

OFFICE OF
APPELLATE COURTS

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FILED

STATE OF MINNESOTA
IN SUPREME COURT
File No. A05-121

McNeilus Truck & Manufacturing, Inc.,

Relator,

**RELATOR'S PETITION
FOR REHEARING**

v.

County of Dodge,

Respondent.

TO: The Supreme Court of the State of Minnesota, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155:

The Relator, McNeilus Truck & Manufacturing, Inc., through its counsel, James H. Gilbert Law Group, P.L.L.C. and Robert Hill & Associates, Ltd., petitions this Court, pursuant to Rule 140.01 of the Minnesota Rules of Appellate Procedure for rehearing, limited to the request that the part of this Court's Decision filed November 10, 2005 which stated that "Accordingly, we remand to the tax court with instructions to consider all properly offered and admitted comparable sale evidence and to apply the same standard to comparable evidence offered by either party and to evaluate in detail the expert evidence offered by both parties" be amended to state that (proposed additions in bold) "Accordingly, **the Judgment is reversed and vacated, and** we remand to the tax

court **for a new trial** with instructions to consider all properly offered and admitted comparable sale evidence and to apply the same standard to comparable evidence offered by either party and to evaluate in detail the expert evidence offered by both parties.”

1. Facts Relevant to the Petition

Pursuant to the Tax Court’s Order for Judgment in this matter dated August 6, 2004, Judgment was entered in Dodge County on August 23, 2004. *See* copy of Judgment attached as exhibit to Affidavit of Robert A. Hill.

Relator brought a Motion for a New Trial and Amended Findings, and the Tax Court denied that Motion by Order dated January 3, 2005.

Pursuant to that Judgment, Relator has already paid more than \$200,000 in real estate taxes (for taxes payable in the years 2002 and 2003) over and above the assessment of the Dodge County Assessor from which appeal to the Tax Court was taken. *See* Affidavit of Robert A. Hill ¶¶ 2-3 and exhibits thereto.

Robert Hill, one of Relator’s attorneys in this matter, spoke with Kenneth Moen, counsel for Dodge County requesting a refund in view of the Decision in this case of such additional amounts paid pursuant to the Judgment which was the subject of this appeal. Hill Affidavit ¶ 4.

Mr. Moen informed Mr. Hill that Dodge County believes that the Decision does not set aside or vacate the Judgment resulting from the Tax Court Order, and that the County refuses therefore to refund such additional amounts paid. Hill Affidavit ¶ 5.

2. Argument and Legal Basis for Petition

In view of the previous established practice of the Tax Court of rejecting evidence of comparable sales from outside of Minnesota, it is apparent that the existing record is inadequate to enable the Tax Court to consider evidence of comparable sales in a manner consistent with the Decision of this Court and that a new trial is needed.

Accordingly, Relator believes that Decision of this Court requires a new trial and requests that the language be modified as set forth in this Petition.

In addition, as the factual summary indicates, the judgment that was entered pursuant to the Tax Court decision has resulted in increased payments from Relator to Dodge County in excess of \$200,000 for taxes payable in the years 2002 and 2003. This happened because the Tax Court **increased** the valuation of the Subject Property by more than \$2,000,000 over the assessment of the Dodge County Assessor from which the appeal to the Tax Court was taken.

Relator cites to the case of *Minnesota Valley R. Co. v. Doran*, 15 Minn. 240, 15 Gil. 186 (1870) (copy attached), in which this Court stated: “[W]e have arrived at the conclusion that the order denying a new trial must be reversed, and a new trial granted, for error occurring on the trial in the court below. It follows from the conclusion in that case that the judgment appealed from and all subsequent proceedings should be set aside and vacated.”

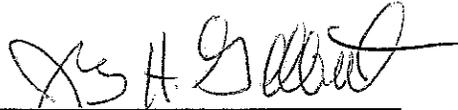
Similarly, Relator submits that in this case, as in *Doran*, where the lower court’s decision has been entirely reversed, the resulting judgment “should be set aside and

vacated.”

Based on the foregoing analysis and the authority cited, Relator respectfully requests that the Decision of this Court be modified in accordance with the Petition.

Respectfully submitted,

Dated: November 18, 2005



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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).