

**Summary of SC92486, *Robert and Donna Bateman v. Cathy Rinehart, Assessor***

Appeal from the Clay County circuit court, Judge Larry D. Harman

Argued and submitted Oct. 30, 2012; opinion issued Feb. 26, 2013

**Attorneys:** The Batemans were represented by Jonathan Sternberg of Jonathan Sternberg, Attorney, PC in Kansas City, (816) 753-0800; and the assessor was represented by Patricia L. Hughes of the Clay County counselor's office in Liberty, (816) 792-5700.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Owners of vacant property appeal the state tax commission's classification and assessment of their property as commercial. In a 4-2 decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the commission's decision, finding it was supported by substantial and competent evidence. The property owners failed to present persuasive evidence of prohibitive economic or legal impediments to commercial use that would make such classification a legal impossibility. There was evidence demonstrating the city would be amenable to a less intrusive commercial use for the property. The record supports a finding that the owners – who previously listed the property for sale as commercial – anticipated it would have some form of commercial use, and it is disingenuous for them now to argue the property cannot be put to commercial use.

Chief Justice Richard B. Teitelman dissents. He would reverse the commission's decision, finding that because any future commercial use for the property – which would have to be rezoned to permit commercial use – is purely speculative and that the only possible immediate use of the properties is as residential.

**Facts:** The property at issue in this case contains two parcels within a residential subdivision in Gladstone, one of which was vacant while the other included a residential structure. Commercial land uses adjoin the property to the north and west, while single-family land uses adjoin the property to the south and east. In 2000, an applicant sought to change the property's zoning from residential to commercial to develop the property for the installation and operation of three unattended gasoline pumps with an overhead canopy. The planning commission rejected the application, finding the use of the site would become very intense. The next year, Robert and Donna Bateman bought the entire property. They demolished the structure on one parcel because it was in "bad condition" and only could be fixed "with a lot of expense." The property remained vacant and unused for many years. In 2008, the Batemans listed the property for sale for \$450,000 with a real estate agent, who characterized the property as "retail-pad" and "an assemblage for commercial development," although the Batemans had not taken any steps to rezone the property as commercial. After more than a year, no offers were made, and the listing expired in October 2009. Effective Jan. 1, 2009, the Clay County assessor reclassified the property from residential to agricultural and assessed the property accordingly, placing a fair market value on the property at \$322,100, assuming a commercial use. The Batemans appealed to the county equalization board, which affirmed the assessor's determinations. The Batemans then sought review by the state tax commission. After a November 2009 evidentiary hearing at

which both parties presented evidence – including expert testimony from the county’s commercial appraiser – the commission concluded that, based on its “immediate most suitable economic use,” the property should be classified as commercial and assessed at the commercial rather than agricultural rate. The Batemans then sought judicial review of the commission’s decision. The circuit court overruled their motion for summary judgment (judgment on the pleadings) and affirmed the commission’s decision. The Batemans appeal.

## **AFFIRMED.**

**Court en banc holds:** Substantial and competent evidence in the record supports the commission’s interpretation and application of section 137.016.5, RSMo, to the Batemans’ property.

(1) The legislature defines the subclasses of real property in section 137.016.1, RSMo, but – recognizing that some property is vacant, unused, held for future use or cannot be classified under those definitions – adopted section 137.016.5, which provides eight factors for consideration in determining a property’s “immediate most suitable economic use.” If the evidence supports either of two opposing findings, a reviewing court is bound by the commission’s determinations.

(2) The Batemans failed to present persuasive evidence of the type of prohibitive economic or legal impediments to commercial use as in *Algonquin Golf Club v. State Tax Commission*, 220 S.W.3d 415 (Mo. App. 2007). In that case, private golf courses and country clubs challenged the commission’s classifications as commercial of certain portions of their property that initially had been classified as residential. The appeals court held that the clubs presented “undisputed, detailed evidence” outlining zoning restrictions that permitted the properties to be used only for residential purposes or as private golf courses. In light of the assessor’s failure to present evidence to dispute these assertions or to demonstrate how any of the indentures or restrictions could be overcome, the appeals court determined the commission’s finding that there were not sufficient obstacles to commercial use was not supported by substantial and competent evidence. Unlike the assessor in *Algonquin*, the assessor here presented evidence that the city was open to rezoning the property for a less intensive commercial use than the one that was rejected in 2000. Rezoning the Batemans’ property does not present nearly as many challenges as the property in *Algonquin*, which was a legal impossibility given the indentures, zoning restrictions and testimony of municipal officials.

(3) The current zoning classification of property is only one of eight factors to be considered. The legislature expressed its specific intent in section 137.016.5(3) that a zoning classification “shall not be considered conclusive, if upon consideration of all factors, the zoning classification does not reflect the immediate most suitable economic use of the property.” One should not place undue emphasis on “immediate” but should consider the statutory phrase as a whole. Section 137.016.5 contains no requirement that property must be used for a particular zoning purpose during an assessment cycle, nor does it provide that, when present zoning prohibits a particular use, that zoning is the exclusive factor to be considered. Here, there was evidence demonstrating the city would be amenable to a less intrusive commercial use for the property.

(4) Section 137.016.5(8) permits examination of any other factor relevant to the determination of the property's "immediate most suitable economic use." The record supports a finding that the Batemans anticipated some form of commercial use for their property through its listing, which expired just a month before the evidentiary hearing. It is disingenuous for them to discount the marketing of the property for commercial use and rely on the lack of offers to support their argument when they clearly anticipated the property could be put to commercial use.

**Dissenting opinion by Chief Justice Teitelman:** The author would reverse the commission's decision, finding that because any future commercial use for the property – which would have to be rezoned to permit commercial use – is purely speculative and that the only possible immediate use of the properties is as residential lots. Any tax classification pursuant to section 137.016.5 requires a finding that the taxing authority's proposed most suitable economic use is an "immediate" use. Considering the ordinary dictionary definitions of "immediate," such a use cannot be one that absolutely is prohibited by existing zoning regulations. The logic of section 137.016.5(3) demonstrates that present zoning restriction can be conclusive. The zoning here establishes and strictly defines the present, suitable use of the property. It absolutely prohibits commercial use, and there is no imminent change to the present zoning classification. As such, commercial use cannot be an immediate use, and the present, prohibitory zoning must be considered conclusive. The facts of the case demonstrate the Batemans cannot use their property immediately for commercial purposes. The assessor admits in her brief to this Court that any commercial use of the property is "improbable" in the 13 months remaining in the assessment cycle. Even if the city is amenable to some type of rezoning at a future time, any commercial use still is speculative and contingent and, therefore, by definition is not "immediate." That the owners may have desired to sell the property as commercial is less relevant than the fact that, for nearly four years, their marketing efforts were unsuccessful. As with the private clubs in *Algonquin*, the owners here presently cannot use their property commercially, and any such use is contingent on obtaining a change in the law.