WD73954

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CATHY RINEHART,
Clay County Assessor,

Respondent,

vs.

ROBERT BATEMAN
and
DONNA BATEMAN,

Appellants.

On Appeal from the Circuit Court of Clay County
Honorable Larry D. Harman, Circuit Judge
Case No. 10CY-CV05361

BRIEF OF THE RESPONDENTS
(Filed by Appellants Pursuant to Rule 84.05(e))

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Preliminary Statement

The law of Missouri specifies that land "used for agricultural purposes and devoted primarily to the raising and harvesting of crops" is "agricultural and horticultural property," which must be assessed for property taxes based on its productive use value – a maximum of $985 per acre and a minimum of $30 per acre, depending on soil condition – rather than its salable fair market value. The State Tax Commission determined that 3.3 acres owned by Appellants Robert and Donna Bateman and used entirely in 2007, 2008, and 2009 for the raising and harvesting of more than four tons of red clover hay each year, was agricultural property to be assessed by its productive use value.

The Clay County Assessor argues this was error. Instead, the Assessor argues the property tax for the land should be assessed based on its supposed fair market value for commercial use, increasing the Batemans' annual property tax from $30 to many thousands of dollars. The Assessor asserts that the land actually is "vacant and unused;" it argues that, merely because the Batemans have not yet turned a profit on their agricultural venture, their active and productive hay farm cannot be an agricultural use.

These arguments are without merit. In *City of Clinton v. Terra Foundation, Inc.*, 139 S.W.3d 186 (Mo. App. 2004), this Court made abundantly clear that hay is an "agricultural crop" and using land to cultivate hay is an "agricultural use." In arguing otherwise, the Assessor ignores the standard of review and inserts words into the tax statutes that are not there. Viewing the evidence in a light most favorable to the Commission's decision, there was no error. This Court should reverse the trial court's judgment and remand this case with instructions to affirm the Commission's decision.

Table of Contents

Table of Authorities

Cases

Constitution of Missouri

Revised Statutes of Missouri

Missouri Code of State Regulations

Missouri Supreme Court Rules

Rules of the Missouri Court of Appeals, Western District

Other Authorities

Jurisdictional Statement

This is a landowner couple's appeal from a judgment reversing a decision of the State Tax Commission in their favor concerning the assessment of property tax against their hay farm. Though the landowners are the appellants, they are acting as respondents under Rule 84.05(e).

This case does not involve the validity of a Missouri statute or constitutional provision or of a federal statute or treaty, the construction of Missouri's revenue laws, the title to statewide office, or the death penalty. Thus, under Mo. Const. art. V, § 3, this case does not fall within the Supreme Court's exclusive appellate jurisdiction, and jurisdiction of this appeal lies in the Missouri Court of Appeals. This case arose in Jackson County. Pursuant to § 477.070, R.S.Mo., venue lies in the Western District.

Statement of Facts

A. The subject property

In 1997, Appellants Robert and Donna Bateman bought two contiguous parcels of land near Northeast 68th Street and North Broadway in Clay County, Missouri, comprising 3.3 acres (Legal File 53, 62, 69). They paid $240,000 for both parcels (L.F. 76). One parcel is situated in Gladstone, and the other in Kansas City (L.F. 57). The boundary between the two parcels is "artificial:" if the city limits did not divide them, they would be considered one piece of property (L.F. 94).

The Batemans' land generally adjoins commercial and residential property (L.F. 63, 104). This includes an apartment complex to the east and a "long-term care hospital" to the west (L.F. 63, 73, 85). To the north and south are vacant lots (L.F. 85). The Batemans' land is less than a quarter-mile from a highway (L.F. 85). At trial, Clay County's expert opined that the setting is "urban" (L.F. 84).

There never has been any "driveway or curb cut access to the" Batemans' property (L.F. 57, 76). As Clay County stipulated at trial, the property only ever has been used agriculturally, even before the Batemans purchased it (L.F. 116). It never has been used for any commercial purpose (L.F. 57). No development plan ever has been proposed for it to the City of Gladstone (L.F. 57, 100). In 1988, a grocery store briefly sought to develop the Kansas City portion, but ultimately decided on another location elsewhere (L.F. 57).

The County's expert acknowledged there was no evidence anyone desired to use the land commercially at the time of the 2009 reassessment this case concerns (L.F. 101-

03). Indeed, there was no possibility it could be used commercially during the 2009-11 assessment cycle, largely because there is no utility connection to the property; the only water and sewer connection is 250 feet west of the property on the other side of North Broadway, a four-lane road (L.F. 57). The Clay County Assessor long had classified the two parcels as "agricultural" for property tax purposes (L.F. 57). In 2007, for example, the Assessor confirmed this in a letter to Mr. Bateman, stating, "As you can see, we have agricultural for property use" (L.F. 57).

Between 1997 and 2006, the Batemans did not use the property for anything, but instead kept it mowed (L.F. 77). Then, beginning in 2007 and continuing in 2008 and 2009, the "entire property" – both lots – were "used for an agricultural use" (L.F. 56, 61). That is, "[h]ay was cut, raked, and baled twice in 2007, and twice in 2008," and again in 2009 (L.F. 56, 219, 232).

For the hay cultivation, Mr. Bateman had bought and planted red clover throughout the property (L.F. 60, 207). He then entered into an agreement with a farmer, McKinnie's Custom Hay Baling, for the "agricultural services" of cutting, raking, and baling the clover into hay in 2007, and then again in 2008 and 2009 (L.F. 56, 79, 215-17, 219, 268). They later entered into the same agreement for 2010 (L.F. 56).

Thus, in June 2007, McKinnie's harvested 97 bales of red clover hay from the Batemans' property (L.F. 60). It did so again in October 2007, July 2008, October 2008, and July 2009 (L.F. 56). Mr. Bateman paid McKinnie's $750 each time in 2007 and 2008, and then $800 in 2009 (L.F. 61). Thereafter, each time, Mr. Bateman sold the harvested bales (L.F. 61). Though he had not yet made a profit by the time of trial, he

testified he knows many farmers do not immediately profit from their enterprises (L.F. 79).

Photographs of the hay baling venture, Mr. Batemans' agreements with McKinnie's, and other documents related to the 2007, 2008, and 2009 red clover hay harvests were admitted into evidence (L.F. 60). Complainant's Exhibit 2 covers 2007 (L.F. 72-73, 169-245). Exhibit 3 covers 2008 (L.F. 72-73, 246-270). Exhibit 4 covers 2009 (L.F. 72-73, 271-284).

Thus, as of January 1, 2009, "the property was agricultural with an active agricultural use" (L.F. 56). In 2007, on Mr. Bateman's request, the University of Missouri had tested the soil on the property (L.F. 59, 192-93, 195). It determined the soil was agriculturally appropriate to grow the "crop" of "cool season grass hay" in the amount of 3-4 tons annually (L.F. 193, 195). Mr. Bateman stated he believes the land is soil "grade 7" (L.F. 58). At trial, the County's expert stated he believed the soil's grade was "one" (L.F. 88). In his written report, however, the expert stated that "the Soil Survey of Clay and Ray Counties, Missouri from the United States Department of Agriculture Soil Conservation Service" gave the land a "productive soil grade level" of "7," just as Mr. Bateman had thought (L.F. 316).

The County argued the agricultural use of the land was "illegal" under Kansas City and Gladstone city ordinances that zoned the land for commercial use (L.F. 63-64). It said the Gladstone portion of the land was zoned "C-3," and the Kansas City portion was zoned "CP-3," both of which were commercial classifications (L.F. 76). But no copies of any zoning ordinances or restrictions were introduced into evidence.

B. Reassessment

In 2009, Gary Maurer, a "commercial appraiser" for Clay County, was tasked with reappraising the Batemans' property (L.F. 82, 326). His appraisal was admitted into evidence as Respondent's Exhibit A (L.F. 82, 95, 285-372).

At trial, Mr. Maurer testified he appraised the property's fair market value as commercial property at $575,000 (L.F. 83, 297). He appraised the Gladstone parcel at $226,500, and the Kansas City parcel at $348,500 (L.F. 83). Then, he applied the 12% statutory agricultural assessment percentage, rather than the 32% commercial assessment percentage, to reach an "assessment value" (L.F. 83). Earlier, before the Board of Equalization, however, he had testified the fair market value of the combined property was $374,000, a value that also appeared in his actual written report (L.F. 97, 298-99). At trial before the State Tax Commission's Hearing Officer, he insisted he was "correcting" that value to $575,000 (L.F. 97).

Mr. Maurer said that, in determining the property's classification, he believed its "highest and best use" was "vacant, because there is [*sic*] no buildings on it" (L.F. 83). Thereafter, he said he applied "eight questions … to decide whether it's going to be residential, agricultural, or commercial or exempt usage" (L.F. 84). He acknowledged, though, that the property "couldn't be considered to be commercial" because its zoning is uncertain on the Kansas City portion (L.F. 85).

Rather, Mr. Maurer suggested the land should be valued commercially based on fair market value, but assessed agriculturally at 12% of that value (L.F. 86). Again, this

contradicted his appraisal, which stated, "It is our opinion that the Highest and Best Use of the subject site is for future commercial development" (L.F. 311).

Mr. Maurer tried to defend the propriety of this agricultural assessment of commercial fair market value, rather than "productive use value" (L.F. 86). He said, "we have three criteria which we use" "when determining whether agricultural property should have productive use value:" (1) "is it greater than five acres in size"; (2) "is it adjoining – or being held for future agricultural use, the same owner with several neighboring tracts already in productive use" and (3) does it have "a soil grade with a productive use grade of six or higher" (L.F. 86). When the Hearing Officer asked Mr. Maurer, "Who set up these criteria?" he responded, "The State Tax Commission did" in 1994 in "some type of rule," which he thought "probably" was in the Code of State Regulations (L.F. 89).

Mr. Maurer stated that, "in order to qualify for productive use value," "at least two of the three" "criteria have to be met" (L.F. 86). He testified the Batemans' property did not meet any of them (L.F. 87). He said this was because the property is "less than five acres in size," there are no adjoining, agriculturally productive properties, and the soil grade is "one" (L.F. 87). Additionally, Mr. Maurer said "there's another kind of informal rule that you should be making at least $2,500 a year on a piece of property in order to entitle it to agricultural productive use," which the Batemans' property does not meet, either (L.F. 90-91).

To reach his "fair market value" of $575,000, Mr. Maurer compared sales of six other properties (L.F. 57-58, 91-94, 106, 320). All, though, were dated between 2004 and

2006, and all were commercially used land (L.F. 57-58, 91-94, 106, 320). The first was a property of 4.47 acres Mr. Maurer said was "next door" to the Batemans' property, which was sold in December 2006 for $778,852, or $4 per square foot (L.F. 91, 320, 346). The second was 10.1 acres five miles away sold in November 2006 for $2 million, or $4.55 per square foot (L.F. 92, 320, 347). The third was 2.9 acres 3 miles away sold in August 2004 for $675,000, or $5.34 per square foot (L.F. 92-93, 320, 348). The fourth was 0.65 acres sold in July 2005 for $165,000, or $5.82 per square foot (L.F. 93, 320, 349). The fifth was 0.62 acres sold in October 2006 for $110,000, or $4.07 per square foot (L.F. 93, 320, 350). The sixth was 1.1 acres sold in July 2004 for $200,000, or $4.17 per square foot (L.F. 93-94, 320, 351).

Based on these "comparables," Mr. Maurer stated he believed the Batemans' property should be valued at $4.00 per square foot (L.F. 94). Based on his appraisal, the Clay County Assessor gave the property a "true value" of $374,500 with a 12% "assessed value" of $44,940, to which it would apply its property tax percentage (L.F. 32-35).

C. Proceedings below

On June 10, 2009, the Batemans appealed the Assessor's determinations to the Clay County Board of Equalization (L.F. 33, 35). On July 16, 2009, the Board stated it ruled not change the assessment (L.F. 33, 35). The Batemans then appealed to the State Tax Commission (L.F. 32, 34).

On November 17, 2009, a hearing was held before the State Tax Commisison's Senior Hearing Officer, Luann Johnson, in Clay County (L.F. 51). It was consolidated with that of two other State Tax Commission property tax appeals by the Batemans (L.F.

51-52).[1] Mr. Bateman (L.F. 53-81) and Mr. Maurer (L.F. 81-114) were the only witnesses (L.F. 51).

Officer Johnson issued her decision on December 22, 2009 (L.F. 373-84; Appx. A6-17). She found the Batemans' evidence "establish[ing] that the subject parcels had been used for hay production in 2007, 2008 and 2009 … is substantial and persuasive to rebut the presumption of correct assessment by the Board and to establish agricultural use of the property" (L.F. 376; Appx. A9). She found the parties agree the proper soil grade for the property "is grade seven," which "carries a productive use value of $75" per acre, citing Mr. Maurer's written report (L.F. 376; Appx. A9). Thus, the correct "true value" for the Batemans' Kansas City parcel was $150 and the correct true value for the Gladstone parcel was $97 (L.F. 376; Appx. A9).

Then, Officer Johnson found the County's evidence was "not substantial and persuasive" (L.F. 376; Appx. A9). Specifically, she was unimpressed by the County's imagined "criteria:" though Mr. Maurer "testified that he was prohibited from assigning agricultural grades to the properties because of a Tax Commission directive prohibiting the use of productive use valuations on parcels smaller than 5 acres which do not adjoin agricultural parcels or which have a grade of 6 or higher," based on her "nearly 20 years of service with the State Tax Commission, these 'Logic Tables' were not created by the State Tax Commission. Nor are these 'Logic Tables' anywhere identified, on their faces,

[1] These appeals are the subject of another case pending before this Court, *Bateman v. Rinehart*, Case No. WD73947 (filed May 26, 2011).

as creations of the State Tax Commission. … Further, these 'Logic Tables' are nowhere supported by statute or case law" (L.F. 376; Appx. A9).

Officer Johnson observed, "Cutting hay is an agricultural activity and such activity is sufficient to cause real property to be classified as 'agricultural property'" (L.F. 378; Appx. A11). She held the eight-factor test in § 137.016.5, R.S.Mo., for "vacant property" therefore did not apply (L.F. 378; Appx. A11).

As such, Officer Johnson held the Batemans had met their burden of proof (L.F. 380; Appx. A13). The "subject parcels had been used for hay production since at least 2007 up to and including the tax day" (L.F. 380; Appx. A13). "Once agricultural use is established, the only remaining issue is the appropriate land grade," which "both parties agree" is grade 7, "valued at $75 per acre" (L.F. 380; Appx. A13). Conversely, the County Assessor's "evidence fails because" its "Logic Tables" used to "exclude small acreages from agricultural classification if they are not adjacent to other agricultural parcels or if they are at grade 6 or higher" have no basis in law: "nothing in the statutes allows for exclusion of small acreages" of agriculturally-used land (L.F. 380-81; Appx. A13-14).

Officer Johnson set aside the Assessor's valuations (L.F. 381; Appx. A14). She held the correct true value of the property, based on its agriculturally productive use, was $150 and $97, with respective agricultural assessed values of $20 and $10 (L.F. 373-74, 381; Appx. A6-7, A14).

On January 22, 2010, the Assessor applied for review of Officer Johnson's decision by the State Tax Commission itself (L.F. 385). The Assessor argued: (1) the

Batemans' hay cultivation violated city ordinances (L.F. 386-87); (2) "cutting hay … is, at best, an agricultural activity, not use" (L.F. 388-89); (3) the "Logic Tables" were based on "state Tax Commission guidelines" (L.F. 389); (4) "agriculture is a way people make a living, not a service they have performed for them" (L.F. 390-91); and (5) holding otherwise had s "huge implications throughout the state" because "it will be cheaper for owners to pay someone to bail hay, or plant pumpkins or tether a goad, than to pay the property tax on the fair market value of the property" (L.F. 390).

The State Tax Commission issued a decision on April 13, 2010, rejecting the Assessor's arguments and affirming Officer Johnson's decision. The Commission held the record "provides support for" Officer Johnson's determinations (L.F. 413; Appx. A19). While the Assessor asserted "that the only issue in this case is whether the subject property is 'vacant and unused land' … or is 'used for agricultural purposes,'" Officer Johnson's "Decision provides the simple answer to the issue. The evidence established that the subject parcels had been used for hay production in 2007, 2008 and 2009" (L.F. 413; Appx. A19).

Similarly, the Assessor's "claim that agricultural use is not permitted in the commercial zoning on the property … was not a fact established at the evidentiary hearing. No copy of any applicable zoning ordinances were introduced into evidence at the hearing to establish what were or were not permitted uses and activities on the two parcels by the respective municipalities" (L.F. 413; Appx. A19). Moreover,

> Whatever the actual zoning ordinance may mandate, it does not alter the fact that hay has been harvested from the subject properties during 2007,

> 2008 and 2009 … Cutting of hay constitutes the raising and harvesting of a crop … there is no provision in the assessment statutes which establishes that classification is to be denied based upon an allegation of ordinance violation by a taxpayer.

(L.F. 414; Appx. A20). The Assessor's "argument as to an agricultural activity versus and agricultural use" also "is not well taken. Because the subject property meets the statutory definition of agricultural property, it must be assigned to the appropriate agricultural grade," which was grade 7 (L.F. 414-15; Appx. A20-21).

Finally, the Commission held that the Assessor's assertion of "broad implications" for Officer Johnson's decision "presents nothing of substance:"

> A hearing officer is required to apply the appropriate law to the facts in the record. That is what was correctly done in this instance. The undisputed and controlling fact is that on the assessment date of January 1, 2009, the subject property had been in use for two years harvesting a hay crop and that use continued in 2009. Based upon that fact, the subject tracts must be valued under the agricultural land productive value and not at a commercial market value.

(L.F. 415; Appx. A21).

On May 12, 2010, the Assessor filed a petition for judicial review of the State Tax Commission's decision in the Circuit Court of Clay County (L.F. 1, 4). On November 4, 2010, the Assessor moved the court for summary judgment, which the Batemans opposed (L.F. 1-2, 421, 445).

The trial court granted summary judgment to the Assessor on February 8, 2010, reversing the State Tax Commission (L.F. 2, 476). It issued a *nunc pro tunc* judgment on March 17, 2010 (L.F. 2, 476; Appx. A1).

The Batemans timely filed a post-judgment motion to reconsider, which the trial court denied on May 9, 2010 (L.F. 2-3, 471, 481). This Court granted the Batemans leave to file a notice of appeal out of time, and they did so (L.F. 482-83).

Response to Appellant's Points Relied On

I. The State Tax Commission did not err in assessing the Batemans' property based on its productive use value *because* the subject property is in active agricultural use and is not vacant, unused, or held for future use *in that* the raising, cutting, and bailing of hay constitutes the raising and harvesting of an agricultural crop and, viewing the evidence in a light most favorable to the Commission's decision, the entirety of the property is used for the raising, cutting, and bailing of hay.

(Response to Appellant's Point I)

City of Clinton v. Terra Found., Inc., 139 S.W.3d 186 (Mo. App. 2004)

State ex rel. Unnerstall v. Berkemeyer, 298 S.W.3d 513 (Mo. banc 2009)

Consumer Contact Co. v. State, 592 S.W.2d 782 (Mo. banc 1980)

Shipman v. Dominion Hospitality, 148 S.W.3d 821 (Mo. banc 2004)

§ 137.016, R.S.Mo.

§ 137.017, R.S.Mo.

§ 137.021, R.S.Mo.

12 C.S.R. § 30-4.010

II. The Assessor's argument that the State Tax Commission's decision violated Mo. Const. art. X, § 4(b), by creating a lack of uniformity within a subclass of real property is not preserved for appellate review *because* to be preserved for appellate review, a constitutional argument must be raised at the earliest possible opportunity *in that* the Assessor couold have raised this argument before the Commission's hearing officer, the Commission itself, or the trial court, but did not, and instead raises it for the first time on appeal.

(Response to Appellant's Point II)

State v. Davis, ___ S.W.3d ___, 2011 WL 3841554 (Mo. banc 2011)

State ex rel. York v. Daugherty, 969 S.W.2d 223 (Mo. banc 1998)

Smith v. Shaw, 159 S.W.3d 830 (Mo. banc 2005)

State ex rel. Nixon v. Am. Tobacco Co., 34 S.W.3d 122 (Mo. banc 2000)

Argument

I. The State Tax Commission did not err in assessing the Batemans' property based on its productive use value because the subject property is in active agricultural use and is not vacant, unused, or held for future use in that the raising, cutting, and bailing of hay constitutes the raising and harvesting of an agricultural crop and, viewing the evidence in a light most favorable to the Commission's decision, the entirety of the property is used for the raising, cutting, and bailing of hay.

(Response to Appellant's Point I)

Standard of Review

On appeal from a trial court's review of an administrative agency's decision, this Court examines the underlying decision of the agency and not the trial court's judgment. *Shipman v. Dominion Hospitality*, 148 S.W.3d 821, 822 (Mo. banc 2004). The Court is "limited to determining whether the decision constituted an abuse of discretion, whether it was supported by competent and substantial evidence on the record as a whole, or whether it was arbitrary, capricious, or unreasonable." *Algonquin Golf Club v. State Tax Comm'n*, 220 S.W.3d 415, 418 (Mo. App. 2007). The Court views the evidence and all reasonable inferences therefrom "in the light most favorable to the Commission …." *Id.*

This Court reviews an agency's conclusions of law *de novo*, and makes "corrections to erroneous interpretations of the law." *Id.* (citation omitted).

* * *

In Missouri, real property devoted primarily to the raising and harvesting of agricultural crops is assessed for property tax purposes based on its productive use value,

rather than its salable fair market value. In 2007, 2008, and 2009, the Batemans planted, raised, grew, harvested, and sold red clover hay on their three-acre property. Their net crop was over four tons per year. Did the State Tax Commission err in assessing their property based on its productive use value, rather than its fair market value?

The Clay County Assessor argues the State Tax Commission erred in rejecting its property tax assessment of the Batemans' property based on the land's supposed fair market value for commercial use. It argues the land is "vacant and unused," and the Batemans' active hay farm on the land producing hundreds of bales of red clover hay each year does not constitute an agricultural use simply because the Batemans have not yet turned a profit on their agricultural venture.

This argument is without merit. Under § 137.016.1(1), R.S.Mo., all real property that is "devoted primarily to the raising and harvesting of crops" is classified as "agricultural and horticultural property." Besides the logical obviousness of hay farming being a plain agricultural use of land, in *City of Clinton v. Terra Found., Inc.*, 139 S.W.3d 186 (Mo. App. 2004), this Court expressly recognized it as such. As the Commission found, the Batemans' land, being exclusively used as an active hay farm, qualified as agricultural property under § 137.016.1(1). Thus, under § 137.017.1, R.S.Mo., the land had to be assessed for property taxes based on its productive use value.

There was no error. The Assessor's argument otherwise ignores the standard of review and inserts nonexistent words into statutes so as to distort their plain meaning. This Court should reverse the trial court's judgment and remand this case with instructions to affirm the State Tax Commission's decision.

A. Under §§ 137.016 and 137.017, property "devoted primarily to the raising and harvesting of crops" is not "vacant or unused" and its property taxes must be assessed based on the value it has for agricultural use.

Under Mo. Const. art. X, § 4(b), and § 137.016.1, R.S.Mo., there are three possible classifications of real property for property tax purposes: "agricultural and horticultural property," "residential property," or "utility, industrial, railroad and other real property." Agricultural property is assessed at 12% of "true value," residential property at 19%, and commercial property at 32%. § 137.115.5, R.S.Mo. The county then exacts a tax that "shall not exceed eight percent" of this "assessed value." Mo. Const. art. X, § 4(b).

Real property is "agricultural and horticultural property" if it is "used for agricultural purposes and devoted primarily to the raising and harvesting of crops …." § 137.016.1(1) (Appendix A25). The General Assembly further has specified that, if land "is in use as agricultural and horticultural property," its "true value in money … shall be that value which such land has for agricultural and horticultural use." § 137.017.1, R.S.Mo. (Appx. A27), rather than its salable fair market value.

The State Tax Commission is directed annually to determine agricultural use values based on soil grade and acreage. § 137.021, R.S.Mo. (Appx. A28). It presently does so in 12 C.S.R. § 30-4.010 (Appx. A29). The maximum productive value per acre, for "Grade #1" property, is $985 per acre, and the minimum, for "Grade #8" property ("land capable of only limited production of plant growth"), is $30 per acre. *Id.*

As a result,

> From an owner's perspective, the target classification for land will often be the agricultural and horticultural land class. Not only does such land have a low percentage multiplier (12%), it also typically benefits from [the above] specified method of valuation.
>
> …
>
> Property on the outskirts of metropolitan areas which is favorably located, perhaps along a major thoroughfare and in the path of commercial development, may have significant commercial value which far exceeds its value for agricultural or horticultural use. [But i]f the property is "in use" as agricultural and horticultural property, it should benefit from this specialized approach to valuation [in §§ 137.017 and 137.021]. On the other hand, if it is *simply* vacant and unused land, it may not qualify for the agricultural and horticultural use method but instead be valued at its fair market value. *Thus, if an owner has agricultural and horticultural land, it may pay to use it as such. Perhaps, planting Christmas trees will be worth the effort.*

18A MO. PRAC. § 65:5 (2011 ed.) (emphasis added).

As this treatise points out, under § 137.016.5, land that is "vacant and unused" is not subject to this special, productive valuation method. But if land is "in use" agriculturally, it is not "vacant and unused," and therefore qualifies for this method. As the Assessor acknowledges, "Land devoted primarily to the raising and harvesting of crops qualifies as agricultural" (Appellant's Amended Brief 22).

The plain meaning of "use" is, "The application or employment of something," especially a "possession and employment of a thing for the purpose for which it is adapted …." BLACK'S LAW DICTIONARY 1577 (8th ed. 2004). Plainly, if land actively and primarily is employed for the purpose of raising and harvesting an agricultural crop, it is "in use" for that purpose and cannot be "unused." The agricultural assessment rubric of § 137.017 applies, not the "vacant and unused" land rubric in § 137.016.5. Otherwise, every piece of unimproved crop farmland in Missouri would be "vacant and unused."

To attempt to circumvent this obvious fault of logic, the Assessor adds a requirement conspicuously missing from the statutes that an agricultural use must turn a financial profit. The Assessor suggests the Batemans' land was "vacant and unused" as agricultural property because they merely "began allowing the grass to grow" on it one year and then paid "a farmer to bale it as hay" (Aplt. Br. 18-19). Not only does this argument insert extra requirements into § 137.016.1(1) that plainly are not there, but it also fails to view the facts in a light most favorable to the Commission's decision.

The Assessor's argument is without merit. As the author of 18A MO. PRAC. § 65:5 contemplated, the Batemans took advantage of their land's scientifically-proven agricultural value. They continuously have employed it for a true, *bona fide* agricultural use for more than four years. That they have not yet made a profit from their agricultural enterprise is irrelevant. Nothing in §§ 137.016.1(1) or 137.017.1 requires or even implies that an agricultural use must turn a profit. The Batemans' land is "in use as" and "devoted primarily to" the raising and harvesting of red clover hay. It is actively used as agricultural property.

B. Red clover hay is an agricultural crop; under §§ 137.016 and 137.017, land devoted to raising and harvesting it is "in use" as agricultural property and must be assessed based on its productive value.

The Assessor's notion that the Batemans merely "began allowing the grass to grow" and then paid "a farmer to bale it as hay" misstates the evidence in the Record. Viewing the evidence in a light most favorable to the Commission's decision, the Batemans' operation of their hay farm was far more technical and deliberate than this.

Mr. Bateman began by paying the University of Missouri in 2007 to test the land's soil to determine what agricultural use, if any, to which the property was amenable (Legal File 59, 192-93, 195). The University's testing determined the soil was agriculturally appropriate to grow the "crop" of "cool season grass hay" and could produce 3-4 tons of it annually (L.F. 193, 195). Mr. Bateman then bought and planted red clover throughout the property (L.F. 60, 207). He then entered into an agreement with a farmer, McKinnie's Custom Hay Baling, to cut, rake, and bale the red clover as hay (L.F. 56, 79, 215-17, 219). These agreements continued in 2008, 2009, and 2010 (L.F. 56, 79, 268).

As such, as the Hearing Officer and the Commission ultimately found, beginning in 2007 and continuing thereafter, the Batemans' entire property was used agriculturally for cutting, raking, and baling red clover hay (L.F. 56, 219, 232, 380, 413; Appx. A13, A19). The land produced over 90 bales of red clover hay in each respective harvest in June 2007, October 2007, July 2008, October 2008, and July 2009 (L.F. 56, 60). At an average weight of 50 pounds per bale, that equals over four tons of hay per year, just as the University of Missouri predicted. Mr. Bateman sold all the hay harvested (L.F. 61).

This Court previously has confirmed that hay is an "agricultural crop." In *Terra Found.*, the question was whether the "use" of land to grow "prairie grasses" for hay violated Clinton's residential zoning that prohibited "commercial use" of the property. 139 S.W.3d at 187-88. The zoning code listed growing "agricultural crops" as a "permitted use" of the residential property. *Id.* at 189. The trial court granted Clinton an injunction against the landowner, holding that growing prairie grasses was an invalid "commercial use." *Id.* at 188.

On appeal, this Court reversed. The Court observed that "Crops are '[p]roducts that are grown, raised, and harvested.'" *Id.* at 191 (quoting BLACK'S LAW DICTIONARY 383 (7th ed. 1999)). Furthermore, "agriculture" "means 'the science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man's use and their disposal (as by marketing)." *Id.* (quoting WEBSTER'S 3D NEW INT'L DICTIONARY 44 (1993)). Thus, plainly, "Grasses … are definitely agricultural crops, that is, plant products grown and raised for man's use. This would seem to follow from the fact that hay, which is just dried grass, is an agricultural product." *Id.* at 191. Thus, Clinton's injunction was invalid. *Id.* at 192.

In this case, the terminology in § 137.016.1(1) is not much different than the "permitted use" in Clinton's zoning ordinance: "agricultural and horticultural property" is "all real property used for *agricultural* purposes and devoted primarily to the raising and harvesting of *crops*." (Emphasis added). As in *Terra Found.*, hay grasses, including the Batemans' planted, grown, raised, and harvested red clover, are "crops." Their growing and raising for man's use is "agricultural." Plainly, if an entire piece of property is used

for hay production, it is used for agricultural purposes and devoted primarily to the raising and harvesting of a crop.

Thus, the Assessor is forced to "agree[] that hay production CAN be an agricultural use" (Aplt. Br. 20) (emphasis in the original). The Assessor argues that this is "not [so] in this case," though, because it believes hay production "is unreasonable, and does not make economic sense" in this case (Aplt. Br. 20). The Assessor argues this is because the "terms 'Agriculture' and 'Horticulture' presumes a business or benefit in the activity," and it "cost 18 times more to have the grass cut and baled than the hay from it could be sold for" or "the cost to have the grass cut and baled into hay is 20 times the sale price" (Aplt. Br. 18, 21).

It is true that the Batemans have not yet made a profit from their hay-growing enterprise (L.F. 79). The Assessor's suggestion of the difference in cost and profit, though, is incorrect; Mr. Bateman paid $750 each time to have the hay cut and raked, and sold the bales for $120 each time – 1/5 of the cost, not 1/18 or 1/20 (L.F. 61). In any case, the evidence before the Hearing Officer was that many farms do not immediately profit (L.F. 79).

But whether the Batemans profited from their enterprise is irrelevant to whether the use of the property for a hay farm producing over four tons of hay per year was a use "for agricultural purposes and devoted primarily to the raising and harvesting of crops" within the meaning of § 137.016.1(1). When reading a statute, the primary rule "is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning." *State ex*

rel. Unnerstall v. Berkemeyer, 298 S.W.3d 513, 519 (Mo. banc 2009) (citations omitted). "It is presumed that the legislature intended that every word, clause, sentence, and provision of a statute have effect. Conversely, it will be presumed that the legislature did not insert verbiage or superfluous language in a statute." *Id.* (citations omitted).

Under § 137.016.1(1), "all real property used for agricultural purposes and devoted primarily to the raising and harvesting of corps" is "agricultural and horticultural property." "Crops are '[p]roducts that are grown, raised, and harvested.'" *Terra Found.*, 139 S.W.3d at 191. Agriculture "means 'the science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man's use and their disposal (as by marketing)." *Id.* Thus, "Grasses … are definitely agricultural crops, that is, plant products grown and raised for man's use. This would seem to follow from the fact that hay, which is just dried grass, is an agricultural product." *Id.* at 191.

There is no indication whatsoever in § 137.016.1(1) that the terms "agriculture," "horticulture," or "crops" differ in any way from their dictionary definitions and suddenly depend in some fashion on some particular financial outcome. The Assessor's argument otherwise, based only on its own surmising and wishes (and no authority at all), is simply wrong. The State Tax Commission correctly recognized this when it held that

> [H]ay has been harvested from the subject properties during 2007, 2008 and 2009. The plain language of the controlling statute mandates for assessment purposes real property "…devoted primarily to the raising and harvesting of crops;…" is to be classified as agricultural property. Cutting

> of hay constitutes the raising and harvesting of a crop. … [T]he subject property meets the statutory definition of agricultural property.

(L.F. 414; Appx. A20).

Plainly, as in *Terra Found.*, the Batemans' red clover hay is an agricultural crop. The Batemans' cultivation, harvesting, and marketing of many tons of red clover hay each year from the entirety of their property plainly make the property agricultural and horticultural property within the plain meaning of § 137.016.1(1). The State Tax Commission correctly held that the property therefore must be assessed by its productive value under § 137.017.1 and § 131.021.

C. The Court cannot take judicial notice of the existence or contents of alleged zoning ordinances that are not in the Record.

The Assessor also argues that because local zoning ordinances "prohibit[ed] allowing grass to grow more than 10 inches tall," the Batemans' property could not "be 'devoted primarily' to agriculture" (Aplt. Br. 21). The Assessor made this argument before the Commission, too (L.F. 413-14; Appx. A19-20). The Commission held the Assessor's "claim that agricultural use is not permitted in the commercial zoning on the property … was not a fact established at the evidentiary hearing" (L.F. 413; Appx. A19).

For,

> No copy of any applicable zoning ordinances were introduced into evidence at the hearing to establish what were or were not permitted uses and activities on the two parcels by the respective municipalities. Respondent's

> Reply for the first time by way of two Affidavits dated more than four months after the close of the evidentiary hearing raises this issue.
>
> …
>
> The Hearing Officer could not have erred on this point, as she had no evidence in the record to establish what, if any, impact the zoning of the subject parcels might have on the harvesting of hay. Nor does the Commission have any evidence from the record on this point. The best evidence on this issue is not the interpretation of city ordinances by two city employees. The best evidence would have been a complete copy of the existing zoning ordinances applicable to the properties under appeal as of the applicable times when hay was harvested and submitted at the evidentiary hearing. The two affidavits tendered after the close of the evidentiary record as exhibits to Respondent's Reply are not now permitted to come into the evidentiary record. The Commission's review of the Decision must be based upon the evidence in the record, not additional evidence that one party seeks to present without benefit of objection or cross-examination by the opposing party.

(L.F. 413-14; Appx. A19-20).

The Commission correctly refused to take judicial notice of alleged zoning ordinances not in the record. The longstanding law of Missouri is that a "court may not take judicial notice of the existence or contents of city or county ordinances." *Consumer Contact Co. v. State*, 592 S.W.2d 782, 785 (Mo. banc 1980). Instead, ordinances may be

recognized "only if admitted into evidence or stipulated to by the parties." *Nigh v. City of Savannah*, 956 S.W.2d 451, 454 (Mo. App. 1997) (quoting *Queen of Diamonds, Inc. v. Quinn*, 569 S.W.2d 317, 319 (Mo. App. 1978)). This applies to both trial and appellate courts. *Id.*

In *Consumer Contact*, the Supreme Court noted that it had stated this rule "in a score of cases dating back over 130 years," and then cited a list of such cases back to 1848. 592 S.W.2d at 785 n.2. The Court most recently reiterated this principle in *Southers v. City of Farmington*, 263 S.W.3d 603, 617 n.20 (Mo. banc 2008). Simply put, "Without the ordinance before us, [the Court does] not know its terms or if in fact one was enacted." *Consumer Contact*, 592 S.W.2d at 786 (quoting *City of St. Joseph v. Roller*, 363 S.W.2d 609, 611 (Mo. 1963)).

Thus, not only would certified copies of the alleged zoning ordinances to which the Assessor refers be the "best evidence" of their existence of contents, but those copies would have been the *only* permissible such evidence. Instead, there was no proof of their existence or content whatsoever. The Assessor's zoning argument is without merit.

D. The State Tax Commission correctly applied §§ 137.016, 137.017, and 137.021 in determining the true value of the Batemans' property.

As the Batemans' property met the express definition of "agricultural and horticultural property" in § 137.016.1(1) and was "in use as agricultural and horticultural property," under § 137.017.1 the land's "true value in money" for property tax assessment purposes had to be the value it "has for agricultural and horticultural use." Under § 137.021, the productive use value is "based on productive capability for each of

the several grades of agricultural and horticultural land" that the State Tax Commission promulgates in 12 C.S.R. § 30-4.010.

As the Hearing Officer ultimately determined, the land had soil grade 7, which "carries a productive use value of $75" per acre (L.F. 376; Appx. A9). The Commission's regulation describes "Grade #7" soils as being "generally unsuited for cultivation and may have other severe limitations for grazing and forestry," though with "intensive management," can produce "grass or timber." 12 C.S.R. § 30-4.010(1)(G).

At the hearing, Mr. Bateman stated the land has "grade 7" soil. The County's expert stated he believed the soil's grade was "one" (L.F. 88). Apparently, the County's commercial appraiser was not coached well enough to realize that "grade one" is the *best* agricultural grade, not the worst. Still, in his written report, he agreed with Mr. Bateman that the land had a "productive soil grade level" of "7" (L.F. 316). Thus, under § 30-4.010(1)(G)(5), the land's value for property tax purposes was $75 per acre. At 3.3 acres (Aplt. Br. 7-8), the Commission's assessment of $247 was correct (L.F. 376; Appx. A9).

The State Tax Commission correctly rejected the assessor's classification of the Batemans' land as "vacant and unused" property assessed by its supposed salable fair market value as commercial property. It correctly determined the land is agricultural property actively in use as such. Viewing the evidence in a light most favorable to the Commission's decision, it was supported by competent and substantial evidence on the record as a whole and correctly followed the plain language of the law of Missouri.

This Court should reverse the trial court's decision and remand this case with instructions to affirm the State Tax Commission's decision.

II. The Assessor's argument that the State Tax Commission's decision violated Mo. Const. art. X, § 4(b), by creating a lack of uniformity within a subclass of real property is not preserved for appellate review because to be preserved for appellate review, a constitutional argument must be raised at the earliest possible opportunity in that the Assessor couold have raised this argument before the Commission's hearing officer, the Commission itself, or the trial court, but did not, and instead raises it for the first time on appeal.

(Response to Appellant's Point II)

Standard of Review

On appeal from a trial court's review of an administrative agency's decision, this Court examines the underlying decision of the agency and not the trial court's judgment. *Shipman v. Dominion Hospitality*, 148 S.W.3d 821, 822 (Mo. banc 2004). The Court is "limited to determining whether the decision constituted an abuse of discretion, whether it was supported by competent and substantial evidence on the record as a whole, or whether it was arbitrary, capricious, or unreasonable." *Algonquin Golf Club v. State Tax Comm'n*, 220 S.W.3d 415, 418 (Mo. App. 2007). The Court views the evidence and all reasonable inferences therefrom "in the light most favorable to the Commission …." *Id.*

This Court reviews an agency's conclusions of law *de novo*, and makes "corrections to erroneous interpretations of the law." *Id.* (citation omitted).

* * *

In Missouri, for a constitutional argument to be heard on appeal, the precise argument must have been raised at the earliest possible opportunity. In this case, the

Assessor argues on appeal that the State Tax Commission's decision violated Mo. Const. art. X, § 4(b), by creating a lack of uniformity within a subclass of real property. It could have raised this argument before the Commission's hearing officer, the Commission itself, or the trial court, but did not. Is this argument preserved for appellate review?

In its second Point Relied On, the Assessor asserts the State Tax Commission's decision "violates Article X, Section 4(b) of the Missouri Constitution in that it creates a lack of uniformity within a subclass of real property …." (Appellant's Amended Brief 13, 35). But now, on appeal, is the first time any party has raised this argument. As a result, the law of Missouri is that it is not preserved for this Court's review.

"An issue that was never presented to or decided by the trial court is not preserved for appellate review." *Smith v. Shaw*, 159 S.W.3d 830, 835 (Mo. banc 2005) (quoting *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 129 (Mo. banc 2000)).

> Because an appellate court is not a forum in which new points will be considered, but is merely a court of review to determine whether the rulings of the trial court, as there presented, were correct, a party seeking the correction of error must stand or fall on the record made in the trial court, thus it follows that only those objections or grounds of objection which were urged in the trial court, *without change and without addition*, will be considered on appeal.

State v. Davis, ___ S.W.3d ___, 2011 WL 3841554 at *2 (Mo. banc 2011) (citations omitted) (emphasis added). "Accordingly, an appellate court generally will not find,

absent plain error, that a lower court erred on an issue that was not put before it to decide." *Id.* (citations omitted).

This is especially true of arguments alleging a violation of the state or federal constitutions: "Constitutional violations are waived if not raised at the *earliest possible* opportunity." *State ex rel. York v. Daugherty*, 969 S.W.2d 223, 224 (Mo. banc 1998) (emphasis added). In determining if a constitutional question has been waived, the "critical issue" is whether the party had a reasonable opportunity to raise the specific constitutional defect by timely asserting the claim before the trial court. *Id.* at 225.

Here, the earliest possible time the Assessor could have accused the State Tax Commission of this precise, alleged constitutional violation was in its application for review of the Hearing Officer's decision before the Commission itself (Legal File 385-93). It did not. Rather, the Assessor reargued its case as to why it believed the Batemans' land was not being used agriculturally, tacking on an argument that the Hearing Officer's decision had "broad implications" that would impoverish every county (L.F. 385-93). Of course, the Commission found these arguments to be without merit (L.F. 412-18; Appendix A18-24).

Thereafter, the Assessor certainly could have raised this argument to attack the Commission's ruling itself before the trial court. Again, it did not. The trial court decided the case on the Assessor's motion for summary judgment (L.F. 476; Appx. A1). The Assessor's actual summary judgment motion, however, comprised one page and did not even cite Mo. Const. art. X, § 4(b) (L.F. 421). And nowhere in its attached memorandum of law did the Assessor remotely come close to arguing that the

Commission's decision "violates Article X, Section 4(b) of the Missouri Constitution in that it creates a lack of uniformity within a subclass of real property," as it does in its second point relied on (L.F. 427-39). Indeed, the only mention of Mo. Const. art. X, § 4(b) in that memorandum at all was in a block quote of a statute citing that provision (L.F. 429).

While Mo. Const. art. X, § 4(b), obviously is generally relevant to the central question in this case, as it sets forth the foundation of Missouri's property tax rubric, at no time before appeal did the Assessor argue the Commission had violated this provision in any manner, let alone the specific (and creatively incomprehensible) manner it now alleges. As such, that new argument is a change or addition to any previous objections the Assessor may have had to the Hearing Officer's and Commission's respective decisions. That change or addition is impermissible. *Davis*, 2011 WL 3841554 at *2.

The Assessor's second Point Relied On is not preserved for this Court's review. The Court should not consider it.

Conclusion

The Court should reverse the trial court's judgment and remand this case with instructions to affirm the State Tax Commission's decision.

Respectfully Submitted,

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by_____

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Certificate of Compliance

I hereby certify that I scanned the enclosed CD-ROM for viruses using Microsoft Security Essentials and it is virus free, and that I used Microsoft Word 2010 for word processing. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b) and this Court's Rule XLI, and that this brief contains 8,167 words.

_____

Attorney

Certificate of Service

I hereby certify that on November 9, 2011, I mailed a true and accurate copy and CD-ROM of this Brief of the Respondents to the following:

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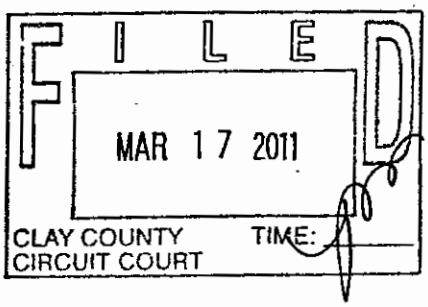
_____

Attorney

Appendix

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

CATHY RINEHART, ASSESSOR CLAY COUNTY, MISSOURI Petitioner,	)	
v.	)	Case No. 10CY-CV05361 Division 4
ROBERT & DONNA BATEMAN Respondents.	)	



NUNC PRO TUNC JUDGMENT

On the 26th day of January, 2011, this cause came on for hearing and argument on Petitioner's motion for summary judgment. Petitioner appeared by her Attorney, Patricia L. Hughes, and Respondent, appeared by attorney Robert J. Megraw. Arguments were made and the court took the matter under advisement.

On Febraury 8, 2010, the court entered Judgment. Due to a clerical error in the proposed Judgment four lines of alternative language on page 5 was left in the Judgment. This Judgment corrects the error. The Court being fully advised in the premises therefore makes the following findings of fact and conclusions of law, and enters this Judgment nunc pro tunc:

1. This case is an appeal from an administrative decision of the Missouri State Tax Comission and is subject to judicial review as set out in Section 536.100 R.S.Mo. The scope of judicial review is set out in Section 536.140 R.S.Mo.

2. The evidence and facts of the case are contained in the Certified Record of the Tax Commission filed in this case.

3. There is a presumption in favor of a decision of the County Board of Equalization in tax cases.

4. The findings of fact of State Tax Commission are given deference, however, the court makes its own conclusions of law, and application of law to fact.

5. The issue for this court is whether the Commission's assessment of the subject property at productive use value pursuant to Section 137.017 R.S.Mo. is in violation of constitutional provisions, misapplies the law, is in unsupported by competent and substantial evidence on the whole record, is unauthorized by law, is arbitrary or capricious or involves an abuse of discretion.

6. Article X of the Missouri Constitution authorizes the general assembly to establish a property tax, that must be uniform upon each class and sub class of property. Article X Section 4(a). Article X Section 4(b) provides that real property sub-classified as "agricultural and horticultural" "may, by general law, be assessed for tax purposes on its productive capability". To implement this section, the legislature enacted Section 137.016, 137.017 and 137.021 R.S.Mo. Section 137.017 provides that property in use as agricultural or horticultural property be valued for tax purposes according to its productive capability.

7. The Missouri legislature could have decided that all property classified as agricultural should be assessed on its productive capability. It did not. Section 137.017.4 R.S.Mo provides that the assessment for taxes for "vacant and unused land" "shall be its fair market value".

8. The term "vacant and unused land" has not been construed by Missouri courts in the context of property taxes. Since section 137.017 provides that vacant and unused land shall be taxed based on its fair market value, the legislature is presumed to have had a reasonable basis for differentiating between vacant land and land in use for agriculture.

9. The facts of this case include that the subject property totals 3.3 acres; that it is located at the corner of NW 68th Street and N. Broadway, and is partly within the city of Kansas City, and

partly in the city of Gladstone; that it is zoned as commercial property in both cities; that it is located on a four lane paved road, with a medical building on one side and an apartment complex across the street; and that the property has access to all utilities, sanitary and storm sewers. Respondents purchased the property in 1997 for $240,000. From 1997 to 2007 the only activity on the property was that it was mowed. Beginning in 2007, the grass was cut and baled into hay. In 2007 and 2008 the cost to Respondents to have the grass cut and baled was $750, and the hay was sold for $40. In 2008 the Respondents paid $800 to have the grass baled.

10. In determining what constitutes "vacant and unused land" it must be noted that Missouri has little "bare ground". There is something growing nearly everywhere - often weeds, grass and brush. The question then is, what did the legislature intend when it used the term "vacant and unused", as differentiated from land "in use for agricultural or horticultural purposes". If grass growing on land is automatically an agricultural use, then there would be no vacant and unused land. The question then becomes whether the act of baling the grass would or would not be sufficient, in and of itself, to show that the land is "in use as agricultural or horticultural property".

11. State statutes are to be read in context with one another, and Section 137.016 and 137.021 R.S.Mo. define in detail what it means to be "agricultural and horticultural property", and speaks in terms of raising crops, farming, dairying, management of livestock including breeding, showing and boarding horses. The statutes are specific. The legislative scheme to limit the productive use value to true farming operations is clear from the context of the statutes. Any activity claimed to be an agricultural use must be analyzed in a broader context than whether there is something growing that might be a crop. Just as gathering wildflower

seed as a business might be a legitimate agricultural use, gathering wildflowers, or walnuts, or other plants would not automatically mean that the property were "in use as agricultural or horticultural property." The terms "Agriculture" "Horticulture" presumes a business or benefit in the activity. In the instant case where the cost to have the grass cut and baled into hay is 20 times the sale price, there is no legitimate business interest in doing it. All of the examples of agricultural or horticultural use mentioned in the statutes relate to legitimate business interests.

12. In addition to the above factors, zoning ordinances in the City of Kansas City prohibit allowing grass to grow more than 10 inches high. Grass or plants growing more than 10 inches are defined as rank weeds. The ordinance is cited on page 284 of the record in Petitioner's appraisal report, under the heading of "other legal restrictions". [Rank weeds are declared to be a nuisance unless the land is "zoned or used for agricultural use which is more than 150 feet distant from any occupied residential subdivision, lot tract or parcel of land." The subject property is zoned as commercial, not agricultural, and is directly across the street from an occupied residential apartment complex.] Agricultural uses are not permitted uses in commercial zoning in the city of Kansas City.

13. Where a zoning ordinance prohibits allowing grass to grow more than 10 inches tall, the property cannot be "devoted primarily" to agricultural or horticultural use solely by virtue of the fact that the owner paid to have the grass baled.

14. It is not the role of this court to formulate guidelines on what would or would not constitute agricultural use, but based on the facts in this case, the subject property is not in agricultural use within the meaning of Sections 137.017 and 137.021 R.S.Mo.

15. The commission finding that the subject property is "in use as agricultural and horticultural property" within the meaning of Section 137.017 R.S.Mo. misapplies the law, is unsupported by competent and substantial evidence upon the whole record, is unauthorized by law, and is arbitrary, capricious, and unreasonable.

16. The motion of Petitioner for Summary Judgment should be sustained and the decision of the Commission should be reversed.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED the Petitioner's motion for Summary Judgment is sustained. The decision of the State Tax Commission is reversed. The classification of the subject property as vacant agricultural property, as set by the County Assessor and affirmed by the Clay County Board of Equalization, is reinstated and affirmed. The assessed value of the subject property is a total of $44,940 - $27,960 as to the Kansas City portion and $16, 980 as to the Gladstone portion for the tax years 2009 and 2010. Each party shall bear their respective costs.

Dated: 3-17-11

Judge

State Tax Commission of Missouri

ROBERT & DONNA BATEMAN, Complainants, v. CATHY RINEHART, ASSESSOR, CLAY COUNTY, MISSOURI, Respondent.	)	Appeals Number 09-32008 and 09-32009

DECISION AND ORDER

HOLDING

Decision of the Clay County Board of Equalization sustaining the assessment made by the Assessor in Appeal Number 09-32008 is SET ASIDE. Hearing Officer finds Complainants did rebut the presumption of correct assessment by the Board. The correct classification of the subject parcel on January 1, 2009, was agricultural. The correct agricultural grade is 7. The correct productive use value is $75 per acre. Productive use value for Appeal Number 09-32008 for tax years 2009 and 2010 is set at $150, agricultural (2 acres at $75/acre) assessed value of $20.

Decision of the Clay County Board of Equalization sustaining the assessment made by the Assessor in Appeal Number 09-32009 is SET ASIDE. Hearing Officer finds Complainants did rebut the presumption of correct assessment by the Board. The correct classification of the subject parcel on January 1, 2009 was agricultural. The correct agricultural grade is 7. The correct productive use value is $75 per acre. Productive use value for Appeal Number 09-32009

for tax years 2009 and 2010 is set at $97, agricultural (1.3 acres at $75/acre) assessed value of $10.

Complainant appeared pro se.

Respondent appeared by Counsel, Patricia Hughes.

Case heard and decided by Senior Hearing Officer Luann Johnson.

ISSUE

The Commission takes these appeals to determine the true value in money for the subject properties on January 1, 2009, and January 1, 2010.

SUMMARY

These two parcels are contiguous and are only treated as separate parcels because they are separated by municipal boundary lines. The parcel in Appeal Number 09-32008 is located in the City of Kansas City while the parcel in Appeal Number 09-32009 is located in the City of Gladstone. For the purposes of hearing and decision, these two parcels will be subject to the same findings of fact and conclusions of law.

Complainants appeal the decision of the Clay County Board of Equalization, which sustained the valuation of the subject properties. The Assessor determined an appraised value of $233,000 (assessed value of $27,960) on Appeal Number 09-32008. The Assessor determined an appraised value of $141,500 (assessed value of $16,980) on Appeal Number 09-32009. At hearing Respondent's appraiser asserted an appraised value of $575,000. Complainants propose a value of $200. A hearing was conducted on November 17, 2009, at the Clay County Administration Building, Courthouse Square, Liberty, Missouri.

The Hearing Officer, having considered all of the competent evidence upon the whole record, enters the following Decision and Order.

Complainants' Evidence

Exhibit 1	A summary of similar cases with Complainants' analysis
Exhibit 2	A packet of pictures and miscellaneous documents demonstrating that the subject parcels were being used for hay production during 2007
Exhibit 3	A packet of pictures and miscellaneous documents demonstrating that the subject parcels were being used for hay production during 2008
Exhibit 4	A packet of pictures and miscellaneous documents demonstrating that the subject parcels were being used for hay production during 2009
Exhibit 5	A letter from Sandra Reeves, Collector

Respondent's Evidence

Respondent placed into evidence the testimony of Mr. Gary E. Maurer, appraiser for Clay County. The appraiser testified as to his appraisal of the subject property. The Appraisal Report, Exhibit A, of Mr. Maurer was received into evidence. Mr. Maurer arrived at an opinion of value for the subject property of $575,000 based upon a sales comparison approach to value. In performing his sales comparison analysis, the appraiser relied upon the sales of properties deemed comparable to the subject properties.

FINDINGS OF FACT

1. Jurisdiction over these appeals is proper. Complainants timely appealed to the State Tax Commission from the decisions of the Clay County Board of Equalization.

2. The subject properties are located at Northwest 68th Street and North Broadway Avenue. Appeal Number 09-32008 is located in Kansas City, Missouri. The property is identified by parcel number 13-516-00-04-006.00. The property consists of an unimproved two acre tract. Appeal Number 09-32009 is located in Gladstone, Missouri. The property is identified by parcel number 13-516-00-04-005.00. The property consists of an unimproved 1.3 acre tract.

3. Complainants presented evidence which established that the subject parcels had been used for hay production in 2007, 2008 and 2009. (Complainants' Exhibits 2, 3, 4). Complainants' evidence is substantial and persuasive to rebut the presumption of correct assessment by the Board and to establish agricultural use of the property.

4. Complainants and Respondent agree that the proper grade for this property is grade 7. (Complainants' Exhibit 1, Respondent's Exhibit A, page 32). Grade 7 carries a productive use value of $75. (Respondent's Exhibit A, page 32, 12 CSR 30-4.010).

5. Correct true value for Appeal Number 09-32008 is $150. (2 acres at $75/acre.)

6. Correct true value for Appeal Number 09-32009 is $97. (1.3 acres at $75/acre.)

7. Respondent's evidence is not substantial and persuasive. Respondent's appraiser testified that he was prohibited from assigning agricultural grades to the properties because of a Tax Commission directive prohibiting the use of productive use valuations on parcels smaller than 5 acres which do not adjoin agricultural parcels or which have a grade of 6 or higher. (Respondent's Exhibit A, page 32, pages 68-71). To the best of this Hearing Officer's knowledge, based upon nearly 20 years of service with the State Tax Commission, these "Logic Tables" were not created by the State Tax Commission. Nor are these "Logic Tables" anywhere identified, on their faces, as creations of the State Tax Commission. (Respondent's Exhibit A, pages 68-71). Further, these "Logic Tables" are nowhere supported by statute or case law.

CONCLUSIONS OF LAW AND DECISION

Jurisdiction

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious. The hearing officer shall issue a decision

and order affirming, modifying or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious.[1]

Official and Judicial Notice

Agencies shall take official notice of all matters of which the courts take judicial notice.[2]

Courts will take judicial notice of their own records in the same cases.[3] In addition, courts may take judicial notice of records in earlier cases when justice requires[4] or when it is necessary for a full understanding of the instant appeal.[5] Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts.[6]

Presumptions In Appeals

There is a presumption of validity, good faith and correctness of assessment by the County Board of Equalization.[7]

The presumption in favor of the Board is not evidence. A presumption simply accepts something as true without any substantial proof to the contrary. In an evidentiary hearing before the Commission, the valuation determined by the Board, even if simply to sustain the value made by the Assessor, is accepted as true only until and so long as there is no substantial evidence to the contrary.

The presumption of correct assessment is rebutted when the taxpayer, or respondent when advocating a value different than that determined by the Board, presents substantial and persuasive evidence to establish that the Board's valuation is erroneous and what the fair market value should have been placed on the property.[8]

Agricultural Land

Under Missouri statutory law, property shall be classified as agricultural and horticultural property when "real property [is] used for agricultural purposes and devoted primarily to the raising and harvesting of crops . . ." Section 137.016.1(2), RSMo. The classification is determined by the *actual use* put to the property.[9] Cutting hay is an agricultural activity and such activity is sufficient to cause real property to be classified as "agricultural property".[10]

Standard for Valuation

Section 137.017.1, RSMo provides "For general property assessment purposes, the true value in money of land which is in use as agricultural and horticultural property, as defined in Section 137.016, shall be that value which such land has for agricultural or horticultural use. . ."

Land Grades

Section 137.021.1, RSMo provides " . . . .the state tax commission shall promulgate by regulation and publish a value based on productive capability for each of the several grades of agricultural and horticultural land. . . ."

Most Suitable Economic Use

The eight point analysis to determine the "most suitable economic use" [under Section 137.016.5, RSMo] is only appropriate for property "*for which a determination as to its classification cannot be made under the definitions set out in subsection 1.*" In cases where the actual use of the property – raising and harvesting hay – dictates the classification, there is no need to resort to a subsection 5 analysis.[11]

Duty to Investigate

In order to investigate appeals filed with the Commission, the Hearing Officer has the duty to 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. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon its inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties.[12]

Weight to be Given Evidence

The Hearing Officer is not bound by any single formula, rule or method in determining true value in money, but is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled. The relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide.[13]

Trier of Fact

The Hearing Officer as the trier of fact may consider the testimony of an expert witness and give it as much weight and credit as she may deem it entitled to when viewed in connection with all other circumstances. The Hearing Officer is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all or none of the expert's testimony and accept it in part or reject it in part.[14]

Complainants' Burden of Proof

In order to prevail, Complainants must present an opinion of market value and substantial and persuasive evidence that the proposed value is indicative of the market value of the subject property on January 1, 2009.[15] There is no presumption that the taxpayer's opinion is correct. The taxpayer in a Commission appeal still bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, the Complainant bears the burden of proving the

vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary or capricious."[16]

Substantial evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[17] *Persuasive evidence* is that evidence which has sufficient weight and probative value to convince the trier of fact. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief.[18]

Owner's Opinion of Value

The owner of property is generally held competent to testify to its reasonable market value.[19] The owner's opinion is without probative value however, where it is shown to have been based upon improper elements or an improper foundation.[20] "Where the basis for a test as to the reliability of the testimony is not supported by a statement of facts on which it is based, or the basis of fact does not appear to be sufficient, the testimony should be rejected."[21]

A taxpayer does not meet his burden if evidence on any essential element of his case leaves the Commission "in the nebulous twilight of speculation, conjecture and surmise."[22]

Decision

Complainants have met their burden of proof. They established that the subject parcels had been used for hay production since at least 2007 up to and including the tax day. Once agricultural use is established, the only remaining issue is the appropriate land grade. In this instance, both parties agree that the appropriate grade for the subject property is grade 7. Grade 7 land is valued at $75 per acre.

Respondent's evidence fails because Respondent's appraiser read more into the law than actually exists. By using "Logic Tables," Respondent's appraiser excludes small acreages from

agricultural classification if they are not adjacent to other agricultural parcels or if they are at grade 6 or higher. However, nothing in the statutes allows for exclusion of small acreages.

We frequently hear it said that property should be valued "in exchange" rather than "in use." However, our statutes require that classification be based upon actual use, if that use if readily ascertainable. Thus Section 137.016.1(1) provides that property being used for residential living should be classified as residential. Section 137.016.1(2) provides that property used for agricultural purposes should be classified as agricultural. Section 137.016.1(3) provides that property used for commercial, industrial, manufacturing, and so forth, should be classified as commercial. Only when a determination as to classification cannot be made under the definitions in the above subsections, is the assessor authorized to conduct a Section 137.016.5 "most suitable economic use" analysis.

ORDER

The assessed valuations for the subject parcels as determined by the Assessor and sustained by the Board of Equalization for Clay County for the subject tax day is SET ASIDE.

The assessed value for the subject property in Appeal Number 09-32008 for tax years 2009 and 2010 is set at $20. The assessed value for the subject property in Appeal Number 09-32009 for tax years 2009 and 2010 is set at $10.

A party may file with the Commission an application for review of this decision within thirty (30) days of the mailing date shown in the Certificate of Service. The application shall contain specific grounds upon which it is claimed the decision is erroneous. Said application must be in writing addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, and a copy of said application must be sent to each person at the address listed below in the certificate of service.

Failure to state specific facts or law upon which the appeal is based will result in summary denial. [23]

The Collector of Clay County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending a filing of an Application for Review, unless said taxes have been disbursed pursuant to a court order under the provisions of 139.031.8 RSMo.

Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED December 22, 2009.

STATE TAX COMMISSION OF MISSOURI

Luann Johnson

Luann Johnson
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid on this 22nd day of December, 2009, to: Robert Bateman, 100 NW 72nd Street, Gladstone, MO 64118, Complainant; Patricia Hughes, Associate County Counselor, 17 W. Kansas, Suite 3, Attorney for Respondent; Cathy Rinehart, Assessor, Tom Brandom, Clerk, Sandra Reeves, Collector, Administration Building, 1 Courthouse Square, Liberty, MO 64068.

Barbara Heller

Barbara Heller
Legal Coordinator

[1] *Article X, section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431.4, RSMo.*

[2] *Section 536.070(6), RSMo.*

[3] *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] *- Burton v. Moulder, 245 S.W.2d 844, 846 (Mo. 1952); Knorp v. Thompson, 175 S.W.2d 889, 894 (1943); Bushman v. Barlow, 15 S.W.2d 329, 332 (Mo. banc 1929)*

[5] *State ex rel St. Louis Public Service Company v. Public Service Commission, 291 S.W.2d 95, 97 (Mo. banc 1956).*

[6] *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).*

[7] *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).*

[8] *Hermel, supra; Cupples-Hesse Corporation v. State Tax Commission, 329 S.W.2d 696, 702 (Mo. 1959).*

[9] *Northtown Village v. Don Davis, Assessor, Jasper County. Mo., Appeal Nos. 03-62558 (May 27, 2004) providing that the definitions in Section 137.016 (2000) illustrate that "the classification turns on the actual use put to the property."*

[10] *Dickerson v. Curtis Koons, Assessor, Cass County, Mo. Appeal Number 01-49004 (June 11, 2002); Ernest W. Giddens, Trustee v. Rick Kessinger, Assessor, Greene County, MO., Appeal No. 05-33000 (Commission Decision April 19, 2007).*

[11] *Ernest W. Giddens, Trustee v. Rick Kessinger, Assessor, Greene County, Mo., Appeal No. 05-33000(Hearing Officer Decision January 10, 2007).*

[12] *Section 138.430.2, RSMo.*

[13] *St. Louis County v. Security Bonhomme, Inc., 558 S.W.2d 655, 659 (Mo. banc 1977); St. Louis County v. STC, 515 S.W.2d 446, 450 (Mo. 1974); Chicago, Burlington & Quincy Railroad Company v. STC, 436 S.W.2d 650 (Mo. 1968).*

[14] *St. Louis County v. Boatmen's Trust Co., 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); Vincent by Vincent v. Johnson, 833 S.W.2d 859, 865 (Mo. 1992); Beardsley v. Beardsley, 819 S.W.2d 400, 403 (Mo. App. 1991); Curnow v. Sloan, 625 S.W.2d 605, 607 (Mo. banc 1981).*

[15] *Hermel, Inc. v. State Tax Commission, 564 S.W.2d 888, at 897.*

[16] *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. 1991).*

[17] *See, Cupples-Hesse Corporation v. State Tax Commission, 329 S.W.2d 696, 702 (Mo. 1959).*

[18] *Brooks v. General Motors Assembly Division, 527 S.W.2d 50, 53 (Mo. App. 1975).*

[19] *Rigali v. Kensington Place Homeowners' Ass'n, 103 S.W.3d 839, 846 (Mo. App. E.D. 2003); Boten v. Brecklein, 452 S.W.2d 86, 95 (Sup. 1970).*

[20] *Cohen v. Bushmeyer, 251 S.W.3d 345, (Mo. App. E.D., March 25, 2008); Carmel Energy, Inc. v. Fritter, 827 S.W.2d 780, 783 (Mo. App. W.D. 1992); State, ex rel. Missouri Hwy & Transp. Com'n v. Pracht, 801 S.W.2d 90, 94 (Mo. App. E.D. 1990); Shelby County R-4 School District v. Hermann, 392 S.W.2d 609, 613 (Sup. 1965).*

[21] *Carmel Energy at 783.*

[22] *See, Rossman v. G.G.C. Corp. of Missouri, 596 S.W.2d 469, 471 (Mo. App. 1980).*

[23] *Section 138.432, RSMo 2000.*

State Tax Commission of Missouri

ROBERT & DONNA BATEMAN, Complainants, v. CATHY RINEHART, ASSESSOR, CLAY COUNTY, MISSOURI, Respondent.	)	Appeal Nos. 09-32008 & 09-32009

ORDER
AFFIRMING HEARING OFFICER DECISION
UPON APPLICATION FOR REVIEW

On December 22, 2009, Senior Hearing Officer Luann Johnson entered her Decision and Order (Decision) setting aside the assessments by the Clay County Board of Equalization.[1]

Respondent filed her Application for Review of the Decision. Complainants filed their Response. Respondent filed her Reply.

CONCLUSIONS OF LAW

Standard Upon Review

The relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide.[2] The Hearing Officer as the trier of fact may consider the testimony of witnesses and give it as much weight and credit as she may deem it entitled to when viewed in connection with all other circumstances. The Hearing Officer is not bound by the testimony of witnesses but may believe all or none of their testimony and accept it in part or reject it in part.[3] The Commission will not lightly interfere with the Hearing Officer's Decision and substitute its

judgment on the credibility of witnesses and weight to be given the evidence for that of the Hearing Officer as the trier of fact.[4]

DECISION

A review of the record in the present appeal provides support for the determinations made by the Hearing Officer. There is competent and substantial evidence to establish a sufficient foundation for the Decision of the Hearing Officer. A reasonable mind could have conscientiously reached the same result based on a review of the entire record. The Commission finds no basis to support a determination that the Hearing Officer acted in an arbitrary or capricious manner or abused his discretion as the trier of fact and concluder of law in this appeal.[5]

Respondent asserts that the only issue in the case is whether the subject property[6] is "vacant and unused land" within the meaning of Section 137.017.4, RSMo, or is "used for agricultural purposes" within the meaning of Section 137.016 RSMo. The Decision provides the simple answer to the issue. The evidence established that the subject parcels had been used for hay production in 2007, 2008 and 2009. A fact not disputed by Respondent.

Respondent's argument essentially rests upon claim that agricultural use is not permitted in the commercial zoning on the property. That was not a fact established at the evidentiary hearing. No copy of any applicable zoning ordinances were introduced into evidence at the hearing to establish what were or were not permitted uses and activities on the two parcels by the respective municipalities. Respondent's Reply for the first time by way of two Affidavits dated more than four months after the close of the evidentiary hearing raises this issue.

The Hearing Officer could not have erred on this point, as she had no evidence in the record to establish what, if any, impact the zoning of the subject parcels might have on the harvesting of hay. Nor does the Commission have any evidence from the record on this point. The best evidence on this issue is not the interpretation of city ordinances by two city employees. The best evidence would have been a complete copy of the existing zoning ordinances applicable to the properties under appeal as of the applicable times when hay was harvested and submitted at the evidentiary hearing. The two affidavits tendered after the close of the evidentiary record as exhibits to Respondent's Reply are not now permitted to come into the evidentiary record. The Commission's review of the Decision must be based upon the evidence in the record, not additional evidence that one party seeks to present without benefit of objection or cross-examination by the opposing party.

Whatever the actual zoning ordinance may mandate, it does not alter the fact that hay has been harvested from the subject properties during 2007, 2008 and 2009. The plain language of the controlling statute[7] mandates for assessment purposes real property "...devoted primarily to the raising and harvesting of crops; ..." is to be classified as agricultural property. Cutting of hay constitutes the raising and harvesting of a crop. Even if the use of the properties in 2007, 2008 and 2009 was contradictory to a municipal ordinance, there is no provision in the assessment statutes which establishes that classification is to be denied based upon an allegation of ordinance violation by a taxpayer.

Respondent's argument as to an agricultural activity versus an agricultural use is not well taken. Because the subject property meets the statutory definition of agricultural property, it

must be assigned to the appropriate agricultural grade.[8] The parties did not dispute that agricultural land productive grade 7 was the proper valuation for the subject tract.[9]

Respondent's reliance on the Decision in *Giddens v. Kessinger*[10] is misplaced for two reasons. There was no argument advanced in *Giddens* that the property should not be valued at its commercial fair market value, as opposed to being placed in the proper agricultural land productive grade. Complainant in *Giddens* conceded to the market value of the property for commercial development but sought the 12% assessment. Such is not the case in the present appeals. In the second place, the Hearing Officer in *Giddens* should have *sua sponte* investigated[11] as to the proper agricultural land grade and applied it in order to properly assess the property.

Finally, the argument under the heading – BROAD IMPLICATIONS OF THIS DECISION presents nothing of substance in this case. A hearing officer is required to apply the appropriate law to the facts in the record. That is what was correctly done in this instance. The undisputed and controlling fact is that on the assessment date of January 1, 2009, the subject property had been in use for two years harvesting a hay crop and that use continued in 2009. Based upon that fact, the subject tracts must be valued under the agricultural land productive value and not at a commercial market value.

The Hearing Officer did not err in her determinations as challenged by Respondent. The subject tracts meet the statutory requirements to be valued at the agricultural land productive value and assessed at 12% of that value.

ORDER

The Commission upon review of the record and Decision in this appeal, finds no grounds upon which the Decision of the Hearing Officer should be reversed or modified. Accordingly, the Decision is affirmed. The Decision and Order of the hearing officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, 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, RSMo within thirty 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, RSMo.

If no judicial review is made within thirty days, this decision and order is deemed final and the Collector of Clay 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 13, 2010.

STATE TAX COMMISSION OF MISSOURI

Bruce E. Davis, Chairman

Jennifer Tidwell, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid this ~~13th~~ 14th day of April, 2010, to: Robert Bateman, 100 NW 72nd Street, Gladstone, MO 64118, Complainant; Patricia Hughes, Associate County Counselor, 17 W. Kansas, Suite 3, Attorney for Respondent; Cathy Rinehart, Assessor, Tom Brandom, Clerk, Sandra Reeves, Collector, Administration Building, 1 Courthouse Square, Liberty, MO 64068.

Barbara Heller
Legal Coordinator

Contact Information for State Tax Commission:
Missouri State Tax Commission
P.O. Box 146
301 W. High Street, Room 840
Jefferson City, MO 65102
573-751-2414
573-751-1341 FAX

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[1] Hearing Officer found properties were incorrectly assessed at 12% of fair market value as vacant and unused property. Valuation was corrected to a agricultural grade 7 for land actually used for an agricultural purpose and assessed at the 12% agricultural assessment.

[2] *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. STC*, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC*, 436 S.W.2d 650 (Mo. 1968).

[3] *St. Louis County v. Boatmen's Trust Co.*, 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); *Vincent by Vincent v. Johnson*, 833 S.W.2d 859, 865 (Mo. 1992); *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. 1991); *Curnow v. Sloan*, 625 S.W.2d 605, 607 (Mo. banc 1981).

[4] *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998); *Lowe v. Lombardi*, 957 S.W.2d 808 (Mo. App. W.D. 1997); *Forms World, Inc. v. Labor and Industrial Relations Com'n*, 935 S.W.2d 680 (Mo. App. W.D. 1996); *Evangelical Retirement Homes v. STC*, 669 S.W.2d 548 (Mo. 1984); *Pulitzer Pub. Co. v. Labor and Indus. Relations Commission*, 596 S.W.2d 413 (Mo. 1980); *St. Louis County v. STC*, 562 S.W.2d 334 (Mo. 1978); *St. Louis County v. STC*, 406 S.W.2d 644 (Mo. 1966).

[5] *Hermel, Inc. v. STC*, 564 S.W.2d 888 (Mo. 1978); *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998); *Holt v. Clarke*, 965 S.W.2d 241 (Mo. App. W.D. 1998); *Smith v. Morton*, 890 S.W.2d 403 (Mo. App. E.D. 1995); *Phelps v. Metropolitan St. Louis Sewer Dist.*, 598 S.W.2d 163 (Mo. App. E.D. 1980).

[6] The "property" consists of two parcels because there is a portion in Gladstone, Missouri and another portion in Kansas City, Missouri.

[7] Section 137.016.1 (1), RSMo.

[8] 137.017. 1. For general property assessment purposes, the true value in money of land which is in use as agricultural and horticultural property, as defined in section 137.016, shall be that value which such land has for agricultural or horticultural use.

[9] 12 CSR 30-4.010 (1) (G) - $75.00 per acre.

[10] *Ernest W. Giddens, Trustee v. Rick Kessinger*, STC Appeal No. 05-33000, 1/10/07.

[11] Section 138.430.2, RSMo.

Missouri Revised Statutes

Chapter 137
Assessment and Levy of Property Taxes
Section *137.016*

August 28, 2010

Real property, subclasses of, defined--political subdivision may adjust operating levy to recoup revenue, when--reclassification to apply, when--placement of certain property within proper subclass, factors considered.

137.016. 1. As used in section 4(b) of article X of the Missouri Constitution, the following terms mean:

(1) "Agricultural and horticultural property", all real property used for agricultural purposes and devoted primarily to the raising and harvesting of crops; to the feeding, breeding and management of livestock which shall include breeding, showing, and boarding of horses; to dairying, or to any other combination thereof; and buildings and structures customarily associated with farming, agricultural, and horticultural uses. Agricultural and horticultural property shall also include land devoted to and qualifying for payments or other compensation under a soil conservation or agricultural assistance program under an agreement with an agency of the federal government. Agricultural and horticultural property shall further include land and improvements, exclusive of structures, on privately owned airports that qualify as reliever airports under the Nation Plan of Integrated Airports System, to receive federal airport improvement project funds through the Federal Aviation Administration. Real property classified as forest croplands shall not be agricultural or horticultural property so long as it is classified as forest croplands and shall be taxed in accordance with the laws enacted to implement section 7 of article X of the Missouri Constitution;

(2) "Residential property", all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, and manufactured home parks, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, "transient housing" means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to subdivision (6) of subsection 1 of section 144.020;

(3) "Utility, industrial, commercial, railroad and other real property", all real property used directly or indirectly, for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but shall not include floating docks, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person or business entity owns more than five individual units. All other real property not included in the property listed in subclasses (1) and (2) of section 4(b) of article X of the Missouri Constitution, as such property is defined in this section, shall be deemed to be included in the term "utility, industrial, commercial, railroad and other real property".

2. Pursuant to article X of the state constitution, any taxing district may adjust its operating levy to recoup any loss of property tax revenue, except revenues from the surtax imposed pursuant to article X, subsection 2 of section 6 of the constitution, as the result of changing the classification of structures intended to be used for residential living by human occupants which contain five or more dwelling units if such adjustment of the levy does not exceed the highest tax rate in effect subsequent to the 1980 tax year. For purposes of this section, loss in revenue shall include the difference between the revenue that would have been collected on such property under its classification prior to enactment of this section and the amount to be collected under its classification under this section. The county assessor of each county or city not within a county shall provide information to each

taxing district within its boundaries regarding the difference in assessed valuation of such property as the result of such change in classification.

3. All reclassification of property as the result of changing the classification of structures intended to be used for residential living by human occupants which contain five or more dwelling units shall apply to assessments made after December 31, 1994.

4. Where real property is used or held for use for more than one purpose and such uses result in different classifications, the county assessor shall allocate to each classification the percentage of the true value in money of the property devoted to each use; except that, where agricultural and horticultural property, as defined in this section, also contains a dwelling unit or units, the farm dwelling, appurtenant residential-related structures and up to five acres immediately surrounding such farm dwelling shall be residential property, as defined in this section.

5. All real property which is vacant, unused, or held for future use; which is used for a private club, a not-for-profit or other nonexempt lodge, club, business, trade, service organization, or similar entity; 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, which use shall be determined after consideration of:

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

(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.

6. All lands classified as forest croplands shall not, for taxation purposes, be classified as subclass (1), subclass (2), or subclass (3) real property, as such classes are prescribed in section 4(b) of article X of the Missouri Constitution and defined in this section, but shall be taxed in accordance with the laws enacted to implement section 7 of article X of the Missouri Constitution.

(L. 1983 S.B. 63, et al. § 3, A.L. 1986 H.B. 1022, et al., A.L. 1989 H.B. 181 & 633, A.L. 1991 S.B. 61, A.L. 1995 H.B. 211, A.L. 1997 S.B. 241, A.L. 2008 S.B. 711)

(2004) Property used as extended stay residential facility, where majority of rooms are available for short-term residency, does not constitute residential property for property tax purposes. Shipman v. Dominion Hospitality, 148 S.W.3d 821 (Mo.banc).

Missouri Revised Statutes

Chapter 137
Assessment and Levy of Property Taxes
Section *137.017*

August 28, 2010

Agricultural and horticultural property, how assessed.

137.017. 1. For general property assessment purposes, the true value in money of land which is in use as agricultural and horticultural property, as defined in section 137.016, shall be that value which such land has for agricultural or horticultural use. The true value of buildings or other structures customarily associated with farming, agricultural, and horticultural uses, excluding residential dwellings and related land, shall be added to the use value of the agricultural and horticultural land to determine the value of the agricultural and horticultural property under sections 137.017 to 137.021.

2. After it has been established that the land is actually agricultural and horticultural property, as defined in section 137.016, and is being valued and assessed accordingly, the land shall remain in this category as long as the owner of the land complies with the provisions of sections 137.017 to 137.021.

3. Continuance of valuation and assessment for general property taxation under the provisions of sections 137.017 to 137.021 shall depend upon continuance of the land being used as agricultural and horticultural property, as defined in section 137.016, and compliance with the other requirements of sections 137.017 to 137.021 and not upon continuance in the same owner of title to the land.

4. For general property assessment purposes, the true value in money of vacant and unused land which is classified as agricultural and horticultural property under subsection 3 of section 137.016 shall be its fair market value.

(L. 1975 S.B. 203 § 1, A.L. 1983 S.B. 63, et al., A.L. 1989 H.B. 181 & 633)

Missouri Revised Statutes

Chapter 137
Assessment and Levy of Property Taxes
Section *137.021*

August 28, 2010

Grading of land for valuation, agricultural and horticultural land, factors to be considered--split-off, effect of.

137.021. 1. The assessor, in grading land which is devoted primarily to the raising and harvesting of crops, to the feeding, breeding and management of livestock, to dairying, or to any combination thereof, as defined in section 137.016, pursuant to the provisions of sections 137.017 to 137.021, shall in addition to the assessor's personal knowledge, judgment and experience, consider soil surveys, decreases in land valuation due to natural disasters, level of flood protection, governmental regulations limiting the use of such land, the estate held in such land, and other relevant information. On or before December thirty-first of each odd-numbered year, the state tax commission shall promulgate by regulation and publish a value based on productive capability for each of the several grades of agricultural and horticultural land. If such rules are not disapproved by the general assembly in the manner set out below, they shall take effect on January first of the next odd-numbered year. Such values shall be based upon soil surveys, soil productivity indexes, production costs, crop yields, appropriate capitalization rates and any other pertinent factors, all of which may be provided by the college of agriculture of the University of Missouri, and shall be used by all county assessors in conjunction with their land grades in determining assessed values. Any regulation promulgated pursuant to this subsection shall be deemed to be beyond the scope and authority provided in this subsection if the general assembly, within the first sixty calendar days of the regular session immediately following the promulgation of such regulation, by concurrent resolution, shall disapprove the values contained in such regulation. If the general assembly so disapproves any regulation promulgated pursuant to this subsection, the state tax commission shall continue to use values set forth in the most recent preceding regulation promulgated pursuant to this subsection.

2. When land that is agricultural and horticultural property, as defined in section 137.016, and is being valued and assessed for general property tax purposes pursuant to the provisions of sections 137.017 to 137.021 becomes property other than agricultural and horticultural property, as defined in section 137.016, it shall be reassessed as of the following January first.

3. Separation or split-off of a part of the land which is being valued and assessed for general property tax purposes pursuant to the provisions of sections 137.017 to 137.021, either by conveyance or other action of the owner of the land, so that such land is no longer agricultural and horticultural property, as defined in section 137.016, shall subject the land so separated to reassessment as of the following January first. This shall not impair the right of the remaining land to continuance of valuation and assessment for general property tax purposes pursuant to the provisions of sections 137.017 to 137.021.

(L. 1975 S.B. 203 § 3, A.L. 1983 S.B. 63, et al., A.L. 1986 S.B. 476, A.L. 1989 H.B. 181 & 633, A.L. 1994 S.B. 633, A.L. 1997 H.B. 470 merged with S.B. 241)

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 4—Agricultural Land Productive Values

12 CSR 30-4.010 Agricultural Land Productive Values

PURPOSE: This rule complies with the requirement of section 137.021, RSMo, to publish a range of productive values for agricultural and horticultural land for the ensuing tax year.

(1) Agricultural Land Grades and Values. The following are definitions of agricultural land grades and the productive values of each:

(A) Grade #1. This is prime agricultural land. Condition of soils is highly favorable with no limitations that restrict their use. Soils are deep, nearly level (zero to two percent (0–2%) slope) or gently sloping with low erosion hazard and not subject to damaging overflow. Soils that are consistently wet and poorly drained are not placed in Grade #1. They are easily worked and produce dependable crop yields with ordinary management practices to maintain productivity—both soil fertility and soil structure. They are adapted to a wide variety of crops and suited for intensive cropping. Use value: nine hundred eighty-five dollars ($985);

(B) Grade #2. These soils are less desirable in one (1) or more respects than Grade #1 and require careful soil management, including some conservation practices on upland to prevent deterioration. This grade has a wide range of soils and minimum slopes (mostly zero to five percent (0–5%)) that result in less choice of either crops or management practices. Primarily bottomland and best upland soils. Limitations—

1. Low to moderate susceptibility to erosion;

2. Rare damaging overflows (once in five to ten (5–10) years); and

3. Wetness correctable by drainage. Use value: eight hundred ten dollars ($810);

(C) Grade #3. Soils have more restrictions than Grade #2. They require good management for best results. Conservation practices are generally more difficult to apply and maintain. Primarily good upland and some bottomland with medium productivity. Limitations—

1. Gentle slope (two to seven percent (2–7%));

2. Moderate susceptibility to erosion;

3. Occasional damaging overflow (once in three to five (3–5) years) of Grades #1 and #2 bottomland; and

4. Some bottomland soils have slow permeability, poor drainage, or both. Use value: six hundred fifteen dollars ($615);

(D) Grade #4. Soils have moderate limitations to cropping that generally require good conservation practices. Crop rotation normally includes some small grain (for example, wheat or oats), hay, or both. Soils have moderately rolling slopes and show evidence of serious erosion. Limitations—

1. Moderate slope (four to ten percent (4–10%));

2. Grade #1 bottomland subject to frequent damaging flooding (more often than once in two (2) years), or Grades #2 and #3 bottomland subject to occasional damaging flooding (once every three to five (3–5) years);

3. Poor drainage in some cases; and

4. Shallow soils, possibly with claypan or hardpan. Use value: three hundred eighty-five dollars ($385);

(E) Grade #5. Soils are not suited to continuous cultivation. Crop rotations contain increasing proportions of small grain (for example, wheat or oats), hay, or both. Upland soils have moderate to steep slopes and require conservation practices. Limitations—

1. Moderate to steep slopes (eight to twenty percent (8–20%));

2. Grades #2 and #3 bottomland subject to frequent damaging flooding (more than once in two (2) years) and Grade #4 bottomland subject to occasional damaging flooding; and

3. Serious drainage problems for some soils. Use value: one hundred ninety-five dollars ($195);

(F) Grade #6. Soils are generally unsuited for cultivation and are limited largely to pasture and sparse woodland. Limitations—

1. Moderate to steep slopes (eight to twenty percent (8–20%));

2. Severe erosion hazards present;

3. Grades #3 and #4 bottomland subject to frequent damaging flooding (more than once in two (2) years), and Grade #5 bottomland subject to occasional damaging flooding (once every three to five (3–5) years); and

4. Intensive management required for crops. Use value: one hundred fifty dollars ($150);

(G) Grade #7. These soils are generally unsuited for cultivation and may have other severe limitations for grazing and forestry that cannot be corrected. Limitations—

1. Very steep slopes (over fifteen percent (15%));

2. Severe erosion potential;

3. Grades #5 and #6 bottomland subject to frequent damaging flooding (more than once in two (2) years);

4. Intensive management required to achieve grass or timber productions; and

5. Very shallow topsoil. Use value: seventy-five dollars ($75);

(H) Grade #8. Land capable of only limited production of plant growth. It may be extremely dry, rough, steep, stony, sandy, wet or severely eroded. Includes rivers, running branches, dry creek and swamp areas. The lands do provide areas of benefit for wildlife or recreational purposes. Use value: thirty dollars ($30); and

(I) Definitions. The following are definitions of flooding for purposes of this rule:

1. Damaging flooding. A damaging flood is one that limits or affects crop production in one (1) or more of the following ways:

A. Erosion of the soil;

B. Reduced yields due to plant damage caused by standing or flowing water;

C. Reduced crop selection due to extended delays in planting and harvesting; and

D. Soil damage caused by sand and rock being deposited on the land by flood waters;

2. Frequent damaging flooding. Flooding of bottomlands that is so frequent that normal row cropping is affected (reduces row crop selection); and

3. Occasional damaging flooding. Flooding of bottomland that is so infrequent that producing normal row crops is not compromised in most years.

(2) Forest Land and Horticultural Land. The following prescribes the treatment of forest land and horticultural land:

(A) Forest land, whose cover is predominantly trees and other woody vegetation, should not be assigned to a land classification grade based on its productivity for agricultural crops. Forest land of two (2) or more acres in area, which if cleared and used for agricultural crops, would fall into land grades #1–#5 should be placed in land grade #6; or if land would fall into land grades #6 or #7 should be placed in land grade #7. Forest land may or may not be in use for timber production, wildlife management, hunting, other outdoor recreation or similar uses; and

(B) Land utilized for the production of horticultural crops should be assigned to a land classification grade based on productivity of the land if used for agricultural crops. Horticultural crops include fruits, ornamental trees and shrubs, flowers, vegetables, nuts, Christmas trees and similar crops which are

A23