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Jurisdictional Statement

This Court has jurisdiction over Relator's Petition for a Writ of Prohibition pursuant to Article V, Sec. 4 of the Missouri Constitution, which provides this Court with jurisdiction over original remedial writs. Relator asserts that Respondent, the Honorable Gerald D. McBeth, lacks jurisdiction to preside over the underlying lawsuit challenging the valuation and assessment of Relator's property. Relator first applied for a Writ of Prohibition in the Missouri Court of Appeals for the Western District, but Relator's application was denied. Mo. R. Civ. P. 84.22(a).

Statement of the Facts

Relator Kansas City Power & Light Company's ("KCP&L") Petition for a Writ of Prohibition arises from a pending lawsuit filed by the West Platte R-2 School District ("West Platte"), Donald Wilson, a resident of the school district, and John Collier, also a resident of the school district (collectively "Plaintiffs"), against the Platte County Assessor Lisa Pope, in the Platte County Circuit Court, Case No. 09AE-CV01533 (the "lawsuit"). Shortly after the lawsuit was filed, KCP&L intervened as a defendant.

Plaintiffs assert that West Platte has suffered pecuniary loss in the form of lost tax revenue as the result of an alleged undervaluation by Assessor Pope of KCP&L's Platte County property. Plaintiffs purport to seek both declaratory relief and a writ of

mandamus. Exh. A,¹ *First Amended Petition*. Plaintiffs challenge two aspects of Assessor Pope's valuation and assessment of KCP&L's property: (1) the market value of the partially completed portions of KCP&L's local construction projects (sometimes called "construction work in progress," or "CWIP") and (2) the apportionment of KCP&L's property as either "local" (taxed for local benefit) or "distributable" (taxed for the benefit of all Missouri counties in which KCP&L owns property).²

Counts I and II of Plaintiffs' lawsuit relate to the market value, or "true value in money,"³ of KCP&L's CWIP. Pursuant to Section 151.110, RSMo., KCP&L was required to file a report with Assessor Pope that included KCP&L's total construction costs for its "construction work in progress" located within Platte County. This report, known as "Form 30" and promulgated by the Missouri Tax Commission, was due prior to

¹ For ease of identification, "Exh. ___" references exhibits filed with Relator KCP&L's *Petition for a Writ of Prohibition*, and "App. ___" references materials appended to this brief.

² As a utility company, KCP&L is subject to the laws and procedures governing property tax assessments of railroads. § 153.030, RSMo. Pursuant to Section 151.100, RSMo., both the real and personal "local property" of utilities is assessed by the county assessor in which such land resides. "Local property" includes, among other categories, "construction work in progress." § 153.034, RSMo.

³ Section 4, Article X of the Missouri Constitution requires that property be assessed according to its "true value."

April 1, 2009. *Id.* After receiving the Form 30 from KCP&L, Assessor Pope completed an estimate of the market value (i.e., the “true value in money”) of KCP&L’s uncompleted construction projects. Assessor Pope’s market value estimate of KCPL’s CWIP appears on the Form 30 and is approximately 50% of the sum total of construction expenditures KCP&L reported elsewhere on the same form. *See* Exh. A, *First Amended Petition* ¶¶ 33-34. Finally, Assessor Pope applied the relevant assessment percentage (*see* § 137.115, RSMo.) to her estimated market value, and the applicable taxes were levied. Plaintiffs do not challenge either of these latter steps of the valuation, assessment, and taxing process, but only Assessor Pope’s estimate of the “market value.”

Counts I and II of Plaintiffs’ lawsuit allege that Assessor Pope was required to accept and use KCP&L’s reported annual construction costs as the “true value in money,” or market value, of KCP&L’s CWIP as of a certain date. In other words, Plaintiffs assert that Assessor Pope should not have made her own “market value” estimate, but instead should have taken the sum total of construction costs reported by KCP&L and automatically treated those costs as the “market value” of uncompleted construction projects. The lawsuit seeks a declaratory judgment to this effect, and a writ of mandamus compelling Assessor Pope to accept KCP&L’s reported construction costs as the new “true value” of the CWIP. Exh. A, *First Amended Petition* ¶¶ 35-50. Plaintiffs claim to seek relief for the tax year which just passed (2009), and also for 2006, 2007, and 2008.

Counts III and IV of the lawsuit relate to KCP&L property assessed by the Missouri State Tax Commission as “distributable property,” which the lawsuit alleges should have been assessed as “local property” by Assessor Pope, *id.* at ¶¶ 51-62, and thus

subject to West Platte's tax levy. All "local property" of utilities is reported to and originally assessed by the county assessor according to the local school district levy, § 151.100, RSMo., while "distributable property" of a utility is reported to and originally assessed by the Missouri State Tax Commission according to an average of school district levies for each county where such property resides. §§ 151.020, 151.030, RSMo. Tax revenue from distributable property is in turn distributed to school districts throughout the state.

Notably, "distributable property" includes "all [] real or tangible personal property which is used directly in the generation and distribution of electric power...." § 153.034, RSMo. Counts III and IV of Plaintiffs' lawsuit allege that KCP&L's Iatan I power plant, which is located in West Platte's taxing jurisdiction, was undergoing an environmental retrofit and was not actually generating electricity on the day of January 1, 2009. As a result, Plaintiffs assert that all of Iatan I turned into "local property," or "property held for purposes other than generation and distribution of electricity." § 153.034. Thus, Plaintiffs claim the entire value of the Iatan I power plant should have been assessed by Assessor Pope as "local property" subject to West Platte's tax levy. Exh. A, *First Amended Petition* ¶¶ 51-58. The lawsuit prays for an order declaring that the entire Iatan I power plant should be assessed as "local property" and for a writ of mandamus compelling Assessor Pope to assess the entire Iatan I power plant as "local property." *Id.* at ¶¶ 51-62.

After intervening in the lawsuit, Relator KCP&L filed a motion to dismiss Plaintiffs' Petition on August 17, 2009. Exh. B, *Motion to Dismiss*.⁴ KCP&L argued that West Platte had no standing to challenge the valuation and assessment of KCP&L's property and that a writ of mandamus could not issue because Assessor Pope did not have a clear legal duty to value and assess KCP&L's property in the manner asserted by Plaintiffs.⁵ KCP&L also filed a motion to join necessary parties. Exh. E, *Motion to Join Necessary Parties*.⁶ These necessary parties included the school districts that would lose the money that West Platte would gain by having distributable property re-classified as local property, and the State Tax Commission, whose distributable property assessment would have been overturned.

KCP&L's motion to dismiss and motion to join necessary parties were heard on September 30, 2009. On October 7, 2009, Respondent denied KCP&L's motions, finding these jurisdictional issues were not "ripe" and were "more appropriate to be taken up after the court has heard evidence at trial or by way of Summary Judgment." App. 1. On January 28, 2010, KCP&L filed a Petition with the Western District Court of Appeals for a Writ of Prohibition to prohibit Respondent's purported exercise of jurisdiction over the lawsuit. The Court of Appeals denied the Petition. App. 2. The present Petition followed.

⁴ The First Amended Petition mirrors the Petition at issue on Relator's Motion to Dismiss except that it dropped Plaintiffs' Count V, which is not at issue in Relator's instant application.

⁵ See also Plaintiffs' Opposition (Ex. C) and KCP&L's Reply (Ex. D).

⁶ See also Plaintiffs' Opposition (Ex. F) and KCP&L's Reply (Ex. G).

Points Relied On

I. Relator is entitled to an order prohibiting Respondent's continued exercise of jurisdiction over the underlying lawsuit because the Plaintiffs lack standing to bring their claims in that third parties cannot challenge the valuation or assessment of another's property.

- *State ex rel. St. Francois County School Dist. R-III v. Lalumondier*, 518 S.W.2d 638 (Mo. 1975)
- *City of Richmond Heights and Clayton Sch. Dist. v. Board of Equalization of St. Louis County*, 586 S.W.2d 338 (Mo. banc 1979)
- *State ex rel. Brentwood Sch. Dist. v. State Tax Commission*, 589 S.W.2d 613 (Mo. banc 1979)
- §137.275, RSMo.

II. Relator is entitled to an order prohibiting Respondent's continued exercise of jurisdiction over the underlying lawsuit because Plaintiffs' mandamus claims fail as a matter of law in that Platte County Assessor Lisa Pope had no clear legal duty to value and assess Relator's property in the manner asserted by Plaintiffs.

- *State ex rel. City of Cabool v. Texas Co. Board of Equalization*, 850 S.W.2d 102 (Mo. banc 1993)
- *Hermel, Inc. v. State Tax Commission*, 564 S.W.2d 888 (Mo. banc 1978)
- § 151.110, RSMo.

III. Relator is entitled to an order prohibiting Respondent's continued exercise of jurisdiction over the underlying lawsuit because the lawsuit is moot in that Relator's property taxes have already been paid and distributed to the applicable taxing jurisdictions and Respondent has no authority to grant the requested relief.

- *State ex rel. Chastain v. City of Kansas City*, 289 S.W.3d 759 (Mo. App. W.D. 2009)
- § 137.275, RSMo.
- § 138.100.2, RSMo.
- § 151.100, RSMo.

Argument

Relator KCP&L seeks a writ of prohibition to bring a timely end to Plaintiffs' lawsuit. Each of the lawsuit's claims is plainly foreclosed by Missouri law and should have been dismissed by the Respondent. As set out below in **Section I**, this Court has long recognized that third parties lack standing to challenge the valuation and assessment of another's property. Only the property owner may bring such a challenge. As a result, Plaintiffs have no standing to challenge Assessor Pope's valuation and assessment of KCP&L's Platte County property, and Respondent lacks jurisdiction to grant the requested declaratory judgment.

Seeking to sidestep this threshold bar, Plaintiffs paired their declaratory judgment claims (Counts I & III) with corresponding mandamus claims (Counts II & IV). Plaintiffs hope to squeeze their lawsuit through the narrow "mandamus exception" to standing suggested by this Court in *Cabool*. However, as set out in **Section II**, Plaintiffs' mandamus claims fail as a matter of law because—even if they had standing—no constitutional provision, no statute, and no regulation requires Assessor Pope to assess KCP&L's property in the manner demanded by Plaintiffs. In the absence of a clear and simple ministerial duty, mandamus has no application.

Finally, Plaintiffs' lawsuit is moot (**Section III**). The property at issue has already been valued and assessed by the appropriate assessors, KCP&L has already paid the resulting taxes due, and the money has already been distributed to the taxing jurisdictions. The circuit court has no justiciable controversy before it and cannot grant

retroactive relief, particularly where no statute allows Assessor Pope to amend her previous years' assessments. A writ of prohibition should issue.

Standard of Review

“Prohibition is a discretionary writ that may be issued to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extra-jurisdictional authority.” *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. banc 2009) (citing *State ex rel. Union Electric Co. v. Dolan*, 256 S.W.3d 77, 81 (Mo. banc 2008)).

In *Dolan*, [this] Court held that “[i]n the context of a motion to dismiss for failure to state a cause of action, it has long been held that ‘where a petition reveals that the pleader has not stated and cannot state a cause of action of which the circuit court would have jurisdiction, then prohibition will lie.’” Of particular relevance here is this Court's statement that “prohibition will lie if plaintiff's petition ‘does not state a viable theory of recovery, and relator was entitled to be dismissed from the suit as a matter of law.’”

Henley, 285 S.W.3d at 330 (quoting *Dolan*). This Court's discretion to issue a writ in the motion to dismiss context is related to the need to prevent unnecessary litigation:

“This Court has repeatedly held that ‘prohibition may be appropriate to prevent unnecessary, inconvenient, and expensive litigation.’” ...If a party cannot state facts sufficient to justify court action or relief, it is fundamentally unjust to force another to suffer the considerable expense and inconvenience of litigation. It is also a waste of judicial resources and

taxpayer money.

Id. (internal citations omitted).

Other distinct grounds for issuing a writ are also implicated by the Plaintiffs' lawsuit. Where a party lacks standing to assert its claims, the court lacks "jurisdiction" in the strictest sense⁷ of that word. *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002) (courts must consider standing before reaching "substantive" issues because they lack power to act in the absence of standing). Like standing, mootness is an issue of justiciability that goes to a court's jurisdiction to act. *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001). Further, where a lower court's action or ruling would itself violate a statute, an excess of jurisdiction has occurred and prohibition is available to remedy it. *State ex rel. Director of Revenue v. Curless*, 181 S.W.3d 595, 598 (Mo. App. S.D. 2005). And finally, a lower court's application of a rule or statute which violates the constitution is also curable by writ of prohibition. *See State ex rel. Bloomquist v. Schneider*, 244 S.W.3d 139, 141 (Mo. banc 2008) (issuing writ to prohibit application of statute of limitations which violated the Commerce Clause).

As discussed below, prohibition is appropriate here for all of these reasons.

⁷ *See Henley*, 285 S.W.3d at 334-335 (Fischer, J., in dissent) (reasoning that the recent narrowing of concept of "jurisdiction" should be applied to the traditional test for granting writs).

I. Relator is entitled to an order prohibiting Respondent's continued exercise of jurisdiction over the underlying lawsuit because the Plaintiffs lack standing to bring their claims in that third parties cannot challenge the valuation or assessment of another's property.

Respondent should have dismissed Plaintiffs' claims for declaratory judgment because Plaintiffs have no standing to bring such claims and, therefore, Respondent lacks jurisdiction to grant the requested relief.

In Counts I and III of their Petition, Plaintiffs seek declaratory judgment arising from an alleged "pecuniary loss attributable to the actions of" Platte County Assessor Lisa Pope. Exh. A, *First Amended Petition* ¶¶ 46, 58. This alleged pecuniary loss is really "lost" tax revenue that West Platte attributes to prior under-valuations of KCP&L's property by Assessor Pope.

Count I seeks a declaratory judgment that Assessor Pope undervalued KCP&L's construction-work-in-progress ("CWIP") property in making her 2009 and previous years' assessments. Plaintiffs allege that Assessor Pope should have accepted KCP&L's reported construction costs as the "true value" of its uncompleted construction projects and should *not* have performed her own estimate as to the market value of the property, which she determined to be about 50% of the construction costs. *Id.* at ¶¶ 36-46. By increasing the valuation of KCP&L's CWIP property from 50% of costs to 100% of costs, West Platte would increase its tax revenue.

Count III of Plaintiffs' lawsuit alleges that Assessor Pope undervalued KCP&L's property by failing to assess certain property. *Id.* at ¶¶ 51-58. Plaintiffs ask the court to

declare that Assessor Pope should have assessed the entire Iatan I power plant as “local property” because it was “off-line” on January 1, 2009.

As set out in Section II below, no provision of the Missouri Constitution, no Missouri statute, and no Missouri regulation requires Assessor Pope to value and assess KCP&L’s property in the manner sought by Plaintiffs. However, irrespective of these substantive shortcomings, Plaintiffs’ declaratory judgment claims fail for a more elemental reason: they lack standing to challenge the valuation and assessment of KCP&L’s property.

A. Declaratory Judgments Still Require Plaintiffs to Have Standing

In order to obtain a declaratory judgment, Plaintiffs must have standing to bring their claims. “A declaratory judgment action requires a justiciable controversy.” *Missouri Alliance for Retired Americans v. Department of Labor and Indus. Relations*, 277 S.W.3d 670, 676 (Mo. 2009). The Declaratory Judgment Act does not provide standing to parties who would otherwise lack it. *See Neighbors Against Large Swine Operations v. Continental Grain Co.*, 901 S.W.2d 127, 132 -133 (Mo. App. W.D. 1995) (“The Declaratory Judgment Act thus cannot serve as a basis for relief where ... the party seeking to invoke the Declaratory Judgment Act does not have a direct cause of action concerning the matter as to which declaratory relief is sought.”). *See also Alexian Bros. Sherbrooke Village v. St. Louis County*, 884 S.W.2d 727, 729 (Mo. App. E.D. 1994) (The Act “does not enlarge the jurisdiction of the court of subject matter or parties,” but instead “merely opens the doors of the court to certain potential defendants or plaintiffs at a state prior to that justifying an action for other traditional relief.”). Thus, irrespective of

Plaintiffs' prayer for declaratory relief, they must have standing to seek and obtain such relief, which they do not.

B. Third Parties Lack Standing to Challenge Valuations and Assessments

Missouri courts have consistently held that school districts and taxpayers have no standing to petition for an increase in another taxpayer/property-owner's valuation and assessment. This is true regardless of how the claim for relief is posed in a particular case. Plaintiffs' lawsuit is simply the latest installment in a decades-long line of cases in which taxing jurisdictions and neighbor taxpayers have attempted to use various devices—including administrative review, the statutory equalization and appeal process, and the Declaratory Judgment Act—to accomplish the same thing: an increase in the valuation and assessment of someone else's local property.

However, no matter what device third-parties try to use to challenge a taxpayer's valuation or assessment, the law and policy of this state is clear: only the taxpaying property owner has standing to challenge a valuation or assessment of his/her property. Third-party collateral attacks on property tax assessments are simply not permitted. *See State ex rel. St. Francois County School Dist. R-III v. Lalumondier*, 518 S.W.2d 638 (Mo. 1975) (school districts do not have standing to appeal the decision of the county board of equalization because the right is not granted by statute); *City of Richmond Heights and Clayton Sch. Dist. v. Board of Equalization of St. Louis County*, 586 S.W.2d 338 (Mo. banc 1979) (school districts cannot use administrative review or an original writ to accomplish the same thing in another way); *State ex rel. Brentwood Sch. Dist. v. State Tax Commission*, 589 S.W.2d 613, 614-615 (Mo. banc 1979) (school districts cannot

intervene in State Tax Commission proceedings between a taxpayer and the county assessor, who is presumed to represent the county and the interests of all the taxing jurisdictions within it); *Bartlett v. Ross*, 891 S.W.2d 114 (Mo. banc 1995) (school districts cannot appeal a refund judgment, as that right belongs only to the protesting taxpayer and the county collector).

In *City of Richmond Heights*, this Court explained the rationale behind this longstanding rule in language that is particularly appropriate here:

In *Lalumondier*, this court said that a county board of equalization acts to represent the interests of a city that delegates to the board the performance of assessment functions. The court noted the failure of the General Assembly to provide for review of alleged underassessments at the request of a governmental subdivision, and explained: “No doubt such was originally omitted on the theory that **public officials would adequately protect the interests of the state and its subdivisions** and hence it was only necessary to provide an appeal for **property owners** who considered the valuation of **their** property to be excessive.” 518 S.W.2d at 643. **Provision for review by other political subdivisions would seriously hinder the smooth functioning of an otherwise streamlined procedure for tax assessments. The taxpayer would be subjected to an extended period of uncertainty as to the amount of his tax liability while any entity that might benefit from a higher assessment squabbles with the board over the valuation of the taxpayer's property.** The 1974

assessment of respondent owners' property in the instant case has been stalled in litigation for over five years, despite the owners' satisfaction with the Board's assessment. **It is exactly this sort of disruption in the assessment process that the General Assembly sought to avoid.**

City of Richmond Heights, 586 S.W.2d at 343 (emphasis added). See also *Alexian Brothers Sherbrooke Village v. St. Louis County*, 884 S.W.2d 727, 729 (Mo. App. E.D. 1994) (denying a school district the right to intervene in a proceeding to determine entity's tax-exempt status and stating: "if every governmental agency which claimed injury due to Alexian Brothers' tax exemption possessed standing, this suit could involve 20 parties. In effect, if this Court allows appellant standing, the already backlogged court system would endure more suits involving massive amounts of parties.").

As explained by this Court, the process of property tax valuation and assessment is a process between the property taxpayer and the assessor, the board of equalization, and the State Tax Commission. Third-party taxpayers and taxing jurisdictions are permitted no role in this process. Once a valuation and assessment have occurred, Article X, Section 14 of the Missouri Constitution requires that any challenge to the valuation be handled through the local and state boards of equalization (*i.e.*, the county board of equalization and the Missouri State Tax Commission). Pursuant to its constitutional grant of authority under Article X, Section 14, the General Assembly has prescribed the exclusive means for such appeals. These are the only challenges to the valuation and assessment of property that are permitted under law, and *only* the property owner can bring such a challenge. §§ 137.275, 138.430, RSMo. Various third parties unhappy with

the valuation or assessment of another's land are not permitted to challenge that assessment.

As a result, Counts I and III of West Platte's Petition fail as a matter of law and should have been dismissed by Respondent. Plaintiffs have no standing to challenge the valuation and assessment of KCP&L's property. If Plaintiffs' lawsuit was permitted to go forward the previously cited decisions of this Court would be dead letters, the constitutionally and statutorily prescribed appeals process would be subverted, and lawsuits just like this one—filed by third-party taxing jurisdictions—could be filed years after a property owner's taxes had been levied and paid. Likewise, property owners would face the uncertainty of never knowing when a previous tax assessment might be increased at the request of a third party. It "is exactly this sort of disruption in the assessment process that the General Assembly sought to avoid," *City of Richmond Heights*, 586 S.W.2d at 343, and that is exactly why this Court has long held that school districts cannot collaterally attack the valuation or assessment of another's property.

In a futile effort to avoid the foregoing dispositive authority, Plaintiffs argue that this Court's previous decisions in *Lalumondier*, *City of Richmond Heights*, *State ex rel. Brentwood Sch. Dist.*, and *Bartlett* have no application here because—unlike the plaintiffs in those cases—they do not seek an increase in the valuation or assessment of KCP&L's property. See *Suggestions of Respondent Regarding Writ of Prohibition* at 2, 15-16 ("This is not a case where the claim is that the assessor assessed property at \$100 when the plaintiffs believe the property should have been assessed at \$200"), ("no prayer for back taxes or recovery of lost revenue is uttered in the Underlying Petition").

Despite Plaintiffs' best effort to recast their lawsuit, the Petition plainly reveals what this case is about: increasing the valuation and assessment of KCP&L's property. It is a mathematical certainty that declaring the "true value" of KCP&L's uncompleted construction to be 100% of construction costs instead of 50% of such costs *increases* the valuation. Likewise, transmogrifying "distributable property" into "local property" *increases* the amount of property subject to West Platte's taxing jurisdiction (Count III). And of course, there is West Platte's own statement that it faces "pecuniary loss" as a result of Assessor Pope's alleged undervaluation. Thus, this lawsuit is plainly about *increasing* Assessor Pope's prior assessments—and KCP&L's tax liability—for several prior years.⁸

Plaintiffs' own legal argument concedes as much. Plaintiffs cite *Ste. Genevieve School Dist. R-II v. Bd. of Aldermen of the City of Ste. Genevieve*, 66 S.W.3d 6 (Mo. banc 2002), which it asserts provides school districts with a "general grant of standing." *Suggestions of Respondent Regarding Writ of Prohibition* at 15. *Ste. Genevieve* stands

⁸ In any event, this Court's longstanding rule denying third parties standing to challenge the valuation or assessment of another's property has never been limited to cases in which the third party was seeking to *increase* the valuation or assessment. Courts deny third-party intervention based on a broader principle: the statutory scheme does not allow it. Courts also reason that property owners deserve finality in their assessments and that the assessor adequately protects the interests of the state. *See City of Richmond Heights*, 586 S.W.2d at 343.

for the general proposition that “a school district that is threatened with the imminent unlawful *deprivation* of part of its funds has standing to seek a declaratory judgment challenging the statutory interpretation that led to the deprivation.” *Id.* (emphasis added). Plaintiffs seize upon this language, arguing that they have standing to prosecute their declaratory judgment claims because, like the school district in *Ste. Genevieve*, West Platte faces a loss of tax revenue, in which it has a “direct pecuniary interest.” *Suggestions of Respondent Regarding Writ of Prohibition* at 14.

Two things are noteworthy about this argument. First, by attempting to utilize the school district standing provided for in *Ste. Genevieve*, Plaintiffs confirm that their lawsuit is in fact about *increasing* KCP&L’s assessment.⁹ As a result, Plaintiffs’ already tenuous argument that their lawsuit is distinguishable from *Lalumondier* and its progeny rings hollow. Secondly, *Ste. Genevieve* is entirely inapplicable to this case. *Ste. Genevieve* dealt with an activity in which—in stark contrast to Missouri’s statutory

⁹ In the absence of a pecuniary loss or “deprivation of funds,” Plaintiffs would have no legally protected interest at stake, and therefore no standing to seek declaratory relief under *Ste. Genevieve*. 66 S.W.3d at 10. *See also Phillips v. Missouri Dept. of Social Services Child Support Enforcement Div.*, 723 S.W.2d 2, 4 (Mo.1987) (“In an action for declaratory judgment or one of injunctive relief, the criteria for standing is whether the plaintiff has a legally protectable interest at stake. ‘A legally protectable interest contemplates a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief, immediate or prospective.’”)

valuation and assessment process—a school district *is legally required to participate*: decisions by the local tax increment financing (“TIF”) committee, which is supposed to involve a local school board representative. *Ste. Genevieve* was *not* a challenge to the valuation or assessment of property—a right that is expressly limited by statute to the property owner. If *Ste. Genevieve* provided Plaintiffs with standing to challenge the valuation and assessment of another’s property, this Court would have overruled its prior decisions in *Lalumondier*, *City of Richmond Heights*, *State ex rel. Brentwood School District*, and *Bartlett*, without a word saying as much.

Plaintiffs’ declaratory judgment claims are trapped between a rock and a hard place. To avoid the dispositive holding of *Lalumondier*, Plaintiffs argue that—in plain opposition to the face of their Petition—they do not seek to increase KCP&L’s assessment.¹⁰ But to purportedly establish standing under *Ste. Genevieve*, Plaintiffs argue they have suffered pecuniary loss as the result of an alleged undervaluation of KCP&L’s property. Plaintiffs lack standing under either alternative and the Respondent should have dismissed Counts I and III of the Petition.

¹⁰ As noted, *supra* note 8, the principles of *Lalumondier* are dispositive regardless of whether Plaintiffs are seeking an increase of KCP&L’s assessment.

II. Relator is entitled to an order prohibiting Respondent’s continued exercise of jurisdiction over the underlying lawsuit because Plaintiffs’ mandamus claims fail as a matter of law in that Platte County Assessor Lisa Pope had no clear legal duty to value and assess Relator’s property in the manner asserted by Plaintiffs.

Respondent should have also dismissed Counts II and IV of West Platte’s lawsuit, the analogs to Counts I and III, because the trial court has no jurisdiction to issue the requested writ of mandamus. A writ of mandamus is an extraordinary remedy, *Furlong Companies, Inc. v. City of Kansas City*, 189 S.W.3d 157, 165 (Mo. 2006), appropriate *only* to compel a public official to perform a ministerial duty required by law that is clear, “simple and definite.” *State ex rel. Twenty-Second Judicial Circuit v. Jones*, 823 S.W.2d 471, 472 (Mo. 1992). Mandamus is not appropriate “to compel the performance of a discretionary duty.” *State ex rel. Killingsworth v. George*, 168 S.W.3d 621, 623 (Mo. App. 2005). “If the statute involves a determination of facts or a combination of law and facts, a discretionary act rather than a ministerial act is involved, and this discretion cannot be coerced by the courts.” *Id.*

Accompanying each of Plaintiffs’ claims for declaratory relief (discussed above) is a corresponding claim for mandamus. Thus, Count II of Plaintiffs’ lawsuit prays for a writ of mandamus compelling Assessor Pope to value KCP&L’s CWIP property at the sum total of construction costs reported by KCP&L, Exh. A, *First Amended Petition* ¶¶ 47-50, and Count IV prays for a writ of mandamus compelling Assessor Pope to assess “the entire Iatan I power plant as local property....” *Id.* at ¶¶ 59-62.

Plaintiffs hope to avoid the standing pitfalls of their declaratory judgment claims by seizing upon a “mandamus exception” to standing discussed—and rejected—in *State ex rel. City of Cabool v. Texas Co. Board of Equalization*, 850 S.W.2d 102, 105 (Mo. banc 1993). *Cabool* set out the general rule that political subdivisions do not have standing to challenge property tax valuations or assessments, but suggested that “a narrow window exists by which even a member of the general public may seek mandamus against a public official” when the public official is “required to perform ministerial duties without any request or demand, and the entire public has a right to the performance.” *Id.* (citation omitted). Plaintiffs concede that “[t]his is the narrow window through which [their Petition] states its causes of action.” *Suggestions of Respondent Regarding Writ of Prohibition* at 14.

However, *Cabool* does not help Plaintiffs. In fact, *Cabool* held that apportioning tax assessments is a *discretionary* process that is not subject to a court’s mandamus jurisdiction. *Id.* Likewise, Plaintiffs’ mandamus claims fail as a matter of law because Assessor Pope was under no simple, clear, and unequivocal duty to value and assess KCP&L’s property in the precise manner demanded by Plaintiffs.

A. Because No Law Requires Assessor Pope to Accept the Costs Reported by Relator as the “True Value in Money,” Count II Fails As A Matter of Law.

As set out above, a writ of mandamus could only issue under Count II of Plaintiffs’ lawsuit if Assessor Pope failed to execute “a simple, definite ministerial act imposed by law.” *Cabool*, 850 S.W.2d at 105. In the absence of a law that *requires* her to

accept the construction costs reported by KCP&L as being the “true value in money,” or market value, of its construction-work-in-progress, Count II of Plaintiffs’ lawsuit fails to invoke the court’s mandamus jurisdiction.

Plaintiffs allege that Assessor Pope had a ministerial duty to accept the construction costs reported by KCP&L as the “market value” of KCP&L’s incomplete construction. Plaintiffs reach this conclusion by baldly asserting that a public utility is required to “self-assess” its own local property. *Suggestions of Respondent Regarding Writ of Prohibition* at 7 (“If this sounds like the statute requires self-assessment, it does”). According to the Plaintiffs, KCP&L’s report containing its construction costs, which it filed with Assessor Pope, became a binding “self-assessment” of KCP&L’s uncompleted construction projects, and Assessor Pope was therefore *required* to treat that sum total as the “true value in money” of those projects. Thus, under Plaintiffs’ theory of the law, an assessor has no discretion to make her own estimate that the true value of an unfinished project equals something like 50% of out-of-pocket construction costs during a set time—as Assessor Pope did here. Rather, the assessor must accept as the “true value” of the property whatever amount the railroad or utility has reported as its “Original Costs.”¹¹

However, a review of the constitutional and statutory provisions cited by Plaintiffs—Article X, § 4(b) of the Constitution, Section 151.100, 151.110, and 153.034,

¹¹ While Plaintiffs’ lawsuit only involves KCP&L’s “construction-work-in-progress” property, their “self-assess” theory would necessarily extend to all other railroad and utility “local property” as well.

RSMo.—reveals a simple and dispositive conclusion: Assessor Pope was under no ministerial duty to assess KCP&L’s property in the manner Plaintiffs wish because utilities do not “self assess” their own local property. Indeed, everything about Missouri’s constitutional, statutory, and administrative property tax valuation and assessment scheme militates *against* such a rigid and automatic rule and favors discretion on the part of assessors.

i. The Law Does Not Impose a Clear Legal Duty on Pope

Plaintiffs cite Section 151.110, RSMo. as the statute which imposes a ministerial duty upon Assessor Pope to accept KCP&L’s reported costs as the “true value” of its CWIP property. Far from supporting Plaintiffs’ “self-assessment” theory, the statute plainly provides that assessors are to make their own independent assessment of the local property of a railroad or utility:¹²

1. For the purpose of carrying out the provisions of section 151.100, an

¹² Notably, other statutes provide detailed guidance to the assessor as to the performance of certain functions. *See, e.g.*, §§ 137.016 (covering factors to be considered by the assessor in classifying property); 137.076 (“In establishing the value of a parcel of real property the county assessor shall consider previous decisions of the county board of equalization, the state tax commission or a court of competent jurisdiction that affected the value of such parcel.”); 137.115 (covering many details of the valuation and assessment process). Nothing requires the Assessor to blindly or automatically convert ongoing construction costs into the “true value” of the incomplete improvement.

authorized officer of every such railroad company shall, in addition to the report required to be furnished to the county clerk, as described in section 151.030, no later than April first in each year, furnish to each county assessor in this state, wherever any local property owned or controlled by such company may be located, a separate report, under oath for the benefit of county and other local assessors, specifically describing all lands by county tax map parcel number, situated in such county, and not included in their returns to the state tax commission and county clerks, under sections 151.020 and 151.030, owned or controlled by such company, on the first day of January in each year, and the true value in money thereof.

2. Each county assessor in this state shall certify a copy of the report required by subsection 1 of this section and a **copy of assessments thereon** to the county clerk, the company and the state tax commission no later than April twentieth in each year.

3. An authorized officer of every such railroad company shall, in addition to the reports required to be furnished to the county clerk as described in section 151.030 and subsection 1 of this section, furnish to the state tax commission a list by county of the **true value in money of all local property as derived by the county assessor** in each county no later than May first in each year.

§ 151.110, RSMo.

While subsection 1 of the statute requires officers of railroads and utilities to provide reports to “benefit” the assessor in valuing and assessing property, nowhere does the statute state that the report is conclusive upon the assessor, or that the assessor cannot form his or her own belief as the true value of the property.¹³ Indeed, subsection 2 of Section 151.110 expressly provides the assessor with a 20-day period to make **his or her own assessment** on the report provided by the utility. § 151.110.2, RSMo. (“Each county assessor in this state shall certify a copy of the report required by subsection 1 of this section **and a copy of assessments thereon** to the county clerk, the company and the state tax commission no later than April twentieth in each year.”).

Similarly, subsection 3 of Section 151.110 requires that railroads and utilities file a report with the State Tax Commission by May 1 that contains the “**true value in money**

¹³ As noted *infra*, the form promulgated by the State Tax Commission (Form 30, Schedule 14 (appended at App. 16)) for use by utility companies in making these sworn reports requires the reporting of “Original Costs,” not the “true value in money” of the property at issue. *See* § 151.110.1, RSMo. However, this significant discrepancy need not be addressed by this Court. Relevant for purposes of determining Count II of Plaintiffs’ lawsuit is the simple question of whether county assessors are bound by the value reported by a utility company. As set out in Section II, assessors are not bound by the value reported by a utility or railroad company. Thus, assuming *arguendo* that the construction costs KCP&L reported on Form 30 (Schedule 14) were its best estimate as to the “true value” of its CWIP, Plaintiffs’ mandamus claim fails nonetheless.

of all local property *as derived by the county assessor....*” *Id.* (emphasis added). Thus, the statute plainly contemplates the county assessor making his or her own determination as to the “true value in money” of utility local property. This would only seem logical, of course, considering that the assessor is a public official charged with “assess[ing] *all* of the real and tangible personal property in the county... *at what [s]he believes to be* the actual cash value.” § 53.030, RSMo. (emphasis added).

Likewise, Section 151.100, RSMo., also cited by Plaintiffs, does not require Assessor Pope to convert the reported costs of a utility company (the alleged “self-assessment”) into the “true value” of incomplete construction projects. In fact, that statute explicitly states that: “All local property owned or controlled by any railroad company or corporation in this state, shall be *assessed by the proper assessors* in the several counties, cities, incorporated towns and villages wherein such property is located....” *Id.* (emphasis added).

Further undermining Plaintiffs’ “self-assessment” theory are the statutes governing the review of railroad and utility assessments, which expressly provide for review—just as any other assessment is reviewed—by the board of equalization and, eventually, the State Tax Commission:

...Review of such local railroad assessments shall be the first order of business of the county board of equalization. In no event shall the board of equalization or any county officer alter or amend the local assessed valuations of railroad property later than August fifteenth in any year, except by order of the state tax commission.

Section 151.100, RSMo. If utilities and railroads self-assessed their own property, review procedures would be unnecessary.

Finally, if there were any remaining doubt on this point, this Court must consider the regulations of the Missouri State Tax Commission, which is constitutionally (Article X, Section 14) and statutorily (Sections 138.320 and 138.380, RSMo.) empowered to oversee the valuation and assessment process, including reporting and the use of forms for local assessments.¹⁴ The provisions of 12 CSR 30-2.011 (emphasis added below) (App. 10) clear up any doubt as to whether the county assessor is to make her own valuation of local utility property:

- (1) Unless otherwise provided, each assessor in the state **shall estimate on Form 30, Schedule 14 the market value of property** owned by each railroad...and other similar public utility corporations...doing business within his/her jurisdiction.

¹⁴ The ““interpretation and construction of a statute by [the] agency charged with its administration is entitled to great weight.”” *State ex rel. Sprint Missouri, Inc. v. Public Service Com’n of State*, 165 S.W.3d 160, 164 (Mo. 2005) (citation omitted). Thus, the regulations, forms, and instructions the State Tax Commission has promulgated to execute the requirements of Section 151.110, RSMo., carry particular weight.

(2) Each assessor in the state shall provide a breakdown of the market value and assessment of real estate held by each company within his/her jurisdiction on Form 30, Schedule 15...

(4) These forms shall be completed by each assessor per the attendant instructions and returned to the respective company, county clerk and state tax commission on, or before April 20 of each year.

The forms promulgated by the Tax Commission as part of its regulations make this even clearer. While utility companies do report their construction costs, it is the **Assessor** who considers this information and any supporting documentation, including her own investigation and powers of discretion, to estimate the “true value in money” by filling in the **separate column**, “MARKET VALUE,” which the form clearly states is “TO BE COMPLETED BY ASSESSOR.” App. 16. Likewise, the Tax Commission’s instructions explicitly direct that, while utility companies are to file Form 30 (Schedule 14) with the local assessor by April 1, the “*assessor will value and assess the property, complete the schedule and return [it] by April 20.*”¹⁵ *Instructions: Aggregate Statement of Taxable Property* at 8 (emphasis added), at <http://www.stc.mo.gov/pdf/INSTAggStateTaxablePropElectricUtilityCo.pdf>. Utilities do not “self-assess.”

¹⁵As noted above, Section 151.110.2, RSMo., provides county assessors with 20 days (April 1- April 20) to make their own assessment on the report filed by the company, certify the report, and return it to the company.

The above provisions apply only to the local property of utilities. Other property (distributable property) is to be directly assessed by the State Tax Commission, and in that situation as well, the regulations are clear that KCP&L's reports as to costs or value are not simply accepted by the Tax Commission and converted into an official valuation and assessment. Rather, an adversarial process regarding hearings, exhibits, discovery, and appeals may take place in which the valuation is ultimately determined by the Tax Commission. *See* 12 CSR 30-2.021 ("Original Assessment by State Tax Commission and Appeals") (App. 14). Of course, none of these elaborate procedures regarding local and state assessments would be necessary if some mandatory rule existed requiring construction costs or other data reported by utilities to be conclusively treated as the "true value in money" by county assessors or the State Tax Commission.

In sum, not only can Plaintiffs point to no law imposing their alleged ministerial duty upon Assessor Pope, but all relevant constitutional provisions, statutes, regulations, and forms confirm that Assessor Pope was charged with making her own determination as to the market value of KCP&L's local property.

ii. Sworn Reports Are not Unique to Railroads and Utilities

Plaintiffs' "self-assess" theory places great weight on Section 151.110.1's requirement that railroad and utility companies file sworn reports with the assessor describing and valuing their local property. *See* Exh. A, *First Amended Petition* ¶¶ 31-32. However, the requirement that taxpayers file such sworn reports is not unique and does not require "the assessor to accept the valuation fixed by the taxpayer...." *State ex rel. Dobbins v. Reed*, 60 S.W.2d 70, 71 (Mo. 1900).

Missouri taxpayers have long been required to file sworn reports with the county assessor listing all real and personal property of the taxpayer and stating the value of such property. *See* §§ 137.115, 137.120, 137.280, RSMo. Nonetheless, this Court has held that the county assessor is not bound to accept the value reported by the property owner, but instead may make his or her own valuation of the property. *See State ex rel. Dobbins*, 60 S.W.2d at 71 (a taxpayer’s sworn report stating the value of his or her property “is not binding on the assessor” and does not “constitute the assessment of the taxpayers’ real estate”); *Wymore v. Markway*, 89 S.W.2d 9, 13 (Mo. 1935) (assessor is not bound by taxpayer’s sworn report estimating property’s value because it is the assessor’s “duty to assess and value, and the property owner plays a subsidiary part”); *State ex. Rel. Pehle v. Stamm*, 65 S.W. 242, 244 (Mo. 1901) (principle that the assessor is not bound by a property owner’s valuation is derived “not only in the statute itself and the adjudications of this [C]ourt, but upon the plainest principles of reason and manifest necessity”).

As this Court has made clear, the assessor—the public official charged with assessing property—has ultimate authority to make his or her own valuation of property. While taxpayers may be required to file reports to aid or “benefit” the assessor, the assessor is not bound by such reports.

iii. Assessment is a Discretionary Act

There is a reason that no constitutional provision, statute, or regulation provides Assessor Pope with a clear legal mandate to accept KCP&L’s alleged “self-assessment” as the conclusive “true value” of its property: calculating the “true value” of property requires discretion. As noted above, assessors are charged with assessing property “at

what [they] believe[] to be the actual cash value” of that property. § 53.030, RSMo. As a result, the county assessor has discretion to *estimate* a property’s true value in money, and “a presumption exists in favor of the correctness of the valuation of the tax assessor.” *Hermel, Inc. v. State Tax Commission*, 564 S.W.2d 888 (Mo. banc 1978). As this Court has explained, the process of estimating “true value” is by its nature a discretionary one:

“True value” is an estimate of the fair market value on the valuation date. This definition has not changed from case to case. What does change are the methods used and the factors considered in determining “true value”. The determination of which factors are relevant in a particular case and thus are required to be considered in determining true value has been held to involve the construction of a revenue law. The real question before the court in such a case is not the construction of the term “true value” but an application of this term to the facts of the case. Those facts will include the various methods of valuation and factors or data considered as a part of each method along with the results of the valuation. The meaning of the term “true value” is clear but its application to the facts in cases, such as the present one, is not so clear.

Hermel, 564 S.W. 2d at 897 (citations omitted). *See also O’Flaherty v. State Tax Commission*, 698 S.W.2d 1 (Mo. banc 1985) (determination of “true value” is a factual issue, and tax commission could reduce valuation of inventory by 36% of reported cost to reflect inability to sell inventory on the open market).

Hermel and O'Flaherty make clear that from the county assessor to the State Tax Commission, the process of estimating the "true value in money" requires discretion. As a result, not only is Plaintiffs' "self-assess" theory contrary to Missouri statutes, but if it were not, it would seem a considerable oversight by the General Assembly to delegate to property owners the inherently discretionary authority to value their own property for purposes of *ad valorem* taxation.¹⁶ Moreover, if railroads and utilities were delegated such authority, the *estimates* of "true value" made by such companies would be *unreviewable* because neither the assessor, the county board of equalization, nor the State Tax Commission would have authority to appeal the company's valuation.

This Court need only look to the statutory framework governing the assessment process to decide that no Missouri law required Assessor Pope to accept the construction costs reported by KCP&L as the conclusive and binding "true value in money" of KCP&L's CWIP property. That fact alone disposes of Count II of Plaintiffs' lawsuit because mandamus cannot apply. Respondent lacks jurisdiction over Count II and a writ of prohibition should issue immediately.

¹⁶ If, however, this Court were to disagree and hold that railroads and utilities are empowered to conclusively "self-assess" their own local property, KCP&L notes that numerous regulations and forms promulgated by the State Tax Commission would need to be amended to reflect this holding.

B. Assessors Have No Legal Duty to Consider “Off-Line” Utility Property

“Local Property.”

A writ of mandamus could only issue under Count IV of West Platte’s lawsuit if Assessor Pope failed to execute “a simple, definite ministerial act imposed by law.” *Cabool*, 850 S.W.2d at 105. Thus, Count IV can be boiled down to one dispositive question: do county assessors have a clear, ministerial, legal duty to assess utility property as “local” property if it was not actively “being used to generate and distribute electrical power” sometime during the twenty-four hours of January 1 in the relevant year—even if the property’s sole and ordinary use is to generate electrical power? The statutes cited by Plaintiffs lead to a clear conclusion: assessors have no clear legal duty to assess otherwise-distributable property (like power plants) as local property, solely because the property happens to be “off-line” on January 1.¹⁷ As a result, the trial court has no jurisdiction to issue a writ of mandamus.

As noted above, Section 151.100, RSMo., provides that local property of a utility is to be assessed by the relevant local assessor. Section 153.034 in turn, defines local property and distributable property as follows:

¹⁷ Plaintiffs’ quotation of the phrase “relevant day” from *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W.3d 341, 348 (Mo. 2005), is inapposite. *Suggestions of Respondent Regarding Writ of Prohibition* at 9. *Snider*’s “relevant day” language applied to determining the *value* of property, not the *category* of property. *Snider*, 156 S.W.3d at 348.

1. The term “distributable property” of an electric company shall include all the real or tangible personal property which is used directly in the generation and distribution of electric power, but not property used as a collateral facility nor property held for purposes other than generation and distribution of electricity. Such distributable property includes, but is not limited to:

[listing specific items of property]

2. The term “local property” of an electric company shall include all real and tangible personal property owned, used, leased or otherwise controlled by the electric company not used directly in the generation and distribution of power and not defined in subsection 1 of this section as distributable property. Such local property includes, but is not limited to:

[listing specific items of property]

Citing nothing more than these two statutes, Plaintiffs’ lawsuit claims that Assessor Pope was under a clear legal duty to assess “the entirety of the Iatan I power plant as local property.” Exh. A, *First Amended Petition* ¶ 61. Plaintiffs do not state where in these statutes this purportedly clear, simple, ministerial duty can be found. It cannot be found.

Importantly, the definitions of “distributable” and “local” property are followed by examples of *types* of property that are covered under each classification. These are not *temporal* definitions. In other words, there is no requirement that property must be of the type that is “used directly in the generation and distribution of electric power,” *and* also

be “on-line” during a specific day of the year. *Id.* For example, while the statute provides that property such as boilers, towers, station equipment, and rights-of-way are distributable property, it does not require this property to be generating electricity on January 1 in order to qualify. Indeed, it would be difficult for a right-of-way (one type of property listed in the statute) to ever be deemed “on-line.” Thus, irrespective of whether or not KCP&L’s Iatan I power-plant happened to be “on-line” on January 1, it had the sole purpose of generating and distributing electric power, and was therefore, by definition, “distributable property.”

Moreover, under Plaintiffs’ theory, the assessment of hundreds of millions or billions of dollars in property would swing wildly from year to year based on the vagaries of power companies’ operation of their systems. Utility property “on-line” 364 days a year, which is “off-line” for one day per year, would be considered “local property” if that one day happens to fall on January 1. If the property were to go “off-line” any other day of the year, it would be deemed distributable property. The reverse is also true. Utility property “off-line” 364 days per year, that happens to go “on-line” for January 1 only, would be deemed distributable property. Under either scenario, utility companies would be encouraged to go either “on-line” or “off-line” for the day of January 1 depending on the rate of applicable tax levies. Thankfully, nothing in the statutes requires

or even suggests such an absurd result.¹⁸ In the absence of a clear legal duty, the trial court has no jurisdiction to issue a writ of mandamus.

Finally, it should be noted that Plaintiffs' mandamus claim in Count IV is flatly inconsistent with their earlier argument that utilities "self-assess." Utilities do not report distributable property to the county assessor. § 151.110, RSMo. Instead, utilities report distributable property directly to the State Tax Commission. § 151.020, RSMo. Under Plaintiffs' "self-assess" theory, Assessor Pope would have no ability, let alone a clear legal duty, to assess as local property what KCP&L has reported as distributable property, because under their theory KCP&L's report filed with Assessor Pope is final and binding.

In sum, it is apparent from the face of the applicable statutes that Assessor Pope has no clear legal duty to assess KCP&L's entire Iatan I power plant as local property as the result of its being "off-line" on January 1 of any given year. Any such duty would create absurd and wildly variable results. Because no clear ministerial duty exists, the trial court has no jurisdiction to issue a writ of mandamus and Count IV of Plaintiffs' lawsuit should have been dismissed.

¹⁸ Moreover, even if ambiguity existed, this Court should avoid interpreting the statute to produce such an absurd result. *Teague v. Missouri Gaming Com'n.*, 127 S.W.3d 679, 687 (Mo. App. W.D. 2003) ("the legislature is presumed, when enacting a statute, to intend a logical result, and courts endeavor to avoid unreasonable illogical results").

III. Relator is entitled to an order prohibiting Respondent's continued exercise of jurisdiction over the underlying lawsuit because the lawsuit is moot in that Relator's property taxes have already been paid and distributed to the applicable taxing jurisdictions and Respondent has no authority to grant the requested relief.

Finally, in addition to the foregoing reasons, Respondent lacks jurisdiction over Plaintiffs' lawsuit because it is moot.

Like standing, mootness is a threshold question that goes to a court's jurisdiction: The mootness of a controversy is a threshold question in any appellate review of that controversy. Regarding justiciability, an issue is moot if a judgment rendered has no practical effect upon a controversy. This court does not decide questions of law disconnected from the granting of actual relief. "Because mootness implicates the justiciability of a case, the court may dismiss a case for mootness *sua sponte*." When an appellate decision is unnecessary or it is impossible for the appellate court to grant effectual relief, the appeal is moot and generally should be dismissed.

State ex rel. Chastain v. City of Kansas City, 289 S.W.3d 759, 766-767 (Mo. App. W.D. 2009) (citations omitted). Under these standards, Plaintiffs' claims are moot and should be immediately dismissed.

A. Counts I and II Are Moot

KCP&L's property taxes on the property at issue in Plaintiffs' lawsuit for 2009 and every prior year (including the portion of the taxes that are based on an estimate of

the value of construction work in progress, which is at issue under Counts I and II), can no longer be altered. They have been levied, paid in full, and distributed to the various taxing jurisdictions by the Platte County Collector, all as provided by law. *See* §§ 153.030 and 153.034, RSMo.; Chapter 151, RSMo.; §§ 138.420, 139.220, and 139.230, RSMo.; and 12 CSR 30-2. There is no statutory authority for such taxes to be retroactively increased or for such distributions to be reversed. Indeed, as discussed below, the statutes are explicit that not only does the Assessor have no *duty* to act as Plaintiffs demand, she has no *power* to do so. Section 115.100, RSMo.

First, Section 137.355, RSMo., provides that when the Assessor increases the valuation of any tangible personal property or of any real property, she shall “forthwith” notify the record owner of the increase, either in person or by mail. This triggers a statutory appeal process that begins at the County Board of Equalization and ends with the State Tax Commission and, possibly, the courts. The next step in the process, under Section 137.275, RSMo, provides every person who thinks themselves aggrieved by the assessment of his property with an appeal to the county Board of Equalization, which must be filed on or before the second Monday in July. The Board of Equalization’s hearings shall end on July 31st of each year except for erroneous assessments, double assessments and clerical errors, none of which include the issue presented here: valuation. *See* § 138.100.2., RSMo.

All of these dates have long since passed. Clearly, the statutory machinery which is the sole means of satisfying KCP&L’s due process right to be heard on the Assessor’s new valuation and assessment (*i.e.*, the new multi-year valuations and assessments that

would flow from the Assessor's forced adoption of Plaintiffs' theory in this case) do not provide any means for review in 2010 of assessments for 2009 and prior years. If Plaintiffs were to ultimately succeed, the time for notice and appeal of these retroactive valuations and assessments would have long since run, depriving KCP&L of its right of appeal and due process.

The appeal process aside, there is a second mootness problem. Specifically, there is a date certain after which the Assessor is *absolutely prohibited* from acting without an order from the State Tax Commission—a nonparty to this lawsuit. Under Section 151.100, RSMo., the Assessor may make no increase in an assessment after **August 15th** of any year, except by order of the State Tax Commission. Thus, even if Plaintiffs' novel theories are all correct, Defendant Pope is not now under any duty—ministerial or otherwise—to increase KCP&L's assessment for 2009 or prior years. To do so, in fact, would directly contravene Missouri law.

It is too late for Plaintiffs to seek to increase KCP&L's valuation, assessments, and tax bills for 2009 and prior years. There is nothing left that the Assessor can lawfully do with respect to those prior years. A decision as to the rights and duties of Plaintiffs and Pope serves no purpose. *See Chastain*, 289 S.W.3d at 766-767. Plaintiffs' Counts I and II must be dismissed.

B. Counts III and IV Are Moot

As set out above, Counts III and IV of Plaintiffs' lawsuit seek to have KCP&L's Iatan I power plant re-assessed as "local" property because on January 1 of 2009 it happened to be "off-line" and not generating electricity. Again, KCP&L's 2009 taxes

were levied long ago, were paid in full, and have been distributed according to Sections 153.030; and 153.034, RSMo.; Chapter 151, RSMo.; Sections 138.420, 139.220, and 139.230, RSMo.; and 12 CSR 30-2. The tax distribution is final and cannot be reversed.

Assessor Pope has no authority to unilaterally “move” the substantial value of the Iatan I power plant from the original assessment of the State Tax Commission, which included the value of the plant within its own original assessment of distributable property, onto her own assessment of “local property.” See Section 138.420, RSMo. (providing that the State Tax Commission has the original power of assessment of all distributable property of utilities, and providing a means for utilities to challenge the assessment).

The Assessor has no further rights or duties to be declared, and has no further ministerial duties to perform (other than to comply with the decisions of the State Tax Commission, which Plaintiffs did not join as a party). See, e.g., *State ex rel. Riney v. Mason*, 537 S.W.2d 181 (Mo. banc 1976) (county clerk must compute and extend taxes so as to comply with State Tax Commission’s orders); *State ex rel. Thompson v. Jones*, 41 S.W.2d 393, 399 (assessor was under ministerial duty to extend taxes in accordance with State Tax Commission’s assessment). Any order compelling the Assessor to retroactively change KCP&L’s assessment so as to directly contradict and nullify the State Tax Commission’s assessment would ask her to perform an unlawful act, and mandamus cannot compel such action. *State ex rel. City of St. Louis v. Mummert*, 875 S.W.2d 108, 109 (Mo. banc 1994) (“A court may not use mandamus to require

performance of an unlawful act.”). Since no relief is available to Plaintiffs at this late stage, their Petition must be dismissed as moot.

Conclusion

Respondent has exceeded his jurisdiction in three respects: (1) Plaintiffs lack standing to obtain declaratory relief because only the landowner can challenge the valuation or assessment of its land; (2) a writ of mandamus cannot issue because the assessor has no clear duty to assess KCP&L’s land in the manner asserted by Plaintiffs; and (3) Plaintiffs’ lawsuit is moot. For the foregoing reasons, Relator respectfully requests this Court to enter a writ of prohibition against Respondent:

- a. Prohibiting Respondent from taking any further action related to the lawsuit except that action necessary to dismiss the lawsuit with prejudice from the court’s docket; and
- b. Awarding any such other and further relief as may be necessary and proper.

Respectfully submitted,

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