

No. A05-0121

**STATE OF MINNESOTA  
IN SUPREME COURT**

---

McNeilus Truck & Manufacturing, Inc.,

Relator,

vs.

County of Dodge,

Respondent.

---

**BRIEF OF AMICI CURIAE MINNESOTA CHAMBER OF COMMERCE  
AND NATIONAL ASSOCIATION OF MANUFACTURERS  
AND ADDENDUM OF UNPUBLISHED CASES**

---

James H. Gilbert (#34708)  
JAMES H. GILBERT LAW GROUP  
PLLC  
10159 Wayzata Boulevard, #250  
Minnetonka, Minnesota 55305  
Telephone (952) 960-4201  
and  
Robert A. Hill (#217165)  
ROBERT HILL & ASSOCIATES, LTD.  
80 South Eighth Street, #825  
Minneapolis, Minnesota 55402  
Telephone: (612) 376-0017

Attorneys for Relator

Kenneth R. Moen (#74159)  
MOEN LAW FIRM  
400 South Broadway, # 202  
Rochester, Minnesota 55904  
Telephone: (507) 281-2437

Attorney for Respondent

Myron L. Frans (#172558)  
Mark D. Savin (#178007)  
John F. Beukema (#8023)  
FAEGRE & BENSON LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
Telephone: (612) 766-7000

OF COUNSEL:

Jan S. Amundson, Senior Vice President  
and General Counsel  
Quentin Riegel, Vice President, Litigation  
and Deputy General Counsel  
National Association of Manufacturers  
1331 Pennsylvania Avenue N.W.  
Washington, D.C. 20004  
Telephone: (202) 637-3000

Attorneys for Amici Curiae

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF LEGAL ISSUE.....	1
STATEMENT OF THE CASE AND OF THE FACTS.....	2
ARGUMENT .....	2
I.    Minnesota Law Requires that Property Be Assessed at Its Value in the Market in Which It Is Bought and Sold. ....	2
II.   The Nature and Extent of the Market Within Which to Determine a Property’s Market Value Varies Depending on the Type of Property Involved. ....	4
III.  Political Boundaries Do Not Properly Establish the Limit of the Market Within Which to Assess a Property’s Market Value. ....	5
IV.  The Minnesota Tax Court Has Adopted an Evidentiary Rule for Out-Of- State Comparables that Is Contrary to These Principles of Fair Market Valuation. ....	10
CONCLUSION .....	18

## TABLE OF AUTHORITIES

CASES	<u>Page</u>
<i>Bartlett &amp; Co. Grain v. Board of Review</i> , 253 N.W.2d 86 (Iowa 1977) .....	2, 6, 17-18
<i>City of Springfield v. Love</i> , 721 S.W.2d 208 (Mo. App. 1986) .....	7
<i>County of Ramsey v. Miller</i> , 316 N.W.2d 917 (Minn. 1982).....	8
<i>County of San Luis Obispo v. Bailey</i> , 483 P.2d 27 (Cal. 1971) .....	5
<i>DeZurik Corp. v. County of Stearns</i> , 1999 WL 286300 (Minn. Tax Ct. May 5, 1999) .....	12
<i>Equitable Life Assurance Soc’y v. County of Ramsey</i> , 530 N.W.2d 544 (Minn. 1995) .....	2, 3, 8
<i>Gradison v. State</i> , 300 N.E.2d 67 (Ind. 1973) .....	5
<i>Great Atlantic &amp; Pacific Tea Co. v. Kiernan</i> , 366 N.E.2d 808 (N.Y. 1977).....	2, 6, 7, 9
<i>Hays v. State</i> , 342 S.W.2d 167 (Tex. Civ. App. 1960) .....	8
<i>Hormel Foods Corp. v. Department of Revenue</i> , 2004 WL 717354, Wis. Tax Rep. (CCH) ¶ 400-741 (Wis. Tax App. Comm’n March 29, 2004), <i>aff’d</i> , No. 04-CV-1278 (Dane Cty. Cir. Ct. Oct. 19, 2004) .....	2, 18
<i>Huisken Meat Center, Inc. v. County of Murray</i> , 1998 WL 15131 (Minn. Tax Ct. Jan. 14, 1998) .....	11
<i>Jennie-O Foods, Inc. v. County of Kandiyohi</i> , 2001 WL 1152923 (Minn. Tax Ct., Sept. 11, 2001) .....	12
<i>Knollman v. United States</i> , 214 F.2d 106 (6th Cir. 1954) .....	8, 14
<i>Marquette Bank Nat’l Ass’n v. County of Hennepin</i> , 589 N.W.2d 301 (Minn. 1999) .....	4
<i>McNeilus Truck &amp; Mfg. Inc. v. County of Dodge</i> , 2004 WL 1843041 (Minn. Tax Ct. Aug. 6, 2004).....	13, 14, 15

<i>Multifoods Specialty Distribution, Inc. v. County of Benton</i> , 1996 WL 685572 (Minn. Tax Ct. Nov. 25, 1996) .....	10-11, 12
<i>SPX Corp. v. County of Steele</i> , 2003 WL 21729580 (Minn. Tax Ct. July 23, 2003) .....	12, 13
<i>State by Mattson v. Schoberg</i> , 279 Minn. 145, 155 N.W.2d 750 (1968).....	8
<i>State v. Therrien</i> , 461 A.2d 106 (N.H. 1983).....	7
<i>Y Motel, Inc. v. State Dep't of Roads</i> , 227 N.W.2d 869 (Neb. 1975).....	7

#### STATUTES AND COURT RULES

Minn. R. Civ. App. P. 129.03 .....	1
Minn. Stat. § 272.03 .....	1, 3
Minn. Stat. § 273.11 .....	1, 2
Minn. Stat. § 273.12 .....	2

#### OTHER AUTHORITIES

Appraisal Institute, <u>The Appraisal of Real Estate</u> (12th ed. 2001) .....	9
International Association of Appraising Officers, <u>Property Assessment Valuation</u> (2d ed. 1996).....	8-9
J.D. Eaton, <u>Real Estate Valuation in Litigation</u> (2d ed. 1995).....	4

Minn. Stat. § 273.11, subd. 1, requires that “all property shall be valued at its market value.” The Minnesota Chamber of Commerce and the National Association of Manufacturers file this amicus brief<sup>1</sup> because of their concern that the Tax Court, in this and other cases, has begun to apply an arbitrary rule of evidence that irrationally and unfairly limits the “market” in which it determines the “value” of some types of property to the State of Minnesota, refusing to consider evidence of sales of similar property in other states. Whatever resolution is ultimately reached as to the specific valuation dispute in this case, this Court should take the opportunity to correct the Tax Court’s mistaken belief that the market in which the value of industrial property will be determined arbitrarily ends at the state line.

### **STATEMENT OF LEGAL ISSUE**

This amicus brief addresses the following question:

Does the Minnesota Tax Court’s evidentiary presumption against considering “comparables” located outside the State of Minnesota when determining the value of Minnesota industrial property constitute an abuse of discretion, in light of the economic realities that should guide that Court in determining the fair market value of such property?

The authorities most apposite to this issue are:

Minn. Stat. § 272.03, subd. 8

---

<sup>1</sup> In accordance with Minn. R. Civ. App. P. 129.03, the Amici state (1) that no counsel for any party in this action authored this brief in whole or in part and (2) that no person or entity other than the Amici, their members, and their counsel made any monetary contribution to the preparation or submission of the brief.

Minn. Stat. § 273.11, subd. 1

Bartlett & Co. Grain v. Board of Review, 253 N.W.2d 86 (Iowa 1977)

Equitable Life Assurance Soc’y v. County of Ramsey, 530 N.W.2d 544 (Minn. 1995)

Great Atlantic & Pacific Tea Co. v. Kiernan, 366 N.E.2d 808 (N.Y. 1977)

Hormel Foods Corp. v. Department of Revenue, 2004 WL 717354, Wis. Tax Rep. (CCH) ¶ 400-741 (Wis. Tax App. Comm’n March 29, 2004), *aff’d*, No. 04-CV-1278 (Dane Cty. Cir. Ct. Oct. 19, 2004)

## STATEMENT OF THE CASE AND OF THE FACTS

The Amici adopt the Statement of the Case and Statement of the Facts contained in the Brief of Relator McNeilus Truck & Manufacturing, Inc.

## ARGUMENT

### **I. Minnesota Law Requires that Property Be Assessed at Its Value in the Market in Which It Is Bought and Sold.**

A brief overview of the principles that govern property assessment in Minnesota may be useful to put the issue addressed by the Amici in context.

Minn. Stat. § 273.11, subd. 1, provides that, with exceptions not relevant here, “all property shall be valued at its market value.” This fundamental principle is reinforced by Minn. Stat. § 273.12, which provides in relevant part:

It shall be the duty of every assessor and board, in estimating and determining the value of lands for the purpose of taxation, to consider and give due weight to every element and factor affecting the market value thereof . . . [and] to consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands

similarly located and improved will be assessed upon a uniform basis and without discrimination . . . .

It is significant that consideration of the value of property “comparable in character, quality, and location” – the “market comparison approach” to valuation, “which is based on prices paid in actual market transactions involving comparable properties,” Equitable Life Assurance Soc’y v. County of Ramsey, 530 N.W.2d 544, 552 (Minn. 1995) – is the only method of assessment specifically recognized by statute.<sup>2</sup>

These two statutory hallmarks – that valuation must be based on “market value” and that the value of comparable property must be considered in determining the market value of the property being assessed – gain added importance from the statutory definition of “market value”:

“Market value” means the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained at a private sale or an auction sale, if it is determined by the assessor that the price from the auction sale represents an arm’s-length transaction.

Minn. Stat. § 272.03, subd. 8. This Court has made the same point in even plainer language, defining “market value” as “the price for which property would sell upon the market at private sale.” Equitable Life, *supra*, 530 N.W.2d at 555 (citation omitted). As

---

<sup>2</sup> Professional assessors and appraisers also use, and this Court has recognized as appropriate in particular instances, two other valuation methods: “the cost approach, which is founded on the proposition that an informed buyer would pay no more for the property than the cost of constructing new property having the same utility as the subject property; and . . . the income approach, which is predicated on the capitalization of the income the property is expected to generate.” Equitable Life, *supra*, 530 N.W.2d at 552.

the Court stated in Marquette Bank Nat'l Ass'n v. County of Hennepin, 589 N.W.2d 301, 304 (Minn. 1999), the relevant consideration is “the property’s value to buyers in the marketplace.”

**II. The Nature and Extent of the Market Within Which to Determine a Property’s Market Value Varies Depending on the Type of Property Involved.**

If, as the foregoing statutes and cases instruct, a property must be assessed according to its value in the market in which property of the type is bought and sold, then it is critically important to correctly identify the scope of the market for property of the type at issue. That scope obviously varies depending on the type of property; “[t]he test of comparability in terms of location is not the physical distance between properties, but whether the properties are within *economic proximity*.” J.D. Eaton, Real Estate Valuation in Litigation 209 (2d ed. 1995) (original emphasis).

For example, if the subject property is residential, the relevant market may be as small as a single town or a neighborhood of a large city. A person who lives and works in, say, Albert Lea and who is looking for a new home probably will not find houses in Mankato or Rochester satisfactory alternatives, regardless of their price, and a seller of a residence in Albert Lea is unlikely to advertise that property in Mankato or Rochester. Consequently, an appraiser of a residence in Albert Lea would not consider the price at which houses in those other towns sold to be meaningful indicators of the price that a buyer should expect to pay in Albert Lea. That is, the sales in the other towns are not “comparable” for purposes of determining the market value of the Albert Lea property.

On the other hand, a manufacturing or distribution business that is looking for a location from which to serve a Minnesota/Iowa market will likely regard a facility in Mason City, Iowa, as acceptable for its purposes as locations in Albert Lea, Rochester, or Mankato, because the business could be conducted equally well from all of these towns. Given the “economic proximity” of properties in all of these locations, the prospective seller of commercial/industrial property in Albert Lea could not expect to command a higher price than the price at which similar property could be purchased in Mason City. Likewise, an appraiser of the Albert Lea facility would have to consider the price at which facilities in Mason City had recently sold in determining the market value of a similar facility in Albert Lea; the appraiser could not limit his or her consideration to the prices at which similar facilities in Minnesota had sold, because the market in which prospective purchasers of this type of property look to buy is not limited to Minnesota.

**III. Political Boundaries Do Not Properly Establish the Limit of the Market Within Which to Assess a Property’s Market Value.**

Recognizing this basic principle of market supply and demand, courts have recognized that hard-and-fast rules cannot be imposed that artificially limit the geographic area within which allegedly “comparable” property must be located to be considered under the “market comparison” approach to valuation. *See, e.g., Gradison v. State*, 300 N.E.2d 67, 78 (Ind. 1973) (“Practical considerations enter into such judgments that preclude establishing fixed rules and formulas.”); *County of San Luis Obispo v. Bailey*, 483 P.2d 27, 32-33 (Cal. 1971).

In particular, courts in other states have repeatedly rejected assertions that “comparable” sales should be ignored simply because they involve property located in a different unit of government – whether that unit be a township, a city, a county, *or a state* – from the property being appraised. For example, in Bartlett & Co. Grain v. Board of Review, 253 N.W.2d 86 (Iowa 1977), the Iowa Supreme Court held that the tax assessment board correctly considered seven sales of grain terminals in other states to be “comparable” to the taxpayer’s terminal in Sioux City, Iowa, for purposes of determining the market value of the latter, rejecting the taxpayer’s argument that these properties were too far away from its facility to be considered. The evidence established that, given the nature of the industry and the particular type of property involved, the precise location of a terminal facility within the Midwest grain-growing region would be largely irrelevant to a prospective purchaser, who would not pay a different price for a terminal in Sioux City than for a physically similar facility in Omaha, Kansas City, or Minneapolis. The court concluded, “When from the nature of the property the market for the purchase and sale encompasses a wider area, the wider area becomes the field for investigation. This is necessary in order to give meaning to the sales prices approach . . . .” *Id.* at 94.

Similarly, in Great Atlantic & Pacific Tea Co. v. Kiernan, 366 N.E.2d 808 (N.Y. 1977), the New York Court of Appeals held that, in determining the tax valuation of a large food processing plant in New York State, it was proper for the property owner’s appraisers to rely upon sales of similar properties located in other states in the eastern United States where the evidence showed that the market for properties of the type was regional. As the court explained:

Whether evidence should be received of comparable sales which are some distance away from the subject property depends . . . on the nature and character of the property involved. It would not be proper, for example, to look beyond New York City in valuing an office building located therein because such a building would obviously have a local market. Here, however, there is no local market for appellant's facility but the record is clear . . . that there was a broad regional market for this type of industrial plant. Under these circumstances, we think that it was not error to depart from the ordinary rule with respect to location of comparables and, thus, the trial court properly relied upon the out-of-State comparable sales utilized by appellant's appraiser in determining the value of the property by the market value approach. The ordinary or general rule should not blind us to the fact that the ultimate purpose of valuation, whether in eminent domain or tax certiorari proceedings, is to arrive at a fair and realistic value of the property involved.

\* \* \*

To reject a sound and valid approach to valuation where the normally applicable rule has no relevance under the circumstances of a particular case, is to abandon *the economic realism which should characterize valuation* and embrace a rigid, dogmatic approach which will not yield fair and equitable results.

*Id.* at 812-13 (emphasis added). *See also, e.g., Y Motel, Inc. v. State Dep't of Roads*, 227 N.W.2d 869, 875 (Neb. 1975) (plaintiff's appraiser could properly consider sales of similar motel properties in other states in determining value of plaintiff's motel); *State v. Therrien*, 461 A.2d 106 (N.H. 1983) (whether property in Maine was comparable to property in New Hampshire was question of fact, and trial court erred in excluding evidence of sale of Maine property as matter of law); *City of Springfield v. Love*, 721 S.W.2d 208, 217 (Mo. App. 1986) ("the test of admissibility of evidence of comparable sales is not whether it lies one side or the other of a political dividing line . . . but is

whether the land sold is comparable in character and locality to the land taken”); Hays v. State, 342 S.W.2d 167, 172 (Tex. Civ. App. 1960); Knollman v. United States, 214 F.2d 106, 108 (6th Cir. 1954) (“the law of supply and demand so important on the question of market value . . . does not cease operating at the boundary of a township”).<sup>3</sup>

An essential step of any comparative-sales approach to valuation is adjusting the sale price of the allegedly comparable property to account for differences between it and the subject property that affect the market value of the latter. A myriad of physical, economic, or market factors may have to be accounted for in such adjustments, depending on the type of property being valued. Examples may include the size or shape of the property, the age and physical condition of buildings, the buildings’ features (*e.g.*, the number of bedrooms in a residence, the number and size of loading docks in an industrial property), the access of the two sites to transportation or utilities, the length of time that has passed since the allegedly comparable sale, the access to or the cost of labor or materials, etc. *See generally* International Association of Appraising Officers,

---

<sup>3</sup> The fact that several of these cases involved valuation for eminent domain purposes rather than for purposes of property taxation does not make them any less relevant. In both contexts, the valuation standard is the same – the subject property’s fair market value. *Compare State by Mattson v. Schoberg*, 279 Minn. 145, 151, 155 N.W.2d 750, 754 (1968) (“Market value which an owner is entitled to receive for his property in a condemnation proceeding is that price which the property will bring in a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell.”), *with Equitable Life, supra*. And the same three methods of valuation apply in both contexts. *See, e.g., County of Ramsey v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982) (identifying the three methods that are generally employed in valuing property in eminent domain cases).

Property Assessment Valuation (2d ed. 1996) at 105; Appraisal Institute, The Appraisal of Real Estate (12th ed. 2001) at 425 *ff.* If the alleged comparable is located in a different governmental unit than the subject property, an adjustment may also be necessary to account for different tax rates in the two jurisdictions if buyers and sellers in the relevant market would regard the differences as material.

But the important point is that adjustments that are material to value typically are made in *every* comparative-sale valuation; they are not unique to comparisons involving properties in different governmental units. And, as the New York Court of Appeals noted in the Great Atlantic & Pacific case, *supra*, depending on the facts of the case, such adjustments may be unnecessary even in comparisons across jurisdictional borders or may have the effect of decreasing the market value of the subject property:

[T]here was testimony indicating that conditions such as business climate, labor, transportation and availability of public utilities were taken into account, and, in certain cases no adjustments were necessary. There was also testimony that if adjustments were made for differing conditions, the result would have been a reduction in value since conditions in the localities of the comparables were all more favorable than those in . . . the location of the subject property.

366 N.E.2d at 813.

Ultimately, the need for appropriate adjustments to make an out-of-state sale truly comparable with the property whose market value is being determined is no different in kind from the need that may exist in any case in which the comparable-sales method of valuation is employed. The potential need to make such adjustments does not justify an automatic exclusion of out-of-state comparables when conducting a comparable-sale

valuation. It is simply another possible element of the quest for fair market value that must be the goal in every property valuation.

**IV. The Minnesota Tax Court Has Adopted an Evidentiary Rule for Out-Of-State Comparables that Is Contrary to These Principles of Fair Market Valuation.**

As the foregoing cases make clear, accurately determining a property's fair market value may, depending on the nature of the property and the market in which such property is typically bought and sold, require a court to consider the sale price of properties located in other governmental units than the subject property – even if the different unit is a different state. Unfortunately, the Minnesota Tax Court in recent years has begun to apply an evidentiary rule that arbitrarily limits comparable-sales analyses to properties located in Minnesota. That rule unreasonably burdens, if it does not entirely preclude, the consideration of properties located in other states, regardless of the market realities that make such properties relevant in valuing the property at issue.

The line of cases in which the Tax Court has developed this exclusionary rule began modestly in Multifood Specialty Distribution, Inc. v. County of Benton, 1996 WL 685572 (Minn. Tax Ct. Nov. 25, 1996) (Add.46).<sup>4</sup> In that case, the Court correctly recognized that, in determining the market value of a production, warehouse, and distribution facility located in a small town in central Minnesota, it should not “reject any comparables simply because they are not in rural Minnesota.” *Id.* at \*4 (Add.48). It

---

<sup>4</sup> Copies of the Multifoods case and all other cases cited in this brief that are reported only on Westlaw are included in an Addendum of Unpublished Cases bound with the brief.

found, however, that four allegedly comparable sales cited by the county's expert should not be considered because they were located in the metropolitan Twin Cities area, 'which we believe is not comparable to the subject's neighborhood.' *Id.* (Add.49). And it expressed reluctance to consider comparables cited by the property owner's expert that were located in Iowa and North Dakota, stating, "We are not convinced that these sales are comparable because we were not given enough information about the business conditions in those areas." *Id.* Thus, the Court recognized that the search for comparable sales should not be arbitrarily confined to a particular jurisdiction or area, but it required evidence that proffered comparables, whether in Minnesota or in another state, were part of the same economic market.

Within little more than a year, however, the Tax Court had changed its tune, abandoning the sound and evenhanded approach of Multifoods and instead announcing a virtual presumption against considering comparables from outside the state. In Huisken Meat Center, Inc. v. County of Murray, 1998 WL 15131 (Minn. Tax Ct. Jan. 14, 1998) (Add. 31), involving a meat processing plant in Chandler, a very small town in Murray County in southwestern Minnesota, the Court stated categorically that it "disregard[ed]" four comparables located in Iowa and was "reluctant to place *any* weight on sales in another state." *Id.* at \*2 (Add..32) (emphasis added). The supposed justification for this ruling was that "[w]e do not know the market nor the effect of different tax rates to determine what adjustments, if any, should be made. Without this information, we are unable to say that the sales are comparable to the subject." *Id.* But the Court required no proof of these factors in basing its valuation on sales of properties in Wells (about 100

miles away in Faribault County), New Ulm (obviously a much larger town and more of a regional market center), and Dalbo Township (some 175 miles away in rural Isanti County in east central Minnesota). These three properties were all in-state properties where the “market” and the tax rate were equally likely to be different from those at the location of the subject property. In short, the Huisken court appears to have applied a different evidentiary standard depending on which side of the state line the proffered comparables were located on, requiring affirmative proof of comparability for out-of-state properties that it was willing simply to assume for in-state properties.

This same practice of requiring affirmative proof of comparability only if the proffered comparable was in another state continued in DeZurik Corp. v. County of Stearns, 1999 WL 286300 (Minn. Tax Ct. May 5, 1999) (Add.1), and Jennie-O Foods, Inc. v. County of Kandiyohi, 2001 WL 1152923 (Minn. Tax Ct., Sept. 11, 2001) (Add.35). In both cases, the Tax Court categorically refused to consider out-of-state comparables that had been proffered by both parties, simply citing Huisken and otherwise adding little to the formulation or explanation of the rule it was applying.

The Tax Court made the special burden that it was imposing on proffered out-of-state comparables even more explicit in SPX Corp. v. County of Steele, 2003 WL 21729580 (Minn. Tax Ct. July 23, 2003) (Add.50). It flatly refused to consider any of 12 comparable sales on which the property owner’s expert relied, noting that they involved properties in Iowa, Illinois, and Texas, stating that “we will not accept comparables from outside Minnesota unless the circumstances warrant *such an exception* and unless differences in the markets and tax rates are explained,” and finding that the taxpayer’s

attempted explanation of these factors (which the Court did not describe) were inadequate. *Id.* at \*5 (Add.54) (emphasis added).

The present case shows the distorting effect of the Tax Court's arbitrary exclusionary rule. Relator McNeilus presented substantial evidence that the market for large industrial properties like its facility in Dodge Center (2000 population 2,226) is at least regional if not national. McNeilus Truck & Mfg Inc. v. County of Dodge, 2004 WL 1843041 (Minn. Tax Ct., Aug. 6, 2004) at \*7 (Add.39 at 44). The county's expert agreed that the market was a regional one that extended beyond the borders of Minnesota, although the market he described was smaller than the one described by McNeilus's witnesses, extending only into northern Iowa and eastern South Dakota. *Id.* Because they recognized the market as including areas outside Minnesota, neither expert felt constrained to proffer only comparables in the state, and both of them also cited properties in other states – McNeilus's expert citing six, in Wisconsin and Illinois, and the County's expert citing one in South Dakota. *Id.* at \*3, \*5 (Add.41, 42).

The basic principles of determining a property's value in the context of the market in which properties of the type are bought and sold should have led the Tax Court to give full and fair consideration to these proffered comparables, with adjustments to their respective sale prices for any differences between them and the McNeilus property that were material to the value of the latter in the market. Instead, quoting SPX, *supra*, for the rule that the Court “will not accept comparables from outside Minnesota unless the circumstances warrant . . . and unless differences in the markets and tax rates are explained,” and citing Jennie-O and DeZurick, *supra*, as further support for this rule, the

Court refused to give any weight to McNeilus's non-Minnesota comparables. *Id.* at \*7 (Add.44).<sup>5</sup> It attempted to justify this refusal by asserting that McNeilus's expert had not explained how tax differences between the other states and Minnesota would affect the issue of market value. In addition, the Court asserted that "most" of the proffered comparables "were in the Chicago/Milwaukee area" and that the expert had failed to account for differences between conditions in Dodge Center and the "largely unionized" work force, the "greater availability of property," the greater density of population, and the industrial vacancy rate in Chicago. *Id.*

The Court's reasons for its finding that McNeilus's expert had not justified an "exception" under the Huisken-SPX rule are factually dubious. First, the premise for the Court's assertion that McNeilus had failed to account for conditions "in the Chicago/Milwaukee area" is mistaken, because most of the comparables were not in that area. Other than one in Chicago Heights, Illinois, a southern suburb of Chicago, the other out-of-state comparables that McNeilus's expert cited were in small towns located a significant distance from either Chicago or Milwaukee: Edgerton, Wisconsin, 2000 population 4,933, about 25 miles south of Madison, about 60 miles (as the crow flies) from Milwaukee and about 100 miles from Chicago; Tilton, Illinois, population 2,976,

---

<sup>5</sup> The Court did not explain why, in view of the rule it stated, it appears not to have similarly rejected the Brookings, South Dakota, comparable cited by the County's expert. In Knollman v. United States, *supra*, this sort of discriminatory treatment of comparable evidence was held to be cause for reversal even before the court also ruled that the trial court had erred by excluding the property owner's comparables for solely because they were located in a different jurisdiction than the subject property. 214 F.2d at 109.

located near Danville about 120 miles south of Chicago; Silvis, Illinois, population 7,269, on the edge of the Quad Cities area about 175 miles west of Chicago; and Clinton, Illinois, population 7,485, between Bloomington and Decatur about 150 miles south of Chicago. Accordingly, the unionization of the Chicago area work force, the density of population in Chicago, or the industrial vacancy rate in Chicago had no more effect on the value of the comparables in these towns than they had on the value of the McNeilus property in Dodge Center.

Similarly, the Court was factually incorrect in stating that McNeilus's expert "omitted from his testimony" any discussion of the impact of the tax structure in Illinois and Wisconsin on the market value of the comparables. *Id.* at \*7 (Add.44). On the contrary, as the Court itself acknowledged elsewhere in its opinion, the expert testified that buyers in the market typically are less concerned about taxes and other "business climate" factors than they are with the factors, such as proximity to the markets for their goods, that led him to conclude that the non-Minnesota properties he cited were comparable to the subject property in terms of their market value, and that he had therefore decided not to adjust for the tax factors. *Id.* at \*4 (Add.41).<sup>6</sup>

---

<sup>6</sup> In another example of apparently discriminatory assessment of the evidence, the Tax Court seems to have accepted at face value the testimony of the County's expert that the South Dakota property that he cited was comparable without regard to tax differences because the buyer in that particular sale "specifically ruled out any impact of taxes on the decision to purchase at the location or sales price." *Id.* at \*5 (Add.42). The Court apparently overlooked the likelihood that taxes were irrelevant to that particular buyer because it was already located in the same South Dakota town and that, therefore, there were no tax differences for the unusual single-town market in which it was shopping.

Because of these obvious factual errors, the Tax Court probably applied the Huisken-SPX exclusionary rule incorrectly to the facts of this case. But that is not the primary concern of the Amici. Rather, the Amici submit that the exclusionary rule itself is erroneous as a matter of Minnesota law. The rule violates the most basic principle of market valuation – that a property’s value must be determined according to its value in the market in which properties of the type are bought and sold. It refuses to recognize that, especially for larger industrial properties, the relevant market often is regional, including parts of several states, and may be national. Instead of considering all potentially comparable sales in the relevant market in which willing buyers look for willing sellers, with adjustments of the comparable property’s sale price to account for differences from the subject property, the Tax Court’s rule arbitrarily cuts the market from which it will normally consider comparable sales off at the borders of Minnesota, holding that properties beyond those borders, even if they are in the economically relevant market, may be considered only as an “exception” that will be permitted only if some special “explanation” is provided – an explanation that is not required to permit consideration of properties, however dissimilar, that are located within Minnesota.

This is not to say that there may not be differences between a particular out-of-state comparable and the Minnesota property whose market value it is cited to prove. But this fact does not justify the Tax Court’s requirement of special “explanation” before its exclusionary rule will be waived as to the out-of-state evidence. Differences are likely to exist between *any* proposed comparable and *any* subject property. Because two properties are rarely precisely identical, the need to adjust the sale price of the

comparable to account for such differences is potentially present in almost every instance in which the market comparison approach to valuation is used. But in a case involving the valuation of an industrial property in Winona, for example, the Tax Court would not regard consideration of a proffered comparable in Moorhead as an “exception” that required special advance “explanation;” only if the proffered comparable were in, say, La Crosse – by all measures more likely to be in the same economic market as Winona, and likely to be more comparable in most respects – would the Court’s exclusionary rule bar consideration of the comparable unless it were specially “explained.” There is simply no justification for this discriminatory treatment – which, judging by how the rule was applied in the present case, amounts to a *de facto* rule of *per se* exclusion – of potentially relevant evidence of market value merely because of the presence of a state line between the comparables in one case but not the other.

The Tax Court’s erroneous adoption of its exclusionary rule has obvious implications beyond the facts of the present case. The rule potentially distorts the valuation of all manufacturing property in Minnesota, preventing consideration of evidence that is relevant to and probative of the true market value of such property. It unfairly burdens the ability of Minnesota manufacturers to compete on fair and equal terms with competitors in other states whose tax costs are not distorted by a similar rule. For example, the Tax Court’s rule places Minnesota manufacturers at a competitive disadvantage compared to manufacturers in Iowa and Wisconsin, where out-of-state comparables will be considered for purposes of tax valuations when the market realities for property of the type at issue makes it appropriate to do so. See Bartlett & Co. Grain,

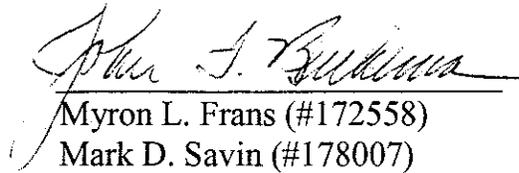
*supra*; Hormel Foods Corp. v. Department of Revenue, 2004 WL 717354 at \*8, Wis. Tax Rep. (CCH) ¶ 400-741 (Wis. Tax App. Comm. March 29, 2004), *aff'd*, No. 04-CV-1278 (Dane Cty. Cir. Ct. Oct. 19, 2004) (Add.7). Minnesota law, and simple fairness, require that, as in these neighboring states, manufacturing property in the State be assessed fairly and accurately based on its true value in the actual market in which such property is bought and sold, rather than in some make-believe market that is artificially limited by the state line.

### CONCLUSION

It is not the purpose of this brief to suggest the correct valuation of the McNeilus property in Dodge County. The Amici request only that, however this Court rules on the merits of this case, it take the opportunity to make clear that the Tax Court's exclusionary rule, represented by Huisken, SPX, and this case, is contrary to law and to direct the Tax Court to apply the same evidentiary rules to all comparable sales that occur within the actual economic market in which property of the type is bought and sold, regardless of whether those sales involve property in Minnesota or outside it.

DATED: March 7, 2005

Respectfully submitted,



Myron L. Frans (#172558)

Mark D. Savin (#178007)

John F. Beukema (#8023)

FAEGRE & BENSON LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402

Telephone: (612) 766-7000

Attorneys for Amici Curiae

OF COUNSEL:

Jan S. Amundson, Senior Vice President  
and General Counsel

Quentin Riegel, Vice President, Litigation  
and Deputy General Counsel

National Association of Manufacturers

1331 Pennsylvania Avenue N.W.

Washington, D.C. 20004

Telephone: (202) 637-3000

M2:20694819 06

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).