In the
Missouri Court of Appeals
Western District

TRACY BALDWIN, ASSESSOR, CLAY COUNTY, MISSOURI,	)	
	)	
Appellant,	)	
	)	**WD87829**
v.	)	**OPINION FILED: DECEMBER 2, 2025**
	)	
QUIKTRIP CORPORATION,	)	
	)	
Respondent.	)	

Appeal from the Circuit Court of Clay County, Missouri
The Honorable David P. Chamberlain, Judge

Before Division Four: Anthony Rex Gabbert, Chief Judge, Presiding, Lisa White Hardwick, Judge, and Karen King Mitchell, Judge

Tracy Baldwin, Clay County Assessor, appeals the judgment of the Clay County Circuit Court affirming the State Tax Commission's order. The order set the total assessed value of QuikTrip Corporation's interest in a property at zero dollars. The four points on appeal argue that the State Tax Commission erred because the property is real property, the property is taxable, the order is not supported by competent and substantial evidence, and the burden of proof was misapplied. The judgment is affirmed.

Facts

In 2017, QuikTrip Corporation ("QuikTrip") owned real estate in Gladstone, Missouri which it used as a gas station and convenience store ("the QT Property"). The QT Property had been assessed and valued by the Clay County Assessor ("Assessor") at

$542,700. In 2017, QuikTrip sold the QT Property to another entity ("Buyer") for $370,000. QuikTrip recorded a Special Warranty Deed ("the Deed") conveying the building and land to Buyer. QuikTrip reserved certain use restrictions, the right of first refusal, and mineral rights. The Deed stated in relevant part:

> A. Use Restriction. The Property shall not be used as a retail convenience grocery store, donut shop, coffee shop, fast food or quick-service restaurant (excluding any sit-down restaurant with full-service wait staff), smoke shop, or other retail outlet selling tobacco products, electronic cigarettes, vapor devices or nicotine based products as one of its primary uses, a sexually oriented business for the sale of adult materials or drug paraphernalia, the retail sale of package or carryout beer, wine, liquor or spirits, the retail sale of motor fuels, or for the sale of items commonly sold in a convenience store including, but not limited to, candy, chips, donuts, sandwiches, pizza, snacks, coffee, soda and other carbonated beverages; and
>
> B. Right of First Refusal. If Grantee, within thirty (30) years from May 31, 2017, elects to sell the Property, Grantee shall provide written notice of such election to Grantor and, upon entering into a binding contract or letter of intent with a third party to sell the Property, provide Grantor with a copy of the third party contract. The third party contract must (a) contain the legal name of the purchasing entity together with the names and addresses of all persons and/or other legal entities having an ownership interest in such entity, and (b) be non-assignable. Upon Grantor's receipt of a copy of the third party contract, Grantor shall have the right of first refusal to purchase the Property on the same terms and conditions of such third party contract or letter of intent. Grantor may exercise its right of first refusal at any time within thirty (30) days of Grantor's receipt of such third party contract (the "ROFR Period"). The exercise of the right of first refusal by Grantor shall be by written notice to Grantee prior to the expiration of the ROFR Period. In the event Grantor has not exercised its right of first refusal prior to the expiration of the ROFR Period, Grantee shall be free to sell the Property to such third person, in accordance with the terms and conditions of such third party contract. In any event, Grantor's failure to exercise its right of first refusal on any offer shall not be a waiver of its right of first refusal on any subsequent sale. In the event Grantor exercises its right of first refusal, Grantor and Grantee shall promptly enter into a

purchase and sale contract for the purchase and sale of the Property on the terms set forth in the third party contract.

C. Mineral Rights. Any and all mineral rights associated with the Property are hereby reserved and retained by and unto the Grantor.

In 2018, Buyer converted the business to a coin-operated laundromat ("the Laundromat Property"). Buyer requested a reduction to the assessed value of the Laundromat Property. The Clay County Board of Equalization ("BOA") agreed. Assessor reduced the Laundromat Property value to Buyer's $370,000 purchase price.

Assessor allocated the residual balance of the 2017 value, $172,700, to a separate tax parcel ("the Residual Property"). QuikTrip was listed as the owner of the Residual Property. Assessor split the original property (the QT Property) into the two parcels (the Laundromat Property and the Residual Property) because the title of the original property (the QT Property) was not transferred in fee simple absolute. The Residual Property consisted of the use restrictions, the right of first refusal, and the reservation of mineral rights.

In 2019, the Laundromat Property and the Residual Property did not increase in value. QuikTrip appealed the assessment of the Residual Property to the BOA. The BOA confirmed the assessment of the Residual Property. QuikTrip filed an appeal to the State Tax Commission ("the Commission").

In February 2021, the hearing officer issued a Decision and Order ("the Hearing Decision"). The hearing officer found that QuikTrip "produced substantial and persuasive evidence establishing overvaluation." The Hearing Decision found that the

Residual Property had a True Value in Money ("TVM") of $0. The hearing officer interpreted section 137.115.16[1] to hold that "certain mineral and mining interests are taxable, but only if at the time of assessment the mining activity has been bonded or permitted under chapter 444; if not, then the property must be assessed based upon how it is currently being used." As of the date of the evidentiary hearing, QuikTrip had made no actual use of the Residual Property.

Assessor filed an application for review with the Commission. In August 2023, the Commission issued an order ("the Commission Decision") affirming the Hearing Decision. The Commission Decision found that the Residual Property had a TVM of $0. It determined that the use restrictions and right of first refusal were not real property or tangible personal property and were not taxable or required to be assessed. The Commission Decision affirmed the Hearing Decision's interpretation of section 137.115.16. It held that "the mineral rights were not taxable and not required to be assessed because the property had not been bonded and permitted under Chapter 444 and was not being used for any purpose as of January 1, 2019." The Commission cited with approval the Hearing Decision's statement that the assessment "did not fit within any of the three recognized approaches to value" and was "improper and arbitrary based upon authority cited in" the Assessor's Post-Hearing Brief which stated that "'[r]eal property is to be valued and taxed at its highest and best use – its true value in money." The Order

[1] All statutory citations are to RSMo 2016 as supplemented unless otherwise indicated.

cited with approval the statement that the Laundromat Property buyer "likely did not pay market value for its parcel but instead paid salvage value." Thus, Assessor erred in using the sales price to value the Laundromat property.

This appeal follows.

Standard of Review

"On an appeal from a judgment of a trial court addressing the decision of an administrative agency, we review the decision of the administrative agency and not the judgment of the trial court." *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 225 (Mo. App. W.D. 2020) (internal quotation marks omitted). "This court reviews the decision of the [Commission] and not the hearing officer[.]" *Id*. (internal quotation marks omitted). "Notwithstanding, in our mandate, we reverse, affirm or otherwise act upon the judgment of the trial court." *Id*. at 225-26 (internal quotation marks omitted). "We must determine whether the [Commission's] findings are supported by competent and substantial evidence on the record as a whole; whether the [Decision and Order] is arbitrary, capricious, unreasonable or involves an abuse of discretion; or whether the [Decision and Order] is unauthorized by law." *Id*. at 226 (internal quotation marks omitted). "However, we review the [Commission's] conclusions of law and its decision *de novo*, and we make corrections to erroneous interpretations of the law." *Id*. (internal quotation marks omitted). "Whether the appropriate standard of value and approach to valuation were properly applied under the particular facts and circumstances of the case is a question of law." *Id*. (internal quotation marks omitted).

Point I

In the first point on appeal, Assessor states the Commission erred in not finding the Residual Property to be real property. Assessor claims that a mineral estate is real property under common law and sections 137.010, 137.115 and 259.220. Assessor further argues that the mineral estate includes all property interest including the use restrictions and right of first refusal.

Section 137.010 states in relevant part:

> The following words, terms and phrases when used in laws governing taxation and revenue in the state of Missouri shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:
> …
> (3) **"Intangible personal property"**, for the purpose of taxation, shall include all property other than real property and tangible personal property, as defined by this section;
>
> (4) **"Real property"** includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon, hydroelectric power generating equipment, the installed poles used in the transmission or reception of electrical energy, audio signals, video signals or similar purposes, provided the owner of such installed poles is also an owner of a fee simple interest, possessor of an easement, holder of a license or franchise, or is the beneficiary of a right-of-way dedicated for public utility purposes for the underlying land; attached wires, transformers, amplifiers, substations, and other such devices and appurtenances used in the transmission or reception of electrical energy, audio signals, video signals or similar purposes when owned by the owner of the installed poles, otherwise such items are considered personal property; and stationary property used for transportation or storage of liquid and gaseous products, including, but not limited to, petroleum products, natural gas, propane or LP gas equipment, water, and sewage;

> …
> (6)[2] **"Tangible personal property"** includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined, but does not include household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place. …

(Emphasis in original). Pursuant to section 137.075, "[e]very person owning or holding real property or tangible personal property on the first day of January, including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year." Section 137.115 states in relevant part:

> 1. All other laws to the contrary notwithstanding, the assessor or the assessor's deputies in all counties of this state … shall annually make a list of all real and tangible personal property taxable in the assessor's city, county, town or district. … The assessor shall annually assess all real property, including any new construction and improvements to real property, *and possessory interests in real property* at the percent of its true value in money set in subsection 5 of this section.
> …
> 16.[3] Any portion of real property that is available as reserve for strip, surface, or coal mining for minerals for purposes of excavation for future use or sale to others that has not been bonded and permitted under chapter 444 shall be assessed based upon how the real property is currently being used. … For purposes of this subsection, **"mine property"** shall mean all real property that is in use or readily available as a reserve for strip, surface, or coal mining for minerals for purposes of excavation for current or future use or sale to others that has been bonded and permitted under chapter 444.

(Italicized emphasis added; bolded emphasis in original). Section 259.220 states:

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[2] Section 137.010 was amended in 2018 by S.B. 881 which added subsection 5 and renumbered the existing subsection 5 to subsection 6.

[3] Section 137.115 was amended in 2020 by S.B. 676 which struck subsection 13 and renumbered subsection 17 to subsection 16.

> All rights and interests in or to oil, gas or other minerals underlying land, whether created by or arising under deed, lease, reservation of rights, or otherwise, which rights or interests are owned by any person other than the owner of the land, shall be assessed and taxed separately to the owner of such rights or interests in the same manner as other real estate. The taxes on such rights or interests which are not owned by the owner of the land shall not be a lien on the land.

Section 140.150.1 states:

> All lands, lots, *mineral rights*, and royalty interests on which taxes or special assessments are delinquent and unpaid are subject to sale to discharge the lien for the delinquent and unpaid taxes or unpaid special assessments as provided for in this chapter on the fourth Monday in August of each year.

(Emphasis added).

On appeal, Assessor claims the Commission erred because it did not explicitly find in its decision that the mineral estate is real property subject to valuation. We disagree. The parties differed on what the assessed value of the mineral rights should be. In its appeal of the BOE decision, QuikTrip argued that "[t]he assessment overvalues the mineral rights as there are no producing wells, no exploratory wells, and no studies indicating there are mineral reserves that the petitioner could access. The property is fully developed and located in a dense residential area with no mineral production." Assessor argued before the Commission that "[t]he Hearing Officer erred in determining the fair market value of the subject property to be $0 as of January 1, 2019."

The Commissioner quoted section 137.115.16, pertaining to real property available as reserve for minerals. The Commission Decision stated that "[t]he Hearing

Officer did not err in finding the TVM of the subject property to be $0 as of January 1, 2019." The Commission found that the mineral rights were real property that should be assessed, and assessed them at $0.

The Commission Decision further found that the right of first refusal and the use restrictions are not real property or tangible personal property and, accordingly, were not taxable and not required to be assessed. Assessor argues that this finding was also erroneous because the mineral estate includes all real property interests. We disagree.

As set forth above, section 137.010 defines intangible personal property, real property, and tangible personal property. Sections 137.075 and 137.115, however, set forth tax liability for and assessment of only real property and tangible personal property. Moreover, sections 259.220 and 140.150.1 discuss assessing and taxing mineral rights. Assessor points to no statutory authority discussing assessing and taxing use restrictions.[4]

"Before 1989, section [137.010] stated that real property includes the 'land itself ... and all rights and privileges belonging or appertaining thereto.'" *St. Charles Cnty. v. Curators of U. of Missouri*, 25 S.W.3d 159, 161 (Mo. banc 2000). "The 1989 amendment removed the 'all rights and privileges' language from section [137.010]." *Id*. The 1989 amendment also enacted section 137.115.1(1) which states in relevant part that "[a]ll

[4] Assessor concedes that the right of first refusal is not an assessable property interest by stating:

> In contrast to the restrictions, the right of first refusal is not a vested right and may never come into being … as such, no value can be ascribed to it because it lacks a definite right of domination in and over the physical thing, such as the right of user, or exclusion, or disposition.

(Internal quotation marks omitted).

other laws to the contrary notwithstanding, the assessor .... shall annually assess all real property, including any new construction and improvements to real property, and possessory interests in real property...." *Id*.

"A statute as amended should be construed on the theory that the lawmaker intended to accomplish something by the amendment." *State v. Libertus*, 560 S.W.3d 578, 582 (Mo. App. W.D. 2018) (internal quotation marks omitted). The 1989 amendment narrowed the definition of "real property." A use restriction is a negative easement. *Wilson v. Owen*, 261 S.W.2d 19, 24 (Mo. 1953) ("[A] negative easement is one the effect of which is not to authorize the doing of an act by the person entitled to the easement, but merely to preclude the owner of the land subject to the easement from the doing of an act which, if no easement existed, he would be entitled to do."). A use restriction is not a possessory interest in real property. *Gilbert v. K.T.I., Inc.*, 765 S.W.2d 289, 293 (Mo. App. W.D. 1988) ("An easement is a nonpossessory interest; it is an interest in the land in the possession of another which entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists.").[5]

To the extent use restrictions are considered, they are looked at with respect to how they impact the value of the property subject to the use restriction. *See Schlafly v. Baumann*, 108 S.W.2d 363, 368 (Mo. 1937) ("It stands uncontradicted of record … that

[5] Assessor argues in the reply brief that use restrictions are part of the "[a]ll rights and interests" in minerals referenced in section 259.220. We are not persuaded. The use restrictions in the deed are entirely unrelated to the retained mineral rights.

real estate values within restricted residential areas are highly sensitive to any removal of the restrictions…."); *Tibbs v. Poplar Bluff Associates I, L.P.*, 599 S.W.3d 1, 11 (Mo. App. S.D. 2020) ("[A] well-informed buyer would consider the existence of deed restrictions associated with a property when making a decision on whether to buy the property. To calculate the value of the properties without considering the restrictions imposed by virtue of the [Land Use Restriction] Agreements would hypothesize[ ] an unrealistic market and assume facts that do not exist." (internal quotation marks omitted)). Assessor points to no example where a party imposing a use restriction is assessed for the value of that use restriction.[6]

The point is denied.

Point II

In the second point on appeal, Assessor states the Commission erred in finding that mineral rights were not taxable. Specifically, Assessor complains about this finding the Commission made in its judgment:

> The weight of the credible evidence in the record established that the mineral rights *were not taxable* and not required to be assessed because the property had not been bonded and permitted under Chapter 444 and was not being used for any purpose as of January 1, 2019.

(Emphasis added). Assessor claims that the plain language of sections 137.075, 137.115 and 259.220 require the taxation of severed mineral estates.

[6] Under Assessor's theory, Home Owner's Associations should be assessed and held liable for a portion of each home in the neighborhood because those homes are subject to use restrictions.

As discussed in Point I, the Commission affirmed the assessment of the mineral rights. In its decision, the Commission set forth the full text of section 137.155.16 pertaining to "[a]ny portion of real property that is available as reserve for … minerals" being "assessed based upon how the real property is currently being used." It found that the TVM was $0. Pursuant to the statutory scheme set forth in Point I, the Commission would only affirm a TVM of the mineral rights if the mineral rights were taxable. Thus, any error in the Commission's statement that the mineral rights were not taxable was harmless error. *See, e.g., Westwood Partn. v. Gogarty*, 103 S.W.3d 152, 163 (Mo. App. E.D. 2003) ("As for the remainder of the excluded evidence, assuming *arguendo,* that such rejections were indeed error by the Commission, such error would constitute harmless error, as the admission of that evidence would not have materially affected the merits of the action."); *contrast Union Electric Co. v. Estes*, 534 S.W.3d 352, 371 n.21 (Mo. App. W.D. 2017) ("Though in theory it is true that harmless error will not support relief, the assessors' improper application of an otherwise proper valuation methodology necessarily had an adverse effect on Ameren, as the failure to apply ***any*** depreciation adjustment necessarily resulted in a materially higher assessment. This is not a case of 'harmless error.'" (emphasis in original)).

The point is denied.

Point III

In the third point on appeal, Assessor claims the Commission erred in finding that the mineral rights had a TVM of zero dollars. Assessor states that the Commission's

finding is unsupported by competent and substantial evidence upon the whole record. Assessor argues that QuikTrip did not present an opinion of value, any evidence of value or of the lack of value.

Although section 536.140 provides seven grounds for review of an agency decision, this point on appeal only pertains to whether the Commission's decision is supported by competent and substantial evidence on the record as a whole. "Substantial evidence is competent evidence that, if believed, has probative force upon the issues." *Stock v. Policemen's and Firemen's Ret. Fund of City of Richmond Heights*, 712 S.W.3d 40, 46 (Mo. App. W.D. 2025) (internal quotation marks omitted). "Competent evidence is relevant and admissible evidence that is capable of establishing the fact in issue." *Id*. (internal quotation marks omitted). "We will only reverse in the rare case where the agency's decision is contrary to the overwhelming weight of the evidence." *Id*. (internal quotation marks omitted). "[W]hen the evidence before an administrative body would warrant either of two opposed findings, the reviewing court is bound by the administrative determination, and it is irrelevant that there is supportive evidence for the contrary finding." *Id*. at 47 (internal quotation marks omitted).

"Section 137.115.1 requires that all real property be assessed according to its true value in money." *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Id*.

(internal quotation marks omitted). "For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Id*. "Each valuation approach is applied with reference to a specific use of the property—its highest and best use." *Id*. "The method used depends on several variables inherent in the highest and best use of the property in question." *Id*. at 347. "Each method uses its own unique factors to calculate the property's true value in money." *Id*. "Determining value is an issue of fact for the Commission[; h]owever, whether the appropriate standard of value and approach to valuation were properly applied under the particular facts and circumstances of the case is a question of law, which we review *de novo*." *Rinehart*, 607 S.W.3d at 229 (internal quotation marks omitted).

The three generally accepted approaches to value real property are the cost approach, the income approach, and the comparable sales approach. *Snider*, 156 S.W.3d at 346-48. "The 'cost approach' may be based on either reproduction cost or replacement cost." *Id*. 347. "The cost approach is most appropriate when the property being valued has been recently improved with structures that conform to the highest and best use of the property or when the property has unique or specialized improvements for which there are no comparables in the market." *Id*. "The 'income approach' determines value by estimating the present worth of what an owner will likely receive in the future as income from the property." *Id*. "The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the

property when devoted to its highest and best use...." *Id*. (internal quotation marks omitted). "This approach is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions." *Id*. "The 'comparable sales approach' uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Id*. at 347-48. "This approach is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Id*. at 348.

The following evidence was presented to the Commission: The contract for the sale of the QT Property to Buyer required QuikTrip to remove all business personal property and to decommission the underground fuel storage tanks and document their condition in an Underground Storage Tank Closure Report. The QT Property is just over an acre in size.

QuikTrip filed written testimony of J.B., the Real Estate Manager-Dispositions for QuikTrip Corporation. J.B. stated: the QT Property was listed for sale for more than 154 days; QuikTrip concluded that the QT Property was no longer of sufficient value to continue as a convenience store gas station; QuikTrip determined that the value range for QT Property was $199,000 to $395,000; QuikTrip received four offers for the QT Property ($305,000; $335,000; $380,000; and $370,000); none of the four offers raised concerns about the reserved interest or deed restrictions; and pursuant to the sales contract, QuikTrip does not have a right to possess, occupy, sell, lease, use, give away,

enter, or leave the property. J.B. stated that, to his knowledge: no one has ever sought or been granted the necessary bond in order to extract minerals or otherwise mine the QT Property and that Clay County has admitted that this is the only time Clay County has attempted to assess, value or tax any type of reservation or restriction in a deed.

At the evidentiary hearing, J.B affirmed his written testimony. He further testified that, in his five years in his current position, QuikTrip has never had to enforce a deed restriction. In his entire 30-year career with QuikTrip, J.B. did not know of a single case where QuikTrip has tried to extract mineral rights. J.B. testified that QuikTrip started in Oklahoma where mineral rights have a different meaning than they do in other states.

QuikTrip consistently maintained that the mineral rights had no value because they were not being exercised and likely would not be exercised. We note that Assessor did not produce evidence: that QuikTrip could obtain the zoning and permits from the City of Gladstone, Missouri to operate a mine; that the Missouri Department of Natural Resources would issue a permit to mine a one-acre parcel of land; that any minerals exist at this site; or that any minerals exist in sufficient quantity to justify the cost of mining.

Section 137.115.16 states that "[a]ny portion of real property that is available as reserve for strip, surface, or coal mining … that has not been bonded and permitted under chapter 444 shall be assessed based upon how the real property is currently being used." As discussed in Point I, QuikTrip's assessable property interest is only the mineral rights. Those mineral rights are not currently being used at all. The finding that the mineral

rights currently have a TVM of $0 is supported by competent and substantial evidence on the record as a whole.

The point is denied.

Point IV

In the fourth point on appeal, Assessor argues that the Commission erred because it misapplied the burden of proof. Assessor states this error makes the Commission Decision arbitrary, capricious, and unreasonable as set forth in section 536.140.2(6). Assessor claims the Commission ignored the presumption of correctness and misapplied the law by placing the burden of proof on the nonmoving party.

"A county board of equalization's valuation is presumed correct; the presumption may be rebutted only if the taxpayer presents substantial and persuasive evidence that the valuation is erroneous." *Parker v. Doe Run Co.*, 553 S.W.3d 356, 360 (Mo. App. S.D. 2018). "The taxpayer has the burden to establish the value that should have been placed on the property." *Id*. The Commission Decision stated in relevant part:

> There is a presumption of validity, good faith and correctness of assessment by the BOE. … The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE's assessment is erroneous and what assessment should have been placed on the property.
>
> The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary, or capricious."
> …

> The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief.
> …
> Here, Complainant had the burden of proving that the BOE's determination regarding the TVM of the subject property was erroneous and establishing the correct TVM to place upon the subject property.

The Commission Decision states the correct burden of proof multiple times.

Assessor acknowledges this, but argues that the Commission Decision "failed to state any evidence or testimony which met that burden." We disagree. The Commission Decision stated that "[t]he weight of credible evidence established" that the use restrictions and right of first refusal were not taxable. The Commission Decision stated that "[t]he weight of credible evidence established" that the mineral rights were not bonded and permitted under Chapter 444 and were not being used for mining or any other purpose as of January 1, 2019. That credible evidence is set forth in Point III. While the Commission Decision also discussed ways in which Assessor's evidence was not convincing, that discussion did not place the burden of proof on Assessor.

The point is denied.

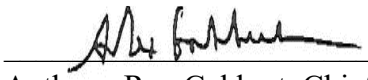
Conclusion

This court's scope of judicial review is limited to a determination of whether the Commission Decision:

> (1) Is in violation of constitutional provisions;
> (2) Is in excess of the statutory authority or jurisdiction of the agency;
> (3) Is unsupported by competent and substantial evidence upon the whole record;
> (4) Is, for any other reason, unauthorized by law;
> (5) Is made upon unlawful procedure or without a fair trial;

(6) Is arbitrary, capricious or unreasonable;
(7) Involves an abuse of discretion.

Section 536.140. This court does not find that any of these criteria are met. The judgment is affirmed.



Anthony Rex Gabbert, Chief Judge

All concur.