



**IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI
DIVISION I**

LOST CREEK WIND, LLC,

Petitioner,

v.

**RUTH A. ROSS, ASSESSOR,
DEKALB COUNTY, MISSOURI,**

Respondent.

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Case Number 13DK-CC00105

JUDGMENT

BE IT REMEMBERED that on the 11th day of February, 2014, this cause came on for hearing and argument on Petitioner's Petition for Administrative Review. Petitioner appeared by its authorized representative and by its attorney, Hon. Elkin L. Kistner. Respondent appeared in person and by her attorney, Hon. Patricia L. Hughes. Arguments were made and the Court took the matter under advisement. Briefs on behalf of both parties have been filed and considered.

Now, on this 5th day of June, 2014, the Court being fully advised in the premises makes the following findings of fact and conclusions of law:

1. This case is an appeal from an administrative decision of the Missouri State Tax Commission and is subject to judicial review as set out in §536.100 RSMo. (2005). The scope of judicial review is set out in §536.140 RSMo. (2005).

**DEKALB
EXHIBIT 2**

2. The evidence and facts of the case are contained in the Certified Record of the Tax Commission STC 11-55000 filed in this case.
3. There are no material disputes as to the facts of the case which are set out in the certified record.
4. The question before the State Tax Commission was the value of the subject property in DeKalb County for purposes of ad valorem property taxes for the tax years 2011 and 2012. The subject property consisted primarily of energy generating wind turbines, considered by both parties to be real property.
5. The Court finds that the Respondent used a variation of the cost approach in valuing the subject property, which was approved by the Board of Equalization and the State Tax Commission.
6. The valuation of the Assessor and Board of Equalization is deemed to be correct absent substantial and persuasive evidence sufficient to rebut the same. The State Tax Commission found there was insufficient evidence to rebut the presumption in favor of the Assessor and Board of Equalization. *Cupples Hesse Corp. v. State Tax Comm'n*, 329 S.W.2d 696, 700 (Mo.App. 1959).
7. This Court finds the petitioner herein failed to meet their burden of proof before the Commission.
8. The State Tax Commission is charged with approving valuation and the various methods used to determine the value of property. *C & D Inv. Co. v. Bestor*, 624 S.W.2d 835, 838 (Mo.banc 1981).
9. If for this "new" type of property, and one without sales data, a slightly different or varied valuation method is utilized by an assessor, the State Tax Commission is the proper forum for

its approval or rejection. No case cited by either party, or found by this Court, completely closes the door to the possibility that variations of a valuation method may be needed and/or used.

10. The issues for this Court, as provided in §536.140, include whether the commission's order is in violation of constitutional provisions, misapplies the law, is in unsupported by competent and substantial evidence on the whole record, is unauthorized by law, is arbitrary or capricious or involves an abuse of discretion. The Court finds the Commission's decision is not in violation of these standards, and this Court can find no reason to overturn the Commission's decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the State Tax Commission's findings and Order are affirmed.

Clerk to notify the parties.

Each party shall bear their respective costs.

Dated:

6/5/14



Daren L. Adkins, Assigned Judge