

No. A11-2093

STATE OF MINNESOTA
IN SUPREME COURT

County of Ramsey,

Relator,

vs.

Macy's Retail Holdings, Inc.,

f/k/a Federated Retail Holdings, Inc.,

Respondent.

**BRIEF OF RESPONDENT MACY'S RETAIL HOLDINGS, INC., F/K/A
FEDERATED RETAIL HOLDINGS, INC.**

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LEGAL ISSUES

- I. Did the Tax Court correctly hold that it lacked jurisdiction over Parcel 0005 since that parcel was not “clearly identified” in the petitions filed at the commencement of the property tax appeal under Minnesota Statutes § 278.01 and 278.02, and in the absence of any easement or legally effective parcel subdivision and consolidation?**

Answer: The Tax Court properly concluded that it lacked jurisdiction to determine the fair market value of Parcel 0005. A property tax petition under Chapter 278 must “clearly identify...the land involved.” Minn. Stat. § 278.02. If a petition does not identify a particular parcel, then the Tax Court has no jurisdiction over that parcel.

Most Apposite Authority: Larsen v. City of Spicer, No. A08-0712 (Minn. Ct. App. Jan. 20, 2009); Minn. Stat. § 278.02.

- II. Did the Tax Court correctly hold that the necessary steps under Minnesota Statutes §§ 272.16, 272.162, 272.46 and relevant local ordinances to subdivide the basement portion of Parcel 0005 leased by Respondent from the remainder of Parcel 0005, or to then consolidate or combine Parcel 0004 with that basement portion of Parcel 0005?**

Answer: The consolidation of two parcels is governed by statute. There is no evidence that the necessary steps were ever taken to subdivide Parcel 0005 or to consolidate Parcels 0004 with the portion of Parcel 0005 leased by Respondent. Such steps are a prerequisite to any transfer or division of a parcel’s tax capacity. The Tax Court thus properly concluded that it lacked jurisdiction to consolidate the value of the Leased Basement Space in Parcel 0005 with Parcel 0004.

Most Apposite Authority: Minn. Stat. §§ 272.16, 272.162, 272.46

- III. Did the Tax Court correctly hold that a long-term right under a lease to occupy and use a portion of Parcel 0005 is not a right that “runs with the land” of Parcel 0004, an adjacent tax parcel?**

Answer: Unlike an easement appurtenant, which benefits a nearby parcel regardless of the owner, a lease is not just an interest in real estate but a contract between two parties. A lease runs with the land that is subject to the lease. The rights under a lease do not run with nearby land, even if that land happens to be owned by the lessee. Thus, the “bundle of rights” inherent in title to Parcel 0004 does not include the right to use and occupy any portion of Parcel 0005, and the Tax Court correctly held that the lease to occupy a portion of Parcel 0005 did not run with Parcel 0004.

Most Apposite Authority: Alvin v. Johnson, 241 Minn. 257, 63 N.W.2d 22 (1954); Pillsbury Inv. Co. v. Otto, 242 Minn. 432, 65 N.W.2d 913 (1954); McLaughlin v. Minn. Loan & Trust Co., 192 Minn. 203, 255 N.W. 839 (1934); Gruman v. Investors Diversified Services, Inc., 247 Minn. 502, 506, 78 N.W.2d 377, 380 (1956).

STATEMENT OF THE CASE

This case involves property tax appeals involving a portion of the Macy's Department Store attached to the Rosedale Center super-regional shopping center. Respondent filed petitions under Minnesota Statutes Chapter 278 challenging the Assessor's Estimated Market Value for the Property as of the assessment dates of January 2, 2006 and January 2, 2007. The petitions expressly identify the Property under appeal as Parcel PID No. 09.29.23.42.0004 ("Parcel 0004"). Rel. Add. at pp. 1, 8.

The trial in this matter was held on April 4 through 7, 2011 before Judge Sheryl A. Ramstad at the Minnesota Tax Court facilities in the Minnesota Judicial Center. Both parties presented expert appraisals. Respondent introduced into evidence an expert appraisal prepared by Daniel Boris, MAI, who testified that the fair market value of the taxable property on Parcel 0004 was \$10,400,000 as of January 2, 2006 and \$11,300,000 as of January 2, 2007. Resp. Add. at p. 10 (Trial Ex. 2 at p. 5).

Relator introduced into evidence an expert appraisal prepared by Dwight Dahlen, MAI, who testified to a fair market value of \$19,465,000 as of January 2, 2006 and January 2, 2007. Mr. Dahlen acknowledged that his analysis included both the value of Parcel 0004 and the value of certain additional real property located on an adjacent parcel, Parcel No. 09.29.23.42.0005 ("Parcel 0005"). Trial Ex. A. Respondent occupies a minor portion of Parcel 0005 located in the basement level of a three-level building structure on Parcel 0005 pursuant to a lease with the shopping center owner (the "Leased Basement Space").

In its Findings of Fact, Conclusions of Law, and Order for Judgment dated August 23, 2011, the Tax Court ruled that it did not have jurisdiction to determine the fair market value of the Leased Basement Space in Parcel 0005, because Parcel 0004 was the only parcel identified in the petitions filed in these proceedings. Rel. Add. at p. 22. No evidence indicated the existence of any actions by any of the relevant parties to subdivide the Leased Basement Space in Parcel 0005 from the remainder of Parcel 0005, nor was there any evidence of any actions by any of the relevant parties to consolidate or combine the value of that same basement portion of Parcel 0005 with the value of Parcel 0004 in accordance with the requirements of applicable statutes or local ordinance. Id.

The Tax Court therefore ruled that it did not have jurisdiction to determine the fair market value of Parcel 0005, and it excluded the value of the Leased Basement Space from its calculation of value under the sales comparison approach. However, the Tax Court's initial decision inadvertently included the area of the Leased Basement Space in its calculation of value under the income approach. Respondent brought a motion for Amended Findings of Fact and Conclusions of Law, in large part to correct this apparently inadvertent error. Rel. App. at p. 39. In its Order of September 27, 2011, the Tax Court granted Respondent's motion and corrected its estimate of value under the income approach to exclude the Leased Basement Space. Rel. Add. at p. 48. The Order clarified that Respondent's right to use and occupy Parcel 0005 under the Lease does not run with the land of Parcel 0004. Id. at p. 55. The Lease of the Leased Basement Space runs with Parcel 0005, not with the property under appeal which is Parcel 0004. The Tax Court ultimately concluded that the Market Value of the taxable Property located in

Parcel 0004 was \$10,590,888 as of January 2, 2006 and \$12,575,281 as of January 2, 2007. Id. at pp. 48-49.

STATEMENT OF FACTS

The Macy's Department Store at Rosedale is a three-level anchor department store physically attached to Rosedale Center. The store was originally constructed in 1990 as a Dayton's Department Store. As of the assessment dates at issue, the audited gross building area (GBA) of the three-story department store building on Parcel 0004 is 224,462 square feet. Resp. Add. at p. 1. An additional 45,436 square feet of department store area—the Leased Basement Space—is not located within the boundaries of Parcel 0004, but is instead located within adjoining plat Parcel 0005. Id. The Leased Basement Space is a portion (45,436 square feet) of the lower level of the Rosedale Shopping Center which is leased from the owner of Rosedale Center and located beneath in-line retail stores and common areas found on the first and second floors of Rosedale Center. Resp. Add. at p. 2. Parcel 0005 consists of 131,792 square feet and includes a portion of the basement, first floor and second floors of the Rosedale Shopping Center, only a minor portion of which (34.5% of Parcel 0005) constitutes the Leased Basement Space. Id.

The Lease for the Leased Basement Space is a lease dated February 18, 1992 between Equitable Life Assurance Society and Dayton Hudson Corp. Rel. App. at p. 5. The Lease runs for a term of 15 years, thereafter renewable for one hundred consecutive terms of one year each. Rel. App. at pp. 5, 9. The Lease provides that rent shall consist of an "Annual Minimum Rent" of \$1.00 per square foot, *in addition to* "all other charges, sums or amounts permitted to be imposed against it under any other Article of this

Lease....” Rel. App. at pp. 8-9 (Art. 7). The Tenant is obligated to pay “its share of all taxes, assessments, and other governmental charges...against the land, building or improvements” and “a proportionate share of the Common Area costs and expenses.” Rel. App. at pp. 9-12 (Art. 10); Resp. Add. at pp. 3-7 (Art. VIII). As such, the Tenant was obligated to pay total rent in the amount of \$8.36 and \$8.58 per square foot for the assessment years at issue, or approximately \$380,000 to \$390,000 annually. Resp. Add. at pp. 8-9, 11-12 (Trial Ex. 2, pp. 4, 114-155).¹ The Tenant may assign the Lease to any person with the consent of the Landlord, or to a party acquiring the Main Store space without such consent. Rel. App. at pp. 21-22 (Art. 21). Thus, the Lease of the Leased Basement Space expressly contemplates that the Leased Basement Space may be used by a different user than the user of Parcel 0004.

STANDARD OF REVIEW

This Court reviews Tax Court decisions to determine whether the Tax Court lacked jurisdiction, whether the Tax Court’s decision is supported by the evidence and is in conformity with the law, and whether the Tax Court committed any other error of law. Jefferson v. Commr. of Revenue, 631 N.W.2d 391, 394 (Minn. 2001). The Tax Court must “carefully explain its reasoning..., and adequately describe the factual support in the record for its determination.” Eden Prairie Mall, LLC v. County of Hennepin, 797

¹Relator repeatedly characterizes the Lease as “rent free” or for “virtually no rent.” Rel. Br. at pp. 5, 8. This is not true; this statement overlooks the Tenant’s liability to the Landlord for taxes and common area costs and expenses under the lease. While the minimum annual rent may well be below-market, the total rent of \$380,000 to \$390,000 annually is certainly not “rent free” or even a merely nominal rent under the undisputed evidence in the record.

N.W.2d 186, 194 (Minn. 2011). This Court will not disturb the Tax Court's valuation of property for tax purposes unless the decision is clearly erroneous. Harold Chevrolet, Inc. v. County of Hennepin, 526 N.W.2d 54, 57 (Minn. 1995).

ARGUMENT

I. THE TAX COURT PROPERLY CONCLUDED THAT IT LACKED JURISDICTION TO DETERMINE THE FAIR MARKET VALUE OF PARCEL 0005.

The subject matter jurisdiction of the Tax Court is determined by statute. A.M. Castle & Co. v. County of Ramsey, No. C9-01-2797 (Minn. Tax Ct. June 7, 2001). The Tax Court has been granted "sole, exclusive and final" jurisdiction over "all questions of law and fact arising under the tax laws of the state...in those cases that have been appealed to the Tax Court and in any case that has been transferred by the district court to the Tax Court." Minn. Stat. § 271.01, subd. 5. The Tax Court therefore has jurisdiction over property tax petitions, and may determine the validity and amount of taxes assessed. Id.; Minn. Stat. § 271.06, subd. 1; Ch. 278. The Court's subject matter jurisdiction may not be waived and may not be conferred by consent of the parties. See Marzitelli v. City of Little Canada, 582 N.W.2d 904, 907 n. 20 (Minn. 1998). As an administrative agency of the executive branch, the jurisdiction of the Tax Court is limited. See Thornberg v. Commissioner of Revenue, No. 8066-R (Minn. Tax Ct. July 30, 2009), and cases cited at *17, n.16-20. Because the Tax Court's jurisdiction is statutory, it lacks authority to decide questions where the requirements of statute have not been met. See Twin Cities Hydro, LLC v. County of Ramsey, No. 8100-R and 62-CV-09-5567 (Minn. Tax Ct. Jan 12, 2011), citing Thornberg v. Commissioner of Revenue, *supra*.

A. The Tax Court Properly Concluded it had no Jurisdiction over Land that was not Identified in the Property Tax Petition.

A property tax petition under Chapter 278 must “clearly identify ... the land involved.” Minn. Stat. § 278.02. If a party does not identify a particular parcel in the petition, then a Court has no jurisdiction over that parcel. See Minn. Stat. § 278.02; cf. Larsen v. City of Spicer, No. A08-0712 (Minn. Ct. App. Jan. 20, 2009) (In action challenging special assessments, “[b]ecause appellant failed to include parcel 85-600-0450 in the notice that was filed with the district court...the district court properly concluded that it did not have subject matter jurisdiction over parcel 85-600-0450.”)

In the case at hand, the petitions to the Tax Court on both assessment dates identify Parcel 0004 as the only parcel under appeal. Parcel 0005 is not identified. Because the Leased Basement Space physically located in Parcel 0005 was not identified in the petition as required by Minn. Stat. § 278.02, the Tax Court properly concluded that it lacked jurisdiction over the taxable value of that parcel.

B. The Tax Court Properly Concluded that the Necessary Steps to Consolidate or Combine the Value of the Leased Basement Space in Parcel 0005 with the Main Store Space in Parcel 0004 Had Not Been Taken.

Respondent, as successor in interest to Dayton’s, is party to the Lease (as amended), a Restatement of Operating Agreement (as amended), and a Supplemental Agreement (as amended); under the foregoing agreements Respondent is liable and obligated to pay the property taxes for the Leased Basement Space. See Trial Exs. K, M. However, these agreements do not in any way comply with the requisite legal processes

for subdividing, consolidating or combining the Leased Basement Space in Parcel 0005 with and into Parcel 0004 for property tax purposes.

The consolidation of two parcels is governed by statute. Minn. Stat. § 272.16 permits that when any part (less than the whole) of any parcel of land is conveyed, the county auditor may agree in writing with the buyer and the seller upon the amount of the net tax capacity to be transferred to the new parcel. There is no evidence that any such written agreement including the County Auditor and any party to the Lease of the Leased Basement Space currently exists or ever existed. No such written agreement between the County Auditor and the owner or tenant of the Leased Basement Space and the Main Store Space has been identified or is known to ever exist. Relator called two witnesses to testify, its independent appraisal expert and a deputy assessor, and both testified that they did not know of any evidence that any such statutorily required action was taken: Relator's appraisal expert testified that he was not aware of any legal required actions, but modified the value of the Leased Basement Space in the value of Parcel 0004 because he thought "that is the way it has always been done." Tr. at 380-81. The assessor did not know of any actions, excepting only a handwritten note of a division, not any subdivision, transfer, or consolidation. Tr. at 645-47; Rel. Add. at p. 65.

Minn. Stat. § 272.46 provides that the "county auditor, upon written application of any person, shall for property tax purposes only, combine legal descriptions...of contiguous parcels to which the applicants hold title." Once again, there is no evidence that any such application was made, nor was any such combination made by the Ramsey County Auditor. See Theobald v. County of Lake, 712 N.W.2d 180 (Minn. 2006)

(holding that eleven separate tax parcels owned by single taxpayer must be valued separately where taxpayer did not apply to assessor to combine parcels under § 272.46). As the Tax Court noted, since Macy's holds title to Parcel 0004, and the owner of Rosedale Center holds title to Parcel 0005, it is doubtful that the statutory procedure for consolidating tax parcels is even an available alternative. Rel. Add. at p. 23 (Order dated Aug. 23, 2011 at p. 11).

Finally, the City of Roseville requires the submission of a preliminary plat, a hearing and report by the Planning Commission, approval of the City Council, and a final plat submission and recording prior to the subdivision of any parcel. See Roseville City Code § 1102.01. There is no evidence that any of these steps occurred with respect to Parcel 0005 and the Leased Basement Space. Nor was Parcel 0005 ever replatted so as to separate the Leased Basement Space in Parcel 0005 from the first and second floors, which would constitute a necessary preliminary step to a combination or consolidation with Parcel 0004, the Main Store Space. Such steps are a legal prerequisite to any transfer or division of a parcel's tax capacity. See Minn. Stat. § 272.162.

The consistent testimony of all the witnesses, Messrs. Boris, Dahlen, and Nelson, was that no witness was aware of any evidence or any other indication that any of these statutorily required steps occurred. Tr. at 181-83; 376-381; 644-647. While the Lease provides that the Landlord will "not do anything which would hinder Tenant from having the Premises taxed with the Main Store," (Rel. App. at p. 16), there is no evidence that either Tenant or Landlord ever performed any of the legally required steps to actually have the Leased Basement Space taxed with the Main Store.

Relator relies solely and exclusively upon a handwritten pencil notation concerning the Leased Basement Space contained on a field card for Parcel 0004, which states “Division 63660 processed – new Dayton’s and basement of old Dayton’s on this description parcel 0004.” Rel. Add. at p. 65. This refers to a *division* of Parcel 0004, not a *consolidation* of part of Parcel 0005 with Parcel 0004. As noted above, a consolidation of Parcel 0004 and 0005 is not possible between these two parcels because they have different owners; Macy’s owns Parcel 0004, but is the tenant, and only the tenant, of a minor part of Parcel 0005. Minn. Stat. § 272.46. See also Tr. at p. 182.

The Tax Court thus properly concluded that it lacked jurisdiction to consolidate the value of the Leased Basement Space with Parcel 0004.

II. THE LEASE ON PARCEL 0005 DOES NOT CREATE ANY RIGHTS THAT RUN WITH THE LAND OF PARCEL 0004.

A. The Lease on Parcel 0005 Runs With the Land of Parcel 0005, not Parcel 0004.

Relator is generally correct that under Minnesota case law, covenants contained in a lease “run with the land,” and that in order to run with the land, a lease must be assignable (i.e., not merely a covenant granted to one particular tenant). Pelser v. Gingold, 214 Minn. 281, 8 N.W.2d 36 (1943). But it is equally clear that a lease runs with the land *that is subject to the lease*. Pillsbury Inv. Co. v. Otto, 242 Minn. 432, 65 N.W.2d 913 (1954); McLaughlin v. Minn. Loan & Trust Co., 192 Minn. 203, 255 N.W. 839 (1934) (“covenants which run with the land...follow the title into the hands of whomsoever it may come.”).

In this case, a portion of Parcel 0005 is subject to the Lease, while Parcel 0004 is

not. The covenants in the Lease therefore “run with the land” of Parcel 0005, not with the land of Parcel 0004. Thus, a purchaser of Parcel 0005 today would have the rights of the Landlord under the Lease to receive rents, to have the leased premises kept in reasonable repair, and to the reversionary right when the Lease expires. A purchaser of Parcel 0005 acquires no rights over Parcel 0004. A purchaser of Parcel 0004 acquires no rights over the Leased Basement Space, or any other portion of Parcel 0005, unless there is a separate legal assignment instrument identifying and transferring said rights in the Leased Basement Space. Relator does not cite a single case in which a lease was held to “run with land” other than the leased premises themselves.

B. Unlike an Easement Appurtenant, a Lease Creates No Rights that Run with a Parcel Not Subject to the Lease.

1. Relator’s Cited Authority Relates Only to a Transfer for Value Effected by an Easement.

Relator cites Alvin v. Johnson, 241 Minn. 257, 63 N.W.2d 22 (1954) in support of the contention that “the right of one parcel of land to the use and enjoyment of another parcel of land can be created to run with the benefited land by the use of an easement.” Relator’s Brief at 11. Such an interest is known as an “easement appurtenant,” which is an interest granted for the benefit of the grantee’s land, such as a right of way to allow access to an otherwise “landlocked” property. See Lidgerding v. Zignego, 77 Minn. 421, 425 (Minn. 1899). An easement appurtenant runs with the *benefited* land and, therefore, passes to subsequent owners of the benefited land. See Swedish-Am. Nat’l Bank of Minneapolis v. Conn. Mut. Life Ins., 83 Minn. 377, 382, 86 N.W. 420, 422 (1901); Heuer v. Cnty. of Aitkin, 645 N.W.2d 753, 759 (Minn. App. 2002). Because the right to use

and enjoy the servient parcel is among the “bundle of rights” enjoyed by the dominant parcel, the value of that use is appropriately considered as part of the taxable value of the dominant parcel. See Alvin, 241 Minn. at 262.

Each of the cases cited by Relator applies this principle: both 444 Lafayette, LLC v. County of Ramsey, 2011 Minn. Tax LEXIS 11 (Minn. Tax Ct. Apr. 7, 2011) and Meritex Enters. v. County of Ramsey, 2009 Minn. Tax LEXIS 14 (Minn. Tax Ct. July 24, 2009) transfer the value of easement rights to the benefited parcel under those easement rights.

Relator cites County of DuPage v. Property Tax Appeal Board, 708 N.E.2d 525 (Ill. App. Ct. 1999) for the proposition that a lease, as well as an easement, may operate to transfer value from one parcel to another. But a close reading of this case shows just the opposite: in that case, the Illinois Court of Appeals considered the “value attributable to the parking facilities and common area *easements*” appurtenant to the subject property. Id. at 541 (emphasis added). County of DuPage in fact presents an example of a classic “right of way” easement, in which the dominant parcel was carved out of and completely surrounded by the servient parcel. The dominant parcel could therefore only be accessed by means of easements across the parking areas or interior common areas of the servient parcel. Under such circumstances, the Court held that the “right to have [the Petitioner’s] customers park on and walk to its store across [the servient parcel]” was one of the rights belonging or pertaining to the dominant parcel. While the terms of the easements were set forth in a “lease agreement with the owner of the shopping center,” this does not change the basic character of the property rights involved as easements. Such agreements

are squarely analogous to the Reciprocal Easement Agreements at issue in both 444 Lafayette and Meritex.

Thus, each of Relator's cited authorities on this question concern the transfer of value created by an easement. Relator does not cite a single case, much less any precedential authority, in support of its contention that a lease runs with adjoining land or may analogously transfer value to an adjacent parcel.

2. The Lease Does Not Transfer Value to Parcel 0004.

A lease is a contract for conveyance of an interest in real estate for a certain term in exchange for rent, and thus binds the landlord and the tenant in both privity of estate and privity of contract. Gruman v. Investors Diversified Services, Inc., 247 Minn. 502, 506, 78 N.W.2d 377, 380 (1956). Relators insist that the Lease in this case "grants rights that belong or appertain to [Parcel 0004]," but that is not possible—Parcel 0004 cannot enter into a contract. The rights under the Lease belong to the Tenant, not to an adjacent piece of land. Yet Relator persists that the rights under the Lease, which belong to the Tenant, actually belong to Parcel 0004. Relator's Br., pp. 13-15.

The Tenant's rights under the Lease are not somehow inherent to title in Parcel 0004. Relator has not identified any provision, nor any mechanism whatsoever, by which the Tenant's rights under the Lease of the Leased Basement Space in Parcel 0005 are bound to title in Parcel 0004. The Lease does not provide, in any way, that the Lease "runs with the land" of Parcel 0004. The Lease recognizes that the tenancy under the Lease may be assigned to a party not acquiring Parcel 0004.

Instead, as Relator notes, the Lease requires a separate legal instrument, an

assignment of lease, to effect a transfer.² Relator's Br., p. 2. In fact, the current Tenant, Macy's, obtained its rights under the Lease of the Leased Basement Space in Parcel 0005 through just such an assignment of lease. A purchaser of Parcel 0004 today would not have the automatic right to use or occupy Parcel 0005—not without another, further assignment of lease. The “bundle of rights” inherent in title to Parcel 0004 *does not include* the right to use and occupy the Leased Basement Space in Parcel 0005.

C. Relator's Argument Calls for Parcel 0005 to be Improperly Assessed at the Value of a Leased Fee Interest.

Relator's argument that the Lease has the effect of enhancing the value of Parcel 0004 and diminishing the value of Parcel 0005, if accepted, would have the absurd result of requiring a portion of Parcel 0005, namely the Leased Basement Space, to be assessed at the value of its leased fee interest in violation of Minn. Stat. § 273.11.

Minn. Stat. § 273.11 provides that all property “shall be valued at the market value of such property and not at the value of a leasehold estate in such property, or at some lesser value than its market value.” The fee simple interest in a property is the “absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.” THE APPRAISAL OF REAL ESTATE, 13th ed., p. 111. A leased fee interest is the “ownership interest held by the lessor, which includes the right to the contract rent specified in the lease plus the reversionary right when the lease expires.” *Id.* at 114.

² As noted above, the fact that the Lease may be assigned is a necessary feature for the Lease to run with the land of Parcel 0005—but has no bearing on the rights inherent to title in Parcel 0004.

Contrary to Relator’s novel definition, a leasehold interest is the “right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.” Id. The relationship between the three can be visualized as follows:

$$\textit{Fee simple} = \textit{Leased fee (Landlord's rights)} + \textit{Leasehold Estate (Tenant's rights)}$$

Relator’s argument that a portion of the value of Parcel 0005 should be diminished by the value attributable to the Leased Basement Space thus reflects a belief that Parcel 0005 should be assessed, at least in part, based on the value of the leased fee estate, rather than on the basis of its fee simple value. Likewise, Relator apparently believes that Parcel 0004 should be enhanced by including within the value of Parcel 0004 the value of the Tenant’s leasehold estate in that portion of Parcel 0005 constituting the Leased Basement Space. This framework directly contradicts the requirement in § 273.11 that each parcel be valued according to its fee simple value. See Continental Retail v. County of Hennepin, 801 N.W.2d 395, 401 (Minn. 2011).

III. RELATOR’S ARGUMENT WOULD RESULT IN DOUBLE-TAXATION

The Tax Court gave due and proper consideration to the evidence reflecting that Relator’s assessment of Parcel 0005 already includes the value of the Leased Basement Space.

Rosedale Mall Parcel Assessments				
The assessed value of the mall parcels are as follows, including all of the identified building area in the parcel where it actually exists:				
PID	Description	Building SF	AEMV (1/2/2009)	AEMV PSF
09.29.23.42.0005 (Parcel 0005)	Portion of Rosedale Mall, including Leased Basement Space	131,792	\$30,000,000	\$227.63
09.29.23.41.0004	New Lifestyle Center segment of Rosedale Mall	210,896	\$130,000,000	\$201.52
09.29.23.42.0007	Main Mall Parcel of Rosedale Mall	702,912	\$95,000,000	\$142.27

Resp. Add. at p. 2. The assessed value per square foot of Parcel 0005 is higher than the rest of the Mall, even when Parcel 0005's AEMV psf is calculated at \$227.63 psf including all of the square footage of the Leased Basement Space in Parcel 0005. Parcel 0005 is assessed at a higher per square foot value than even the new Lifestyle Center (at \$201.52 psf) which was recently added to the former Mervyn's Rosedale location after the Mervyn's was demolished in 2005. The Tax Court stated that "[t]he record speaks for itself that the Leased Basement Space is included in the assessor's records for square footage of both parcels." Rel. Add. at p. 23 (Order dated Aug. 23, 2011 at p. 11, n.20). The value per square foot of Parcel 0005 supports the conclusion of Respondent's expert that the value of the Leased Basement Space is actually assessed, taxed, and included within the assessment of Parcel 0005 Tr. at pp. 183-85; to also include the value of the Leased Basement Space in Parcel 0004 constitutes double taxation.

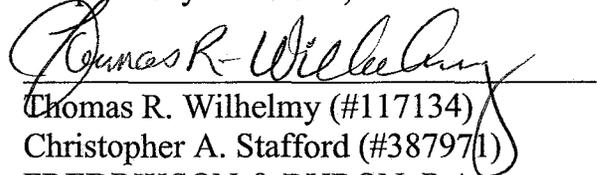
The undisputed evidence confirms that the Leased Basement Space is included in the assessment of Parcel 0005. If the value of the Leased Basement Space is also attributed to Parcel 0004, Relator will unjustly tax the Leased Basement Space twice.

CONCLUSION

The Order of the Tax Court dated September 27, 2011 in this matter should be affirmed.

Dated: January 19, 2012

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that Respondent's Brief submitted herein contains 4,944 words, exclusive of the pages containing the table of contents and table of authorities, and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Office Professional Edition 2003, the word processing system used to prepare this Brief.


Christopher A. Stafford