
*STATE OF MINNESOTA
IN SUPREME COURT*

Continental Retail, LLC,

Relator,

v.

County of Hennepin,

Respondent.

RESPONDENT'S BRIEF

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ISSUE RAISED

DID THE TAX COURT ERR BY REACHING A DECISION ON THE FEE SIMPLE MARKET VALUE OF THE SUBJECT PROPERTY THAT WAS BASED UPON FACTS PRESENTED BY THE EXPERTS AND USING THE COURT'S OWN EXPERTISE AND JUDGMENT?

RESULT BELOW: The Tax Court correctly determined Respondent's expert was credible and accorded significant weight to Respondent's expert's cost and sales comparison approaches to value and minimal weight to the income approach to value because the subject property was newly constructed, had not reach stabilized occupancy and had shell space.

Most Apposite Authority: Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995).

STATEMENT OF THE CASE

This case involves three Chapter 278 petitions filed by Continental Retail LLC, challenging the assessor's Estimated Market Value ("EMV") for the subject property located at 8570 Edinburgh Centre Drive North, Brooklyn Park, for the assessment dates of January 2, 2006, January 2, 2007 and January 2, 2008.

The trial was held on six days between August 13, 2010 and August 26, 2010 before the Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court. Relator introduced the expert testimony of Lawrence D. Kramer, MN Certified General Appraiser, and a summary appraisal report that Mr. Kramer co-authored with James D. Kramer, MAI. Relator also included the lay testimony of the property owner Bradley Hoyt; the regional property manager for Hoyt Management, Inc., Traci Thomas; and Todd Phillips, ex-Virchow Krause CPA/real-estate attorney. Respondent introduced the

expert testimony and summary appraisal report of Shelagh Stoerzinger, MN Certified General Appraiser, MN Certified Assessor. (Transcript (“T”) 829-830.) Respondent also introduced expert testimony and a summary appraisal report (for gift tax purposes) of Terrence M. Johnson, MAI.

The Tax Court issued its decision on December 21, 2010. Relator appealed the Tax Court decision by Petition for Writ of Certiorari on February 22, 2011.

STATEMENT OF FACTS

1) The Improvements

The subject property is a multi-tenant commercial retail building located at 8570 Edinburgh Centre Drive North in the City of Brooklyn Park. (Ex. 141; T 89-94) The subject property has one floor and no basement. (Ex. 1 p. 21.) The property has a gross building area (GBA) of approximately 23,325 s.f. and a gross leasing area (GLA) of approximately 22,767 s.f. on a site of approximately 124,432 s.f. (Ex. 1 p. 4; Ex. 101 p. 4.)

Prior to 2001, soil corrections were carried out on three lots comprising the single subject property parcel and building pads were prepared. (Ex. 6; Ex. 7.) In 2001, a geotechnical exploration was performed resulting in the recommendation that a Geopier™ foundation system be used to prepare the site for the proposed 23,325 s.f. GBA multi-tenant retail center in order to use the building pads that were already present on the property. (Ex. 7; Ex. 105; T 663-67.) Construction on the subject property began in 2004 and a Certificate of Occupancy issued in February 2005. Construction costs were reported at an estimated \$2,432,195 excluding land,

entrepreneurial profit and other soft costs. (Ex. 101 p. 14.) The owner reportedly purchased the land in 1998 for \$1,121,017. (Ex. 101 p. 4.) The subject retail center was reported as the final addition to a 225,000 sq. ft. retail development with great highway exposure. (Ex. 141.)

In February 2005, prior to occupancy and the first assessment date at issue, wall cracks in the area of the fire riser room on the northeast (rear) of the building were investigated by a consulting engineer who was unable to determine the cause but indicated the cracks did not present a structural safety issue. (Ex. 106.) This engineer did not recommend demolishing or razing any portion of the subject property, rather, he recommended filling the cracks with mortar and continued observation. (Id.) Also, in February 2005, a final summary report for construction testing and “IBC ‘Special inspections’” was submitted to the owner without mention of any structural issue with the subject property. (Ex. 107.)

In July 2007, after the first two assessment dates and prior to the third assessment date at issue, Traci Tomas, Relator’s property manager and executive vice president, asked the building maintenance company, United Operations, Inc., (“United”) to review concerns reported by Edina Realty, one of the tenants at the subject. (Ex. 108.) The purpose of the review was to verify whether there was any movement in the building within the Edina Realty leasehold space, to determine the likely cause, and to make repair recommendations. (Id.) United reported structurally insignificant wall movement at the top of the east exterior wall that had apparently caused interior separations between the ceiling and walls. (Id.) United reported the wall movement

was likely caused by an expected deflection of the roof deck that was not being absorbed by the expansion components of the design. (Id.) United also reported that the roof movement was the likely cause of the shifting of interior walls that affected the door alignment. (Id.) Additionally United reported that separation between the wall and floor in the Edina Realty break area was likely caused by settlement of soils resulting in the sinking of the concrete floor slab. (Id.) United did not recommend demolishing or razing any portion of the Edina Realty lease space. Rather, it recommended cosmetic repairs—installing trim and corner pieces on the ceiling and walls, repairing and painting damaged drywall, and adjusting doors. (Id.) The report issued in July 2007 indicated the movement was not a safety issue. (Id.) There were no repairs, cosmetic or otherwise, related to settlement issues at the subject property before May 2007. (Ex. 113; T 757-58.)

Prior to initiating any repairs, United sought and received a proposal from American Engineering Testing, Inc. (“AET”) for a bimonthly, year long building monitoring program. (Ex. 109.) The monitoring program was initiated in September 2007 and quarterly updates documented movement through spring 2009. (Ex. 110; Ex 112; T 726-27, 759-63.) In a July 2009 progress report, after the three assessment dates at issue, AET recommended contacting a specialty contractor to stop the subsistence at the east end of the building. (Ex. 112.) AET also recommended reconfiguring the wall/roof loads at the corner of the trash room next to the 8570 service door and either: 1) adding helical piles at the affected foundation walls and floor slab; or 2) performing compacting grouting to re-level the walls and floors. (Id.) AET did not report any

safety concerns and did not recommend demolishing or razing any portion of the building. (Id.)

In March 2010, over two years after the third assessment date (January 2, 2008) at issue, a Building Site Observation Inspection Report was submitted by LJM Group and Professional Engineering Consultants, Inc. (Ex. 3.) The LJM Group investigation began in 2010 and their reported comments and opinions were based on a limited document review, interviews and field observations. (Id.) As with the previous reports, this 2010 report did not indicate any safety concerns and recommended several repairs for the Edina Realty lease space including: 1) excavating a test pit by the rear service door to verify soil conditions and the condition of the footing, separation of the foundation wall and footing to allow independent movement and possibly installing one or two helico underpins, if required, to provide support for the exterior wall; 2) sand jacking below the floor slab of the Edina Realty lease space to lift the slab to a level condition; 3) replacing the concrete patio adjacent to the Edina Realty lease space with grass and a drainage pattern to allow water to be diverted from the building; and 4) interior and exterior finish repairs as necessary. (Id.) The LJM Group did not recommend razing any portion of the subject property. (Id.)

2) The Tenancy

As of the first assessment date, January 2, 2006, 16,653 s.f. (73%) of tenant space was built-out and occupied. (Ex. 102 p. 103-4.) By the second assessment date, January 2, 2007, Quiznos had vacated its space, thereby increasing the vacancy to 34%. (Ex. 102 p. 104.) By the third assessment date, January 2, 2008, America's Yogurt took

over the vacant Quiznos space but Bears Repeating vacated its space, resulting in a 38% vacancy. (Id.) Through the three assessment dates at issue, 6,114 s.f. (27%) of the vacant space remained in a shell condition. (Id.)

3) The Tax Court Decision

The Tax Court placed little weight on the opinion of value offered by Mr. Johnson, one of Respondent's witnesses, because his appraisal report was done for the property owner for gift tax purposes and it had an effective date prior to the first assessment date. (Relator's Appendix ("RA") APP 009.) The Tax Court accorded "significant weight" to the cost approach because the property was newly constructed and had been issued a certificate of occupancy in 2005, despite both Relator's and Respondent's experts according it 25% weight. (RA APP 010-011.) The Tax Court found the cost approach of Respondent's expert witness, Ms. Stoerzinger, to be credible and accorded it greatest weight; by contrast, the Tax Court concluded that the cost approach performed by Relator's expert witness, Mr. Kramer, was not credible as it was unsupported by the record. (RA APP 013-014, 016-017.)

The Tax Court agreed with Ms. Stoerzinger that minimal weight should be placed on the income approach to value because the subject's actual vacancy exceeded market and a portion of the subject remained in shell condition throughout the assessment dates at issue. (RA APP 020-022; T 882:13-883:17.) The Tax Court found Ms. Stoerzinger valued the fee simple interest under her income approach but placed no weight on the income approach performed by Relator's expert witness, Mr. Kramer, or

the property owner, Mr. Hoyt, as neither valued the fee simple interest in the subject property. (RA APP 019-021.)

The Tax Court found Ms. Stoerzinger's sales comparison approach provided a credible valuation of the fee simple interest in the subject property while, as with the income approach, Relator's expert concluded to a leased fee value, which was not equivalent to the fee simple value for any of the assessment dates at issue. (RA APP 026.) The Tax Court also agreed with Respondent's expert's conclusion that there was no evidence of a structural issue with the subject property prior to the January 2, 2008 assessment date and that her adjustment for a detrimental condition appropriately valued the fee simple interest in the subject property as impaired as of January 2, 2008. (RA APP 026-027; T 885:12-886:22.)

<u>Assessment Year</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
AEMV ¹	\$2,216,000	\$2,216,000	\$2,216,000
Relator's Expert ²	\$1,490,000	\$1,340,000	\$1,100,000
Respondent's Exert ³	\$3,776,600	\$3,967,200	\$2,573,400

The Tax Court found Respondent's expert's value conclusions for the subject property correctly reflected the fee simple market value at \$3,776,600 as of January 2, 2006; \$3,967,200 for January 2, 2007 and \$2,416,600 for January 2, 2008. (RA APP 027.)

¹ Ex. 101 p. 13.

² Ex 1 p. 4.

³ Ex. 102 p. 4 (revised).

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews a final order of the Tax Court to determine whether the Tax Court lacked jurisdiction, whether the order is supported by the evidence and is in conformity with the law, and whether the Tax Court committed any other error of law. Southern Minnesota Beet Sugar Coop v. County of Renville, (“SMBSC”) 737 N.W.2d 545, 551 (Minn. 2007), *citing* Hutchinson Tech., Inc. v. Comm’r of Revenue, 698 N.W.2d 1, 6 (Minn. 2005); Jefferson v. Comm’r of Revenue, 631 N.W.2d 391, 394 (Minn. 2001). Legal determinations are subject to de novo review while factual findings are subject to a “clearly erroneous” standard. SMBSC, 737 N.W.2d at 551, *citing* Hutchinson Tech., 698 N.W.2d at 6; 200 Levee Drive Ass’n v. County of Scott, 532 N.W.2d 574, 576 (Minn. 1995). In Equitable Life Assurance Society of the United States v. County of Ramsey, 530 N.W.2d 544, 552 (Minn. 1995), this Court set forth the clearly erroneous standard as: when the Tax Court’s decision is “not reasonably supported by the evidence as a whole.” In State v. Evans, 756 N.W.2d 854 (Minn. 2008) *citing* Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999), this Court held that “on appeal, a trial court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous.... If there is reasonable evidence to support the trial court’s finding of fact, a reviewing court should not disturb those findings” and that “if we find ‘reasonable evidence to support the [district] court’s findings of fact,’ we will not disturb those findings.” Additionally, this Court has held that it defers to the decision of the Tax Court, due to the “inexact nature of property

assessment,” unless the Tax Court either clearly overvalued or undervalued the subject property, or completely failed to explain its reasoning. Equitable Life Assurance Society of the United States, 530 N.W.2d at 552, *citing* Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 58 (Minn. 1995).

II. THE TAX COURT DID NOT ERR BY REACHING A DECISION OF THE FEE SIMPLE MARKET VALUE OF THE SUBJECT PROPERTY THAT WAS BASED UPON FACTS AND OPINIONS IN THE RECORD.

A. The Tax Court correctly permitted Respondent’s expert to testify and admitted her appraisal report into evidence.

Relator claims that the Tax Court erred in allowing Respondent’s expert witness, Ms. Stoerzinger, to testify, but that argument is without merit. First, the Minnesota Supreme Court held that “‘matters such as trial procedure, **evidentiary rulings** and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error.’... whether trial is to the court or a jury.” Tyroll v. Private Label Chemicals, Inc., 505 N.W.2d 54, 56 (Minn. 1993) (emphasis added) *citing* Sauter v. Wasemiller, 389 N.W.2d 200, 201 (Minn. 1986); *See also* Carson Pirie Scott & Company v. County of Hennepin, 576 N.W.2d 445, 446-7 (Minn. 1998) (In an appeal of a tax court decision, the Court held that an issue raised by relator in its brief was not properly preserved for review because there was no motion for amended findings or a new trial thus the only question preserved for appellate review was whether the evidence sustains the findings of fact and conclusions of law.) Here, the record shows Relator did not bring a motion for amended findings or a new

trial pursuant to Minn. Stat. § 271.08, subd. 1, thereby failing to preserve any evidentiary ruling for appellate review. Id.

Even if Relator had properly preserved evidentiary rulings for appellate review, the Tax Court correctly permitted Respondent's expert to testify and correctly admitted her appraisal report into evidence. The Minnesota Supreme Court has consistently held that "[t]he 'tax court is in the best position to assess the credibility and sincerity of witnesses.'" Wybierala v. Commissioner of Revenue, 587 N.W.2d 832, 837 (Minn. 1998), *citing* F-D Oil Co. v. Commissioner of Revenue 560 N.W.2d 701, 706 (Minn. 1997), (*citing* Manthey v. Commissioner of Revenue, 468 N.W.2d 548, 550 (Minn. 1991)). Relator's claim of error is based on the acknowledgment of Respondent's expert that she lacked experience appraising properties with detrimental conditions when she undertook the appraisal assignment. However, Respondent's expert also indicated and testified that she undertook the appropriate steps to complete the assignment competently, thus complying with the Competency Rule of USPAP and her testimony was accepted by the Tax Court. (RA APP 0239; T 837-845:12.) Relator's claim of error is misplaced and without merit.

Relator further misrepresents the record by stating that it is an "undisputed fact" that the subject property had a detrimental condition and that a portion of the subject property needed to be torn down. (*See* Relator's Brief at p. 11.) The record reflects that any possible detrimental condition with the subject property only arose after the January 2, 2007 assessment, and that a potential buyer *might* consider the possibility of a structural issue with the eastern portion of the subject property. (T 891:7-11, 915:7-

919:11.) There is no evidence in the record to support Relator's assertion that a portion of the subject needs to be torn down and, in fact, the property owner, Mr. Hoyt, did not testify that any structural defect was apparent as of January 2, 2006 or January 2, 2007. Instead, he testified that the tenant, Edina Realty, did not start reporting problems with their space until the first full winter after starting occupancy. (T 637:11-638:25, 647:14-650:13.) Mr. Hoyt also testified that only as of January 2, 2008 had the Edina Realty tenant space become unoccupiable due to settling. (T 647-650:13.) Relator's regional property manager, Traci Tomas, testified that there were no repairs related to any settlement issues at the subject property prior to May 25, 2007, and that repairs subsequent were limited to superficial cosmetic repairs – i.e., replacing stained ceiling tiles, shimming doors, patching drywall, and repairing and regrouting a tile floor. (Ex. 113.) Ms. Tomas further testified that the monitoring program was not initiated until July 2007, and it was not until the spring of 2009 that a recommendation was made for adding helical piles at the affected foundation walls and floor slab or compaction grouting to re-level the walls and floors—**not**, as suggested by Relator, any recommendation for demolition of that portion of the subject building. (Ex. 112; T 761-763:1.) Ms. Tomas also testified that the property owner never considered demolishing any portion of the subject property and she even opined that the resulting property would be transformed into something other than a retail center if any portion was razed. (T 765:5-18 – 766:17.)

Given the evidence of record, the Tax Court did not err in rejecting Relator's expert's extraordinary assumption that as of January 2, 2006 and January 2, 2007 35%

of the subject property suffered from a structural defect that required razing. (RA APP 026.) Respondent's expert adopted razing of a portion of the subject building as the worst case scenario of three possible scenarios a potential buyer might consider as of January 2, 2008. (T 918:2-919:11.) The Tax Court correctly found the record and evidence supported Respondent's expert's application of an extraordinary assumption to only the January 2, 2008 assessment.

B. The Tax Court correctly determined that the leased fee interest was not equivalent to the fee simple interest for the subject property.

The Tax Court did not conclude that the fee simple interest and leased fee interest "can never be the same" as Relator claims. (Relator's Brief p. 16.) The leased fee may be equal to the fee simple interest if the actual rent under the leases, vacancy and expenses are at market rates. (RA APP 20; *see also* Lowertown Five Limited Partnership v. County of Ramsey, File No. C7-01-1964 (Minn. Tax. Ct. June 26, 2006) *citing* TMG Live Ins. Co. v. County of Goodhue, 540 N.W.2d 848 (Minn. 1995).)(The Minnesota Supreme Court affirmed the Tax Court's decision that the income approach was correctly calculated by using market rent rather than the non-corresponding below market actual rent.).

Here the Tax Court correctly determined that neither Relator's expert, Mr. Kramer, nor the property owner, Mr. Hoyt, provided any evidence of the fee simple interest value for the subject property. (RA APP 20.) Relator's expert's report clearly states he valued the leased fee interest, "as is", and although he claimed it was "about equivalent to the fee simple estate property right," the record reflects that this claim is

not supportable. (RA APP 030.) Relator's expert used the discounted cash flow ("DCF") analysis in his income approach to value and specified that the value conclusion was for the "as-is leased fee interest" as of each assessment date at issue. (RA APP 0113-0115, 0138-0141, 0154-0157, 0170-0173.) Relator's expert never projected a stabilized occupancy for subject property in the DCF and despite reporting an average of 6.9% market vacancy for the Northwest Twin City Metro market for neighborhood retail centers, the vacancy in the DCF was 20% **in addition to** the actual vacancy. (T 442:5-443:8; RA APP 0329.) Even if Relator's expert's DCF rent and expenses are at market, the failure to use market vacancy and failure to stabilize the property during the holding period precludes a finding that the value conclusion is for the fee simple interest. Thus, the record clearly supports the Tax Court's conclusion that Relator's expert did not value the fee simple interest.

The property owner testified he never used a DCF analysis when determining whether to purchase an income producing property therefore he used the direct capitalization income approach and capitalized actual income generated by the property as of each assessment date based on his unsupportable opinion that the subject was stabilized at 62% to 66% occupancy which is not indicative of a fee simple interest. (T 691:1 - 692:11; Ex. 11; Ex. 12; Ex. 13.) The property owner also **added** a 7% market vacancy to the actual vacancy, which resulted in a lower occupancy, to between 55% and 59%, and lower net operating income. (T 604:9-605:1.) The property owner also opined to extremely high direct capitalization rates (12% - 15%) which were not supported by market evidence and which far exceeded those proposed by his own expert

of 9% – 10%. (RA APP 020, 112; T 705:23, 707:3.) The Tax Court correctly accorded no weight to his value analysis and conclusions finding his testimony to be self serving and did not value the fee simple interest. (RA APP 020.)

Respondent's expert used the direct capitalization income approach to value and correctly valued the fee simple interest in the subject property by using a stabilized market rent of \$16.00 per s.f. based on rent comparables, rather than the contract rent (\$19.30-\$22/s.f.) which was determined to be at the high end of the market range. (RA APP 0332; T 1003:4-13.) Respondent's expert used a stabilized 10% market vacancy based upon an analysis of reported retail property market vacancy in the Northwest market sector and taking into consideration the subject property is in the leasing phase, given that it was newly constructed in 2005 and that almost 1/3 of the subject remained in "shell condition" through the assessment dates. (RA APP 0332.) As previously mentioned, Relator's expert reported an average of 6.9% market vacancy for the Northwest Twin City Metro market for neighborhood retail centers, which corresponds to the property owner's 7% market vacancy for the assessment years in question. Those facts support Respondent's expert's use of a conservative 10% for market vacancy in the income approach to value. Respondent's expert also applied market operating expenses based on reported operating expenses for neighborhood shopping centers in the analysis. (RA APP 0333.) Additionally, Respondent's expert derived a direct capitalization rate using the methodology preferred by the Tax Court: sales of comparable properties were adjusted on the same basis as applied to the subject by adjusting the comparable to reflect a 10% vacancy and \$.25/s.f. reserves for

replacement. See Geneva Exchange Fund XXVII, LLC v. County of Hennepin, File Nos. 27 CV-06-08694, 27 CV-07-08467, 27-CV-08-10409 (Minn. Tax Ct. Feb. 11, 2010); The Appraisal of Real Estate, (13th Ed. 2008 p. 503) (An appraiser must derive capitalization rates from comparables sales in the same manner used to analyze the subject property and capitalize its income.).

The Tax Court did not “laud” Respondent’s expert as Relator claims but correctly accorded minimal weight to the income approach to value because the subject had space in a shell condition and the actual vacancy was 25%, 34% and 38% for the respective assessment dates at issue. (See Relator’s Brief at p. 20; RA APP 022 (“Ms. Stoerzinger gave the income approach to value only 10% weight because of the Subject Property’s actual vacancy and shell space, concluding that a potential investor would give the income approach minimal consideration. We agree with the minimal weight she accorded the income approach”).) Based on the evidence of record, Relator’s expert and the property owner only valued the leased fee interest which was not equivalent to the fee simple interest. As a result, the Tax Court property rejected Relator’s opinions of value.

C. The Tax Court correctly accorded weight to Respondent’s expert’s sales comparison approach to value.

Relator’s reliance on Lowertown Five Ltd. Partnership v. County of Ramsey, File No. C7-01-1964 (Minn. Tax Ct. June 26, 2002) as support for a claim that Respondent’s expert erred by not adjusting the sales comparables for a “financing impediment” is misplaced. (Relator’s Brief p. 21.) In Lowertown Five the property

owners donated the façade of the building to the Heritage Preservation Alliance by an easement that required future mortgagors to subordinate their interest to the façade easement; that arrangement created a partial impediment to access to market financing. In the instant case, nothing in the record supports a finding that there is any “permanent condition” that prevents the property from being the subject of financing. In fact, the property owner testified that the construction had been financed by a loan with a mortgage term of seven years, which becomes “due and payable not later than October 28, 2011,” several years after the last assessment date at issue, January 2, 2008. (T 680:15–682:13.) Additionally, Relator’s own expert did not make an adjustment for “financing” in the sales comparison approach to value. (RA APP 084-099.) Thus Respondent’s expert did not err by not making an adjustment as Relator asserts. Rather, both Respondent’s and Relator’s experts accurately reflected the lack of a permanent impediment to market financing by not adjusting the sales comparables in their respective sales comparison approaches.

D. The Tax Court correctly found the fee simple market value of the subject property exceeded the assessor’s estimated market value.

In SMBSC, this Court “recognized that the government’s assessment of real property taxes is prima facie valid.” 737 N.W.2d at 557, *citing* Schleiff v. County of Freeborn, 231 Minn. 389, 395-96, 43 N.W.2d 265, 269 (1950); Minn. Stat. § 271.06, subd. 6 (2006); Minn. Stat. § 272.06 (2006). However, the Tax Court tries a case de novo, which means: “either party may introduce evidence and the decision of the tax court is ... based upon all the evidence before it.” SMBSC, 737 N.W.2d. at 558, *citing*

Red Owl Stores, Inc. v. Commissioner of Taxation, 264 Minn. 1, 117 N.W.2d 401 (1962). The record supports the Tax Court's value conclusion that the fee simple interest for the subject as of each assessment date exceeds the EMV and should be affirmed. Minn. Stat. § 271.12.

CONCLUSION

The Tax Court correctly determined Relator failed to provide evidence of the value for the fee simple interest of the subject property. Relator's expert's replacement cost analysis required recalculation during trial due to the significant errors in analysis. (Ex. 150; Respondent's Post Trial Brief pp. 16-21.) Relator's expert's appraisal was also fatally infected by the erroneous application of an unsupported extraordinary assumption that a portion of the subject required razing as of the January 2, 2006 and January 2, 2007 assessment dates. Additionally, Relator's expert and lay witnesses valued the leased fee interest in the subject rather than the fee simple interest, and the record does not support a conclusion that the two interests are identical in value. The Tax Court's determination that no weight should be placed on Relator's expert's opinion or the property owner's opinion should be affirmed.

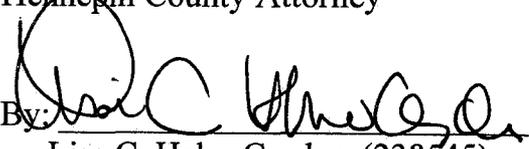
The Tax Court correctly determined Respondent's expert valued the fee simple interest in the subject property because she used market rent, market vacancy, and market expenses to calculate the net operating income, to which she applied a capitalization rate derived from market sales in the same manner as applied to the subject. The Tax Court correctly determined that the record does not support a finding that any potential buyer would have been aware of any potential structural issue until after the first two assessment dates at issue, therefore Respondent's expert correctly applied an extraordinary assumption to only the final assessment date. The record supports the Tax Court's finding that the fee simple market value for the subject property was \$3,776,600 for January 2, 2006; \$3,967,200 for January 2, 2007;

\$2,416,600 for January 2, 2008. Respondent respectfully requests that the Tax Court decision be affirmed.

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney

Dated: April 22, 2011

By: 

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