pools, refreshments stands, sheds, fences, pro shops, concrete/asphalt parking surfaces, and similar structures or uses. *Zimmerman v. Missouri Bluffs Golf Joint Venture*, 50 S.W.3d 907, 909-10 (Mo. App. E.D. 2001).

[14]Section 137.016.5 applies not only to vacant and unused land, and land which cannot otherwise be classified by application of the definitions in section 137.016.1, but also to real property "which is used for a private club, a not-for-profit or other nonexempt lodge, club, business, trade, service organization, or other similar entity."

[15]At the time, the statute was numbered as section 137.016.3. Section 137.016.5 applied in *Village North* because the subject property did not fit within the definition of "residential property" in section 137.016.1(1). 799 S.W.2d at 201.

commercial because "the physical structure is such that were this complex owned by a private for profit organization it clearly would be operated as an apartment complex." *Id.* (quoted with approval in *Zimmerman*, 50 S.W.3d at 913).

*Zimmerman* does not assist the Batemans. It is logical that improved property which would be classified as commercial if owned by a "for profit" entity, or if converted from a private to a public use, should be classified as commercial pursuant to section 137.016.5 as its immediate most suitable economic use is apparent and not otherwise impractical or impossible. Though in both *Zimmerman* and *Village North*, the Eastern District loosely placed emphasis on the word "immediate," it did so because ***no*** evidence was presented in either case suggesting that the conversion to "for profit" ownership (as in *Village North*) or from private to public facilities (as in *Zimmerman*) was beyond the realm of reasonable possibility. The reliance on the word "immediate" did not refer to a temporal constraint, but instead to the absence of any practical constraint preventing the commercial use.

The Eastern District made precisely this point in *Algonquin*. In *Algonquin*, as in *Zimmerman*, several private golf courses and country clubs appealed the decision to assess the improved portions of their properties as commercial. 220 S.W.3d at 416. The Eastern District rejected the argument advanced by the assessor that the word "immediate" required disposition of the case identically to the outcome in *Zimmerman*. *Id.* at 421. The Eastern District concluded that it could not look exclusively to the fact that the improvements on the properties could, at least hypothetically, be *immediately* used for a commercial purpose. *Id.* Instead, the court concluded that it was required to

consider the entire phrase, "immediate most suitable economic use," without undue focus on the word "immediate," "because we presume the legislature intended every word, clause, sentence, and provision of a statute." *Id.* The private clubs presented undisputed evidence of nearly insurmountable obstacles which would prevent them from securing the commercial zoning necessary to convert from private to public golf courses.[16] *Id*. at 420. Further, the private clubs presented undisputed evidence that it would be economically unfeasible to convert the private clubs into public facilities. *Id*. at 421. The Eastern District thus concluded that "[the] unique facts [] and circumstances" of the case required it to reverse the STC's conclusion that the improved portions of the property owned by the clubs should be classified as commercial. *Id.* at 422. In so doing, the Eastern District recognized that the phrase "immediate most suitable economic use" suggests that neither economic nor legal impediments of a substantial nature exist prohibiting or materially impairing the use anticipated by a tax classification.

Collectively, *Village North*, *Zimmerman*, and *Algonquin* did not yield surprising outcomes, as all were based on a fact driven, case by case, and common sense evaluation of a property's "immediate most suitable economic use" based on the potential uses of existing structures in light of economic or legal impediments to such uses, if any. As the Eastern District aptly noted in *Algonquin,* the application of the factors set forth in section 137.016.5 will be necessarily "unique to the facts and circumstances" of each case "as they were developed through [the] record." *Id.* at 422. To suggest otherwise "would

[16]It was undisputed that commercial buildings and uses were prohibited not only by current zoning, and that applicable ordinances made it unlikely special use permits could be secured. As to some of the private clubs recorded deed restrictions prohibited the use of all or any portion of the property for commercial purposes. *Algonquin,* 220 S.W.3d at 417.

render the legislature's directive to examine all eight factors of Section 137.016.5 in each circumstance meaningless." *Id*. We categorically reject, therefore, the Batemans' attempt to characterize the holdings in *Zimmerman* and/or *Algonquin* as requiring disproportionate or undue weight to be placed on a property's current zoning, and/or on the word "immediate" as to suggest a legislative intent to require an assessor to prove property could be used as classified within the current assessment cycle.

In fact, *Algonquin* and *Zimmerman* require us to affirm the STC's decision. The STC found that the immediate most suitable economic use of the Property (which is vacant and not improved) is commercial. The Batemans did not present persuasive evidence of prohibitive economic or legal impediments to such a use. In fact, one can readily conclude, as the STC did, that the Batemans fully anticipate the Property can be put to a commercial use, evidenced by their marketing of the Property as commercial in the months immediately preceding and following the Property's reassessment.

The Batemans also argue that the dictionary definition of "immediate" employed by the STC when it evaluated the Property's immediate prior use (the first factor identified in section 137.016.5) had to be consistently employed when the STC considered the Property's "immediate most suitable economic use." The STC defined "immediate" in the context of discussing the Property's immediate prior use as "[o]ccurring without delay [or] not separated by other persons or things."[17] The Batemans argue that pursuant to this dictionary definition of "immediate," a commercial use cannot be the "immediate most suitable economic use" of the Property because a

---

[17]BLACK'S LAW DICTIONARY 751 (7th ed. 1999).

commercial use of the Property would be delayed and separated by the need to obtain commercial zoning. We disagree with the premise underlying the Batemans' arguments. The STC's selection of a dictionary definition for a word or phrase used in a statute does not control our determination of legislative intent.

The plain language of section 137.016.5 expressly and unambiguously provides that a property's current zoning classification ***"shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property[.]"*** (Emphasis added.) The legislature expressly envisioned that vacant and unused property may well be classified in a manner that is inconsistent with its zoning.[18] Thus, the legislature clearly anticipated that property subject to classification under section 137.016.5 may well be classified for a use which cannot be undertaken without a change in zoning--a process which, by its very nature, takes time and is not possessed of certain outcome.[19]

We reject, therefore, the Batemans' premise that the legislature intended the word "immediate" to mean "occurring without delay or separation." The Batemans' offered definition for the legislature's use of the word "immediate" in section 137.016.5 "requires us first to create an ambiguity, then construe the statute against its clear language. We are not in the business of creating ambiguities to reach a result contrary to the clear

[18]In fact, this is consistent with the fact that even as to property which is classified by application of one of the subclassification definitions set forth at section 137.016.1, zoning is not dispositive. In fact, as a matter of interest, in the matter of *Rinehart v. Bateman*, WD 73954, a decision handed down on the same date as this Opinion, the Batemans' property at issue in that case is zoned commercial, but we concluded the property should be classified as agricultural because its use falls within the definition of "agricultural" set forth at section 137.016.1(2).

[19]Nothing would prevent a taxpayer whose property is classified for tax purposes in a manner that exceeds its zoning classification from challenging later assessments if intervening efforts to rezone the property in a manner consistent with its tax classification prove unsuccessful.

statutory language." *Schudy v. Cooper*, 824 S.W.2d 899, 901 (Mo. banc 1992). Had the legislature intended "immediate" to possess a definition which, as the Batemans argue, would require a tax classification to permit an actual lawful use within at least the current assessment cycle, the legislature "could and would have said so." *Bryan v. Pogue*, 18 S.W.3d 529, 533 (Mo. App. W.D. 2000). Rather, it is apparent that the legislature intended the word "immediate" to convey an expectation that reasonably contemporaneous information should be evaluated in determining the "immediate prior use" of property (the first of the eight factors), and in determining the "immediate most suitable economic use" of property following consideration of all eight factors described in section 137.016.5. *See* BLACK'S LAW DICTIONARY 749 (6th ed. 1990) (defining "immediate" as "[a] reasonable time in view of particular facts and circumstances of case under consideration").

"In all cases, the taxpayer has the burden of proof when challenging the STC's assessment of property." *Algonquin*, 220 S.W.3d at 420. The Batemans failed to meet their burden of proving that the immediate most suitable economic use of the Property is residential. The Property had not been used for a residential purpose since at least 2001. There was no evidence that a residential use of the Property was planned or intended. To the contrary, the Batemans had been attempting to sell the Property for a commercial use. The Batemans did not demonstrate that the mere need to rezone the Property to commercial presented a meaningful obstacle to its use for a commercial purpose, in stark contrast to the compelling evidence presented by the taxpayers in *Algonquin*. In fact, the

evidence suggested that the City of Gladstone was amenable to rezoning the Property to a commercial use less intensive than a gas station.

Based on our review of the record as a whole, we conclude that the STC's conclusion that the "immediate most suitable economic use" of the Property for tax years 2009 and 2010 is commercial is supported by competent and substantial evidence, is not an abuse of discretion, and is not arbitrary, capricious, or unreasonable.[20]

The Batemans do not contest the valuation of the Property as commercially classified. Nor do they contest the STC's conclusion of law that the Property, once classified as commercial, had to be assessed at 32% of its fair market value (and not at the 12% agricultural rate suggested by the Assessor). Though not in contest here, given the evidence which suggests a pattern and practice by the Assessor's office to classify then assess vacant and unused property in a "hybrid" fashion, we express our agreement with the STC's legal conclusion that the Assessor is not authorized by the Missouri Constitution or by statute to classify or value a property in one category, while assessing the property at a rate applicable to another category. Article 10, Section 4(b) of the Missouri Constitution provides that real property "***shall be assessed*** for tax purposes ***at its*** value or such ***percentage of value as may be fixed by law for each class and each subclass***." (Emphasis added.) Consistent with this authorization, the legislature has established assessment rates for each subclassification of real property at Section

[20]Just as in *Algonquin*, "our holding is unique to the facts and circumstances as they were developed through this record. Such holding shall remain binding on the parties unless the conditions on [the Property] change or abate. Just as assessments may be challenged annually, a future assessment may present a record on behalf of the [Batemans] or [the] Assessor which may necessitate a change in the tax classification of the [Property]." 220 S.W.3d at 422.

137.115. Section 137.115.5 provides that property classified as commercial is to be assessed at a rate of 32% of its true value in money, while residential property is to be assessed at 19% and agricultural property is to be assessed at 12%. Section 137.115.5 makes no allowance for classifying property within one subclassification while assessing the property at a rate applicable to a separate subclassification.

## Conclusion

We affirm the judgment of the trial court affirming the decision and order of the STC.[21]

____________________________________

Cynthia L. Martin, Judge

All concur

[21]The Assessor's pending motions to strike portions of the legal file, portions of the statement of facts, the preliminary statement in the Batemans' brief, and page 3 of the Bateman' reply brief are denied.