

NO. A07-0394

State of Minnesota
 In Supreme Court

Southern Minnesota Sugar Beet Coop,

Relator,

v.

County of Renville,

Respondent.

RELATOR'S REPLY BRIEF

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INTRODUCTION

Relator Southern Minnesota Beet Sugar Cooperative (SMBSC) has consistently treated this proceeding in the manner envisioned by the Legislature: a proceeding to appeal from Renville County Assessor's valuation of the SMBSC real estate and to obtain a Tax Court determination as to the proper valuation of the real estate. Accordingly, SMBSC tried the case in the Tax Court as a valuation case. However, Respondent Renville County has taken the approach throughout this entire proceeding that the valuation by the County Assessor is immaterial to this proceeding. Rather, Respondent, in the Tax Court trial and for the first time ever, abandoned all that had been done by Renville County over the previous 30 years by seeking to tax SMBSC production equipment as real estate and for the very first time to adopt the theory that the SMBSC real estate is a "special purpose property" that would be taxed using the cost approach to value as the exclusive basis for valuation.

By accepting the County's arguments, the Tax Court has departed from legislatively mandated approaches to valuation and rejected legislatively prescribed standards for classification, which prescribe that production equipment is not to be taxed as real estate. Respondent's Brief seeks to obtain this Court's stamp of approval of its and the Tax Court's actions.

ARGUMENT

I. THE SMBSC FACILITY IS NOT A "SPECIAL PURPOSE PROPERTY"

Respondent contends that SMBSC's property constitutes a "special purpose property." Respondent, like the Tax Court, uses this to justify reliance on a cost approach

as the *sole* means of valuation. Therefore, it is necessary to discuss both what makes a property a “special purpose property” and whether the designation of a property as a “special purpose property” justifies use of the cost approach alone.

The Appraisal Institute defines special purpose properties as “structures with unique physical designs, special construction materials, or layouts that restrict their utility to the use for which they were originally built.” THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 25-26 (12th ed. 2001). In contrast, a limited market property is defined as “a property that has relatively few potential buyers at a particular time.” *Id.* Special purpose properties are not only constructed for specific purposes, but they also have limited conversion potential. Such properties typically include houses of worship, museums, schools, public buildings, clubhouses, theaters, and sports arenas – not agricultural food processing plants. *Id.*

Respondent’s argument (Brief at 38) ignores the Appraisal Institute definition and leaves out critical language in its citation to *American Express Financial Advisors v. County of Carver*, 573 N.W.2d 651 (Minn. 1998), a case where this Court reversed a Tax Court holding that the real estate in question (a conference center) was a special purpose property and had relied exclusively on the cost approach to value in coming to its determination of value.

In that case, this Court stated (573 N.W.2d at 656, emphasis added):

Special purpose property is property that is *treated in the market* as adapted to or designed and built for a special purpose. This definition combines both functional and structural aspects: a special purpose property becomes such either by its use for unique functions or by its distinctive, **specialty-designed structural** details. *Federal Reserve Bank of*

Minneapolis v. State of Minnesota, 313 N.W.2d 619, 621-22 (Minn. 1981) (emphasis added). A **structure** does not qualify as a special purpose property simply because it was built for a particular purpose. Rather, a special purpose property is one that, due to its unique function or design, is not likely to be sold on the market and cannot readily be converted to other uses without a large capital investment or a substantial loss in the investment value of the property's special features.

Consistent with the Appraisal Institute definitions, under *American Express Financial Advisors*, it is the **structure** that is considered, not the **equipment in the structure**. As noted in the SMBSC principal Brief (at 5, 19), there is nothing unique about the SMBSC structure (“a metal shed over a process”; Brief at 5). To the extent that there is anything unique, it would be equipment used in the beet sugar processing. As the unrebutted testimony¹ of industry experts made abundantly clear, if SMBSC stopped processing sugar beets (and the testimony noted that the option had been considered on more than one occasion), the equipment could be and would be removed and sold for use in other locations.

That a property was originally built for a particular purpose does not make it a “special purpose property.” In that regard, the reasoning of the Tax Court in the case of *R.J. Walser v. County of Hennepin*, 1990 WL 55910 at *6 (Minn. Tax) is instructive:

The evidence is clear that the subject property was constructed for a special purpose – an automobile dealership. However, most buildings are constructed with a specific purpose in mind. This does not of itself justify placing great emphasis on the cost approach in valuing an older building constructed for a specific purpose. We must look to the definition of what constitutes a special purpose building to be valued under the cost approach to

¹ The County's Brief (at 7 n. 5) claims it “rebutted” testimony of Relator's industry experts by cross-examining them. Notably, Respondent's cross-examination of Jeffrey counsel consisted of four questions, none of which related to testimony cited by SMBSC. (Tr. Vol. 3 at 498:17 to 500:1.)

valuation. The full definition requires that a property be of a unique purpose or design *and that there is no readily identifiable market for the property....*²

Similarly, in *DeZurik Corp. v. County of Stearns*, 518 N.W.2d 14 (Minn. 1994), this Court held that, although a property had many features adapted to its use as a foundry, and despite Respondent's argument that the property had more value when put to its intended use, the Tax Court properly found that the property was not a special purpose property because a willing buyer was more likely to use the property for general manufacturing and warehouse purposes. Therefore, the Court concluded, for tax purposes it should be valued on the basis of the sales comparison approach to value; not an arbitrary and subjective cost approach. *Id.*, 518 N.W.2d at 17-18.

As rare as properties are that deserve a "special purpose" designation, still rarer are special purpose properties that can be valued properly using only the cost approach, to the exclusion of other approaches to value. Simply because a property is found to be a "special purpose" property does not mean that the sales comparison approach should be ignored. Again, the reasoning of the Tax Court in *R.J. Walser, supra*, 1990 WL 55910 at *6, is instructive:

Thus, while the subject property was constructed for a special purpose, it meets only half the test for determining if the property is "special purpose" as used in appraisal technology. . . . The indicated value derived from the cost approach to value is seldom given significant weight except in the case of newly constructed buildings or exceptional circumstances where there are no comparable sales. Since the market approach and income

² In arriving at the definition, the Tax Court pointed out that, while the property was constructed for a special purpose, it met only half of the test for determining it to be a "special purpose property." Because there were sales and leases of similar properties which could be considered, there were market indications of value. The same is true in this case.

approaches are generally a better indicator of value than the cost approach to value where sales and leases exist, little weight is given to the cost approach.

See also, Affiliated Community Medical Centers, P.A. v. County of Kandiyohi, 2005 WL 2182192, *4 (Minn. Tax Ct. 2005) (even where the cost approach is applicable and reliable because of the highly specialized design or utility of a property, the cost approach still must be given less weight).

It is instructive also to consider the manner in which the Supreme Court of Pennsylvania, examining and considering Minnesota precedent, dealt with this precise issue in the case of *F & M Schaeffer Brewing Co. v. Lehigh County Bd. of Appeals*, 610 A.2d 1 (Pa. 1992). That case involved an appeal related to the tax assessment of a Stroh's brewery. The trial court had set the assessment level at \$34 million consistent with the county's expert's opinion, ignoring altogether the property owner's \$9.5 million opinion of value based on comparable sales. *Id.*, 610 A.2d at 3. In reversing the trial court, the Pennsylvania Supreme Court specifically addressed the issue of using classification as a special purpose property to justify exclusive reliance on cost approach analysis, stating:

Appellees, nonetheless, defend their valuation methodology because they claim the property falls into the "special purpose" property category, where valuation according to use is the only proper method of valuation. The trial court defined "special purpose" property as: "... property that is treated in the market as adapted to or designed and built for a special purpose...the very nature of special purpose property is such that market value cannot readily be determined by the existence of an actual market and therefore other methods of valuation such as reproduction cost must be resorted to.'" *McCannel v. County of Hennepin*, 301 N.W.2d 910, 924 (Minn. 1980); *Federal Reserve Bank of Minneapolis v. State*, 313 N.W.2d 619 (Minn. 1981) Thus the trial court is saying that an appraiser can disregard, as

non-probative, evidence of comparable sales and value a property exclusively by a cost valuation method--simply by labeling a property as "special purpose" [V]aluation of property utilizing the "special purpose" property principle amounts to valuation according to value-in-use, which we have held to be an improper consideration in property tax assessment cases. Consideration of value-in-use is no more relevant under the guise of "special purpose" property than it is for any other property. It is an unacceptable consideration in property tax assessment cases under all circumstances.

Id., 610 A.2d at 5-6. The Court then expressed a fundamental concern that is equally applicable to these facts:

Especially troubling here is the expansive definition of "special purpose" property adopted by the trial court. Because almost all industrial real estate properties exhibit some peculiarities of design and use specific to the user's particular manufacturing processes, this broad definition could easily apply to most industrial properties, leaving ample room for abuse.

Id., 610 A.2d at 6 n.4.

As with *F & M Schaeffer Brewing Co.*, here too, the lower court has erroneously disregarded relevant and probative evidence of comparable sales simply by labeling the subject property as special purpose.

II. THE TAX COURT ABUSED ITS DISCRETION IN FAILING TO CONSIDER THE COMPARABLE SALES PRESENTED BY SMBSC

As noted in its principal Brief (at pages 7-12 and 22-28), SMBSC presented extensive testimony from numerous witnesses about many sales of beet sugar processing plants and agriculture and food processing plants generally. Notwithstanding the volume of evidence, the decision of the Tax Court totally ignored that evidence. The Tax Court did not reject that evidence. It never discussed it at all.

Respondent seeks to justify this failure to consider sales comparables by asserting (Brief at 44) that they were rejected by the Tax Court when it said that “neither appraisal provided sufficient evidence to allow the Court to reach a well supported and reasonable determination as to the market value of the Subject Property.” A. 31. However, contrary to the County’s position, that Tax Court language is tied strictly to “the cost approach to value.” *Id.*

The failure of the Tax Court to consider and discuss the abundant evidence of comparable sales violates its “obligation to use its independent judgment *in evaluating all testimony and evidence before the court.*” *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005) (emphasis added), *citing American Express Financial Advisors, supra*, 573 N.W.2d at 658-59. In *McNeilus*, the Tax Court had refused to consider out-of-state comparable sales. This Court found that refusal to be an abuse of discretion. *McNeilus, supra*, 705 N.W.2d at 414.

Respondent claims (Brief at 45) that the sales are not comparable because the plants were closed and no longer in operation. Land and buildings are routinely appraised even when vacant. A comparable sale of a house is valid whether someone is living there or has already moved out. A sale is a sale. Property tax valuation focuses on the value of the land and buildings, not whether a business is thriving or failing. By ignoring numerous valid, comparable sales, both Respondent and the Tax Court have converted this real estate valuation case into a case valuing the business of processing sugar beets, not the value of the real estate.

At trial, SMBSC presented four witnesses in addition to its expert appraiser. Two of these individuals had decades of experience in the sugar beet industry and testified at length about the difference between real estate and the very expensive process equipment located on the premises. In addition, Jeffrey Counsell, a real estate broker, testified regarding actual sales of similar properties. The record presents abundant support for the conclusion that there is a market for properties such as the subject property, whether they continue to be used as a sugar beet factory or as some other agricultural food processing facility. Specifically, the unrebutted testimony at trial established the following:

- There is a market for the subject property
- Properties similar to the subject property have been sold in the marketplace
- Sugar beet plants have been converted to other uses
- The physical characteristics of this plant are no different from other food processing plants that have sold in the marketplace

This was not simply a battle of appraisal experts, as Respondent argues and the Tax Court assumed. Rather, Relator brought forth substantial fact and expert witness testimony to establish that the “market value” of a sugar beet processing plant is determined in a manner that does not differ from any other food processing plant of similar size, age, construction, design and location. Unfortunately, the Tax Court simply chose to ignore that evidence.

III. THE MINNESOTA TAX COURT'S CONCLUSION OF HIGHEST AND BEST USE OF THE PLANT IS CONTRARY TO THE LAW

Respondent (Brief at 35-37) seeks to defend the Tax Court's holding that the highest and best use of a prototypical food processing plant is confined to the processing of a single, 10-inch long, 8 inch in diameter, root vegetable. Such a narrow and unrealistic view of the highest and best use of a food processing facility flies in the face of real estate appraisal theory and makes any subsequent analysis of market value flawed from the outset.

Every food-processing plant has a unique configuration that is specially designed for whatever food process it performs. Suggesting that a food processing plant cannot be sold for an alternative highest and best use simply because the plant has a unique layout and design that maximizes its production capacity for its current use ignores the fact that sales of sugar beet processing plants – as well as the numerous sales of similar food processing plants – occur routinely in the marketplace for a variety of alternative uses.

Moreover, the Tax Court's conclusion that a highest and best use analysis should be confined to the current use would mean that every turkey processing plant, every chicken processing plant, every corn processing plant, every ethanol processing plant, every hog processing plant, and every beef processing plant, would also be confined to their current uses, since each of them also maintains a unique design and layout that would not be suitable "as is" to an alternative use and, by definition, always would require substantial capital investment to "retrofit" the particular plant with new production equipment after it is sold for an alternative use.

Highest and best use analysis, therefore, is not confined as narrowly as Respondent and the Tax Court suggest, for the simple reason that one cannot assume that a willing buyer would continue to use the plant's production capacity for the exact same use. The highest and best use conclusion needs to be broader to encompass a market that has a sufficient number of potential buyers. In this case, as Jeffrey Counsell pointed out throughout his unrebutted testimony, a willing buyer would be interested in this plant's production capacity even if the buyer had to strip out all of the equipment, replace it with new equipment, and conduct a different food processing function within the plant. The testimony of Mr. Counsell in these matters is described in the SMBSC principal Brief at 8-10.

The *DeZurik Corp.* case, discussed above, is instructive. There the Supreme Court noted that the "parties in this matter disagree as to the highest and best use of the property" 518 N.W.2d at 17. The county contended that the highest and best use was for continued use as a foundry and valve manufacturing facility, while the taxpayer contended that the highest and best use was for general manufacturing and warehouse purposes. *Id.* The Tax Court agreed with the taxpayer and held that the highest and best use was as a general manufacturing facility, and the Supreme Court affirmed. *Id.*, 518 N.W.2d at 18.

The reasoning in *DeZurik* is applicable in this case. Here the Tax Court neglected market value principles altogether and instead substituted its own view that because the business housed in the plant may at times be profitable, no other use should be considered. That reasoning ignores the real world and is contrary to controlling case law.

IV. PRODUCTION EQUIPMENT IS NOT TAXABLE REAL ESTATE IN MINNESOTA

A significant issue presented on this appeal is whether agricultural production equipment – in this case, sugar beet processing bins, tanks and silos – should be treated as real estate for purposes of determining the market value of a prototypical food processing plant.³ Respondent and the Tax Court have departed from existing case law and from traditional assessment practice and procedure to “declare” that because processing equipment has “structure,” it qualifies as taxable real property. Respondent’s argument is thoroughly misplaced because it ignores the Legislature’s clear language and because production equipment such as thick juice tanks, Weibull bins, and other steel tanks, bins, and silos, exist primarily to serve, and are part of, the food processing functions that are carried out in the real estate.

For these reasons, the Renville County Assessor has never – including the assessment at issue in this case – included such production equipment as taxable real estate. Not until SMBSC challenged the valuation of its real estate in this case, and only then, did the County’s expert witness, Dennis Jabs – not the County Assessor – seek to reclassify SMBSC’s process equipment as “real estate,” and thus artificially increase the assessed value of this facility **by \$35,000,000 in one tax year, an amount 275% higher than the County Assessor’s valuation**, based upon a theory of law that flies in the face of legislative history and of established real property and fixture law in Minnesota.

³ Respondent considers this issue to be so important that it declares (erroneously) that there “is only one logical order in which the issues presented in this appeal should be analyzed” (Brief at page 14) and devotes fully 22 pages of its Brief to this matter – at least triple the space devoted to any other issue.

A. The County's "Structure" Arguments

Renville County argues (Brief at 25-31) in effect that any piece of equipment that has a "structure" qualifies for taxation as real estate in Minnesota. The fundamental upshot of the argument is that if, for example, a taxpayer has a four-story production tank – whether it produces sugar, cheese, ethanol, Spam, pork, beef, fertilizer, pesticides, or any other agricultural product – and if the company chooses to leave the tank outside and exposed to the elements, that piece of process equipment thus becomes real estate. Under Respondent's theory, that production tank would be taxable real estate because it has a "structure" to protect its contents from the elements. However, if the company were to build a simple metal shed over the tank, that same tank would now be exempt as production equipment since it no longer would serve a "shelter" function.

In this argument the County paints with an excessively broad brush. This type of artificial reasoning is flawed because a piece of production equipment is the same whether it is housed inside a metal shed or outside and exposed to the elements. This is why the Minnesota Chamber of Commerce is correct when it points out that the Minnesota State Legislature intended clause (c)(iii) of Minn. Stat. §272.03, subd. 1 (2006) to apply only to the exterior shells of structures that have the same features as ordinary buildings, and to continue to exempt processing tanks and other process-related "structures" that serve the production process, not the real estate. Chamber Brief at 17.

Respondent's "structure" arguments focus on the various tanks, bins, and silos having floors, ceilings, and walls. Notably, when counsel for the County was cross-examining Mr. Suhr (an expert on sugar beet processing, plant construction and

operation), he repeatedly asked Mr. Suhr about whether the various items had floors, walls, and ceilings. Mr. Suhr repeatedly clarified that they had bottoms, sides, and tops. (Tr. Vol. 3 at 448:3 to 450:22.)

B. The Law of Fixtures Applies

One of the critical difficulties with the broad-brush approach taken by the County and the Tax Court is that it paints all tanks, bins, and silos with the same brush, regardless of the differences. For example, Mr. Suhr testified about the various kinds of tanks, their sizes, and how they were or were not attached. Even the largest of the tanks, the thick juice tanks, for example, were fastened only by a few bolts from a “ring wall” of concrete (they did not have a concrete pad or other form of “structure” or foundation). (Tr. Vol. 3 at 354:11 to 356:15.) However, he noted that they are not always even bolted and that he has had some flip over or float away. *Id.* Other tanks, such as some of the fuel tanks, were not secured to anything, and some of them also had floated away in the past. (Tr. Vol. 3 at 367:20 to 368:18.) To contend, therefore, that all tanks are real estate, defies logic and runs counter to established case law.

Despite Respondent’s arguments, it is still appropriate to examine these issues in view of underlying real estate law. Just such an examination was conducted recently by the court in *Integrity Floorcovering, Inc. v. Broan-Nu Tone, LLC*, 2007 WL 628212 (D. Minn. Feb. 26, 2007). That case involved the question of whether a ventilation fan should be considered “equipment or machinery” or as being incorporated in the real estate. In carrying out the legal analysis, the court stated (at *6):

At the same time, Minnesota courts have held or implied that printing presses, seed mixers, sugar-plant boilers, and steel-tube production machines are pieces of “equipment or machinery.” See *Fluck v. Jacobson Mach. Works, Inc.*, No. CX-98-1899, 1999 WL 153789, at *2 (Minn.Ct.App. March 23, 1999) (seed mixer); *Larson v. Babcock & Wilcox*, 525 N.W.2d 589, 591-92 (Minn.Ct.App.1994) (sugar-plant boiler); *Wilson v. A.M. Int’l*, No. 3-92-711, 1993 WL 724814, at *4 & n. 7 (D. Minn. Apr. 26, 1993) (printing press); *Ritter*, 483 N.W.2d at 93-94 & n. 2 (steel tube production mill). These large pieces of stand-alone industrial equipment, unlike ventilation fans, are generally not considered to be part of a structure, but rather to operate inside of a structure. These machines could be moved in and out of a structure without affecting the structure or the machine. Indeed, in theory, these machines could operate in an open field (as long as they had a source of power). Finally, these machines would not necessarily be included in the sale of a structure.

The analysis suggested by the *Integrity Floorcovering* court is applicable in this case.⁴

As noted in the SMBSC principal brief, the tanks are made of carbon steel, often not fastened to real estate, or fastened only by a bolt or two, and easily (and routinely) removed, dismantled, sold to other potential users. The equipment the Tax Court and Respondent wish to lump into the category of “taxable real estate” is not real estate at all, since it can be taken from the property without harming the actual real estate improvements whatsoever.⁵

⁴ The County cites (Brief at 27, 31) the North Dakota Supreme Court case of *American Crystal Sugar Corp. v. Traill County Board of Comm’rs*, 714 N.W.2d 851 (N.D. 2006). Respondent (Brief at 27 n. 15) makes the bald assertion that “if an item is taxable real property in North Dakota, it is almost certain to be taxable real property under Minnesota law.” *Traill* makes it clear that North Dakota law has its own unique characteristics and such a generalization is unwarranted.

⁵ As noted in the SMBSC principal Brief (at 41-42), the SMBSC appraiser included half the cost of the Weibull bin and half of the sugar drying silos in his cost analysis of the real estate.

Finally, as the Minnesota Chamber of Commerce also points out, ponderous process-related manufacturing equipment is not taxable as real estate because this court has historically applied a “functionality test” when deciding whether a structure qualifies as exempt equipment and has always held that equipment that serves a business enterprise function for that enterprise exclusively is not an improvement that adds value to the real estate itself. Chamber Brief, at 11-25. In any case, the fact that three sugar beet processing plants were sold recently that included the same type of equipment that is at issue in this case, confirms that the sale price for such plants and equipment are in line with the sales comparison analysis SMBSC placed before the Tax Court. This is why ignoring the sales data with regard to similar – indeed almost identical – sugar beet processing plants was an abuse of the Tax Court’s discretion and must be reversed.

C. Respondent’s Citation to a Subsequent Tax Court Case as Authority is Improper

Respondent cited (*see, e.g.*, Brief at 27-31) as authority a Tax Court case decided after the Tax Court decision in this case. *American Crystal Sugar Co. v. County of Polk*, Nos. C1-05-574, C3-05-575, CX-06-373, C4-06-367, 2007 WL 987084 (Minn. Tax Ct. Mar. 30, 2007). The Tax Court is an “independent agency of the executive branch of government.” Minn. Stat. § 271.01 (2006). Despite use of the plural pronoun “we” in the *American Crystal Sugar* decision, the Tax Court does not sit *en banc*, nor is it a collegial court made up of three judges deciding cases.

The Tax Court has on occasion applied the principle of *stare decisis* to its own cases. *Stare decisis* is defined in Black’s Law Dictionary as “the doctrine of precedent,

under which it is necessary for courts to follow earlier judicial decisions when the same points arise again in litigation.” Similarly, Black’s defines “precedent” as a “decided case that furnishes a basis for determining later cases involving similar facts or issues.”

It is clear that reported decisions of the Minnesota Supreme Court and the Minnesota Court of Appeals have precedential value in Minnesota. However, not all decisions of those courts have precedential value. For example, summary affirmances by the Minnesota Supreme Court do not. *Terault v. Palmer*, 413 N.W.2d 283 (Minn. App. 1987). Similarly, unpublished decisions of the Minnesota Court of Appeals are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2006), and numerous cases decided thereunder.

Perhaps most importantly, decisions of district courts in Minnesota have been held to have no precedential value. *Nash v. Wollan*, 656 N.W.2d 585, 590-91 (Minn. App. 2003); *Appeal of Crow Wing County*, 552 N.W.2d 278, 280 n.2 (Minn. App. 1996); and *Prince v. Torgersons of Austin, Mn, Inc.*, 1992 WL 231667 (Minn. App. 1992).

The rules of precedent and *stare decisis* have evolved over a great deal of time, and are well defined, at least in terms of what kinds of court decisions have precedential value. In Minnesota, the Minnesota Supreme Court and the Legislature have made pronouncements from time to time on these issues. The Tax Court decisions do not have precedential value for subsequent cases until the Minnesota Supreme Court affirms them.

V. RESPONDENT FAILED TO SHOW ANY SUPPORT IN THE RECORD FOR THE ASSESSOR’S VALUATION CONCLUSIONS

Respondent's final argument is that the Tax Court's "default" to the assessor's own determination of market value – which has no support whatsoever in the record⁶ – nevertheless was appropriate as a matter of law. SMBSC in its principal brief (at pages 34-36) asserted that it was error for the Tax Court to "affirm" the County Assessor's valuation considering the total absence in the record of any evidence supporting that valuation. Respondent's Brief (at page 49) argues that the SMBSC contentions "are inconsistent with long-standing case law."

As Respondent notes in its brief (at page 49), under Minnesota law, the determination of the county assessor is deemed to be "prima facie valid." Minn. Stat. § 271.06, subd. 6 (2006). Both briefs cite *Schleiff v. County of Freeborn*, 231 Minn. 389, 395-96, 43 N.W.2d 265, 269 (1950), in support of that proposition. However, Respondent Renville County seems to leap from that principle to a conclusion premised on the unsupported proposition that it is irrelevant to examine the record to determine if there is support for the Assessor's valuation conclusion.

Schleiff itself makes it clear that a court must examine the record to see if there is support for the Assessor's determination. There the Supreme Court first noted the statutory mandate governing the Assessor's determinations of value, and went on to examine the "duties" of the Assessor to consider certain factors in making those determinations. *Id.*, 231 Minn. at 394-95, 43 N.W.2d at 268-69. In *Schleiff*, the Supreme

⁶ The County objects (Brief at 49 n. 30) to SMBSC's reference in its Brief (at 36-37) to statements by Respondent's counsel. The facts remains that the record is totally silent on what the County assessed or how it reached its valuation. The quoted language merely confirms the obvious.

Court concluded that “the assessor did not follow the statutory mandates in arriving at the estimates of value” *Id.*, 231 Minn. at 396, 43 N.W.2d at 269 (“It follows that a finding based upon [the assessor’s] testimony alone could not be sustained”).

Despite that determination, the *Schleiff* Court went on to note that the failure of the assessor in that case to “follow the statutory mandates” would not be fatal “if there is other evidence to support” the valuation conclusion. *Id.* In that case the Supreme Court concluded that the trial court’s conclusion regarding valuation did have independent support in the record, and thus it affirmed the decision.

That is the point of departure in this case. Here, the Tax Court rejected both appraisers and elected to “affirm” the Assessor’s valuation. Conclusion of Law 5, A. 9. The Tax Court concluded that “we cannot reach a well supported and reasonable determination as to the market value of the subject property based on the experts’ extrapolations and incomplete analyses under the cost approach and, therefore, we affirm the assessor’s estimated market value” A. 32.

Accordingly, absent any evidence in the record supporting the Assessor’s valuation conclusion, and in view of the absence of any analysis of value by the Tax Court, the decision of the Tax Court must be reversed as unsupported by the law and facts.

CONCLUSION

In an era where there is much public discussion about no new tax increases, an executive branch agency, the Tax Court, is now in effect declaring major new taxes on traditional food/agricultural production equipment and agricultural processing facilities

simply by avoiding any discussion of what these plants sell for in the open market. This case presents the Minnesota Supreme Court with a critical opportunity to reaffirm that traditional approaches to market value are not to be ignored simply because a taxing jurisdiction is trying to do everything in its power to “prop up” its tax base. The Tax Court decision can be read as such an attempt. As such, the decision should be reversed and remanded with instructions to apply the sales comparison approach to the subject property and tax only the real estate – not the production equipment – so that the SMBSC and its farmer coop members are not unfairly and excessively taxed.

Respectfully submitted,



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Date: April 30, 2007