

No. A12-0542

STATE OF MINNESOTA  
IN SUPREME COURT

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**Eden Prairie Mall, LLC,**

*Relator,*

vs.

**County of Hennepin,**

*Respondent.*

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**REPLY BRIEF OF RELATOR EDEN PRAIRIE MALL, LLC**

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## INTRODUCTION

Relator submits this Reply Brief to correct the misstatements of fact and erroneous citations of the law contained in Respondent's Brief to this Court dated June 5, 2012 ("Respondent's Brief"). Respondent fails to accurately acknowledge the procedural posture of this case. Respondent's Brief effectively presents its arguments as if this Court had never issued its first decision in this case,<sup>1</sup> or remanded the case back to the Tax Court for further proceedings with express instructions. Instead, Respondent repeatedly either misstates or ignores this Court's express guidance and directions, and at critical times calls this Court's instructions "unnecessary." Respondent further suggests that the standard of review on remand gives the Tax Court discretion to disregard this Court's guidance and directions on remand. Ultimately, Respondent fails to fairly and accurately discuss the evidence actually submitted at trial relating to the interrelated issues of tenant improvements and capitalization rates. As a result these errors, Respondent's arguments lack merit.

## ARGUMENT

### **I. RESPONDENT'S ARGUMENTS FAIL TO FULLY AND ACCURATELY ACKNOWLEDGE THE PROCEDURAL POSTURE OF THIS CASE.**

In Eden Prairie Mall I, this Court provided detailed guidance and direction regarding tenant improvements, market rent, and effective market rent. Eden Prairie Mall I, 797 N.W.2d at 195 to 197. This Court stated, *inter alia*:

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<sup>1</sup> Eden Prairie Mall, LLC v. County of Hennepin, 797 N.W.2d 186 (Minn. 2011) (herein "Eden Prairie Mall I").

“Where market conditions require rent concessions, an appraiser *must* further determine a property’s effective rent.” *Id.*, at 195, *emphasis added*.

“(I)n determining effective market rent as part of valuation under the income capitalization approach, the court *must* adjust for rent concessions that effective future rent receipts.” *Id.*, at 195 to 196, *emphasis added*.

“(A)n appraiser *must* not only examine the terms of the lease, but also *must* conduct market research to determine whether or not tenant improvement allowances are atypical, to determine effective rents.” *Id.*, at 196, *emphasis added*.

“The tax court, however, did not explain its reason for increasing the net operating income above the testimony of the parties’ appraisers, or describe the factual support in the record for its determination. Moreover, the tax court did not explicitly address whether changing one of EPM appraiser Lennhoff’s revenue assumptions would impact other revenue and expense assumptions, such as tenant revenues. *We therefore remand the matter to allow the tax court to do so.*” *Id.*, at 197, *emphasis added*.

Despite the foregoing guidance and directions, the Tax Court decided that it would not analyze or consider the issues of market rent, tenant improvements, or effective market rent in any manner whatsoever. Instead, as discussed in detail in Relator’s May 7, 2012 Brief, the Tax Court’s decision was largely a verbatim repeat of its original decision. (Relator’s May 7, 2012 Brief at pp. 10-11; See also, Redlined Order, App. to Relator’s May 7, 2012 Brief at pp. 161-208.)

Notwithstanding this Court’s explicit guidance and directions, Respondent’s argues that the Tax Court did not err when it failed to analyze or consider the issue of tenant improvements in any manner whatsoever. Respondent instead contends that the Tax Court’s failure to consider the issue of tenant improvements was acceptable. Respondent makes this contention because the Tax Court’s capitalization rate was based on the Korpacz survey, which Respondent claims reports capitalization rates before the

deduction of tenant improvements. Therefore, Respondent argues, the income figures used by the Tax Court were consistent with its capitalization rate selections, rendering any analysis of tenant improvements or effective market rent “*unnecessary.*” (Respondent’s Brief at p. 13, *emphasis added.*)

There are several problems with Respondent’s argument. First, as will be discussed in greater detail below, Respondent’s reference to the Korpacz survey is inaccurate and misstates the evidence in the record at trial taken as a whole.

Second, and more important, Respondent’s argument wholly disregards this Court’s guidance and directions and the procedural posture of this case. In Eden Prairie Mall I, Respondent made the nearly identical argument that any analysis of tenant improvements was unnecessary because the Tax Court’s capitalization rate was derived before their deduction. (See Respondent’s February 11, 2010 Brief at pp. 22-24.) Had this Court agreed with Respondent’s argument in 2011, it simply would have affirmed the Tax Court’s original decision in Eden Prairie Mall I.

But this Court expressly did not agree with Respondent’s argument in Eden Prairie Mall I. This Court did not tell the Tax Court it could ignore the issue of tenant improvements as long as the capitalization rate selection was derived before the deduction of tenant improvements. Instead, when remanding the case in Eden Prairie Mall I, this Court provided the Tax Court detailed guidance regarding generally accepted appraisal practices including the required analysis and research concerning tenant improvements and their relationship to the determination of effective market rent.

Notably, this Court expressly recognized the interrelated nature of tenant improvements and the selection of the proper capitalization rate, and suggested that once the Tax Court fully analyzed the issue of tenant improvements, it may also revisit the issue of capitalization rate.

But recognizing that the record may be reopened on remand, and further recognizing that the valuation of the mall is complicated and that the factors underlying the appropriate capitalization rate may be impacted by changes in the appraisal testimony, we conclude that on remand the tax court may also revisit the appropriate capitalization rates.

Eden Prairie Mall I, 797 N.W.2d at 199. The Tax Court, however, decided: (1) to not reopen the record; (2) to not consider tenant improvements or effective market rent; (3) to not revisit the issue of the appropriate capitalization rate; and (4) ultimately relied on precisely the same evidentiary record this Court found inadequate and insufficient to support the Tax Court's analysis and conclusions in Eden Prairie Mall I. Because the Tax Court's analysis and conclusions remained essentially unchanged in its decision on remand, the evidentiary record continues to be inadequate and insufficient to support the Tax Court's decision on remand. (See Redlined Order, App. to Relator's May 7, 2012 Brief at pp. 161-208.)

**A. Respondent Does Not Fairly Address This Court's Express Guidance and Instructions on Remand.**

Respondent now claims that this Court remanded the case "to permit the Tax Court to explain the basis for the net operating income ("NOI") attributed to the Mall and to correct an error in failing to adjust for furniture, fixtures and equipment ("FF&E")." (Respondent's Brief at p. 3.) While those two items were included within this Court's

remand instructions, Respondent wholly disregards the entirety of Eden Prairie Mall I. This Court's remand instructions included substantially more substantive guidance and instructive comments regarding the determination of effective market rent as of the valuation dates. (See discussion of remand instructions at p. 2, supra.)

Respondent does not acknowledge, let alone discuss, the Tax Court's failure to follow this Court's guidance and instructive comments. Respondent thereby effectively misrepresents the procedural posture of this case. The threshold issue on appeal is not whether the Tax Court's NOI was consistent with its capitalization rate selection as Respondent discusses in its Brief. The threshold issue is whether the Tax Court properly executed the mandate of this Court on remand.

**B. The Standard of Review on Remand Does Not Give The Tax Court Discretion to Ignore the Guidance and Direction of This Court.**

Respondent's discussion of the Standard of Review commencing at Respondent's Brief at page 4 discusses almost exclusively cases where the proceedings were not on appeal from the trial court after the remand proceedings. Respondent's discussion again fails to acknowledge the procedural posture of this case. It is not until page 6 of Respondent's Brief that Respondent finally cites Janssen v. Best & Flanagan, LLP, 704 N.W.2d 759, 763 (Minn. 2005), but does so for the notion that the standard of review gives the Tax Court discretion to ignore the clear mandate of this Court on remand. Respondent's notion is wrong.

Janssen makes absolutely clear that while the trial court has some discretion in the manner in which it follows this Court's remand instructions, the trial court must not act

inconsistently with those instructions. Id. “The trial court has no power to alter, amend, or modify [this Court’s] mandate.” Halverson v. Village of Deerwood, 322 N.W.2d 761, 766 (Minn. 1982), *citing* Tanker Gas, Inc. v. Lumbermen’s Mutual Casualty Co., 9 N.W.2d 754 (Minn. 1943). “It is elementary law that it is the duty of the trial court on remand to execute the mandate of this court strictly according to its terms.” Jallen v. Agre, 122 N.W.2d 207, 208 (Minn. 1963).

Here, this Court’s remand instructions were unmistakable. The Tax Court was directed to “explicitly determine effective market rent” based upon the generally accepted appraisal practices detailed in this Court’s decision. Eden Prairie Mall I, 797 N.W.2d at 195-197. Those appraisal practices included, among other things, examining the leases and conducting market research regarding tenant improvement allowances. This Court determined that such an analysis was required to provide the evidentiary foundation for a determination regarding whether rent concessions were required by the market affecting the subject property, and if so, whether those rent concessions affected future rent receipts. As explained in detail in Relator’s original brief, the only pertinent evidence in the record on those issues was Mr. Lennhoff’s detailed analysis of the mall leases and market conditions supporting his determination that tenant improvements were required by the market and did affect future rents. (Relator’s May 7, 2012 Brief at p. 32); (Exhibit 1, pp. facing 19, facing 26, facing 27, 27-28 and 30, 33 and facing 40); (Tr., 144:19 – 146:14). Mr. Lennhoff’s analysis and determinations in this regard are not contested by any other evidence in the record.

This Court further directed that, after the Tax Court analyzed and determined the answers to the above-questions, the Tax Court then “must” adjust for those rent concessions in determining effective market rent as part of its valuation under the income capitalization approach. Eden Prairie Mall I, 797 N.W.2d at 195-197. Regardless, the Tax Court elected to not do so. As described in Respondent’s Brief, the Tax Court “rejected” this Court’s instruction to make the requisite inquiries and adjustments as an “*unnecessary* ‘effective rent’ analysis.” (Respondent’s Brief at pp. 9, 13 and 14, *emphasis added*.) What Respondent advocates is an abuse of discretion by the Tax Court and a failure to execute the mandate of this Court “strictly according to the terms.” Jallen, 122 N.W.2d at 208.

**II. RESPONDENT DOES NOT ACCURATELY DISCUSS THE EVIDENCE IN THE RECORD.**

As highlighted in Relator’s May 7, 2012 Brief to this Court, the Tax Court’s conclusion that Mr. Messner was more credible on the issues of tenant improvements and effective market rent was clearly erroneous because Mr. Messner admitted on the witness stand that he had conducted no analysis of the mall leases, nor did he conduct any market research regarding tenant improvements or effective market rent. (Relator’s May 7, 2012 Brief at pp. 9, 23-24.) (See also Redlined Order at p.26; App. to Relator’s May 7, 2012 Brief at p. 186.) It is crucial, if not dispositive, that Respondent’s Brief does not disagree with Relator’s description of Mr. Messner’s testimony and the evidence in the record taken as a whole, despite advancing Respondent’s argument that adhering to this Court’s guidance and directions was “unnecessary.” (Respondent’s Brief at pp. 13-14.)

Respondent's remaining arguments in response to the critical issues presently before this Court similarly ignore that the evidentiary record taken as a whole fails to support the Tax Court's Order on Remand.

**A. Respondent's Argument in Favor of the Use of a 6% Tax Load Ignores the Evidence and Fails to Acknowledge that Some of the Rents Received at the Mall are Partially Gross Rents, Not Net Rents.**

In Eden Prairie Mall I, this Court:

“conclude(d) that the tax court erred in adopting verbatim a valuation of the mall based on the County's recalculation of EPM appraiser Lennhoff's value determinations. The recalculated values *argued after trial by the County*, and adjusted by the Tax Court, contain several mathematical errors, suggesting that the tax court failed to exercise its own skill and independent judgment. More importantly, the changes in assumptions resulted in value conclusions significantly higher than the appraisal testimony of the parties, for which the tax court failed to adequately explain its reasoning and which appear to be unsupported by the factual record.

Eden Prairie Mall I, 797 N.W.2 at 192, *emphasis added*. In adopting a 6% tax load factor on remand, the Tax Court has once again adopted an argument raised by Respondent in its briefing for the first time. This new unsubstantiated analysis and argument appears for the first time in Respondent's Brief on remand, and again does so despite the lack of any supporting evidence in the record.

In the remand proceeding before the Tax Court, and now in Respondent's Brief, Respondent argues against the Tax Court's original use of a 30% tax load factor in its decision prior to Eden Prairie Mall I in favor of its most recent adoption of a 6% tax load factor. Respondent's argument on this issue further contradicts Respondent's own affirmation of the original 30% load factor in its briefing to this Court in Eden Prairie Mall I. (See discussion in Relator's May 7, 2012 Brief at pp. 37-40.)

Moreover, Respondent failed to support its argument with any reference to any evidence in the record. No reference to the record was made, because no such evidence exists. Respondent also failed to respond to Relator's May 7, 2012 Brief discussing that the 30% tax load factor has become the law of the case. This failure is also presumably because Respondent has no valid response.

Instead, Respondent argues in favor of the 6% tax load factor based on its unsupported claim that the Tax Court's original use of a 30% tax load factor, in the Tax Court decision before Eden Prairie Mall I, constitutes a leased fee analysis. Respondent's argument is seriously flawed.

Respondent ignores significant undisputed and dispositive facts in its argument. The evidence in the record established that the leases at the mall were *not* consistently negotiated as "triple net" leases, under which the tenant paid for a pro rata share of operating expenses and real estate taxes in addition to the net rent it paid to the landlord. Instead, the market for the subject property dictated that for a significant number of leases – aggregating effectively 24% of the leased space – the landlord paid the property taxes. (See, Tr., 189: 17 – 190:6; Tr., 241:8 – 242:5; and Tr., 855: 4-13.) The 30% loading factor is calculated as follows: real estate taxes paid by landlord on 6% the space that is vacant plus real estate taxes paid by the landlord on effectively 24% of the space that is leased.

In other words, triple net leases are not achievable on all the occupied space in the mall. Due to these undisputed market conditions, the undisputed market occupancy rate

might be 94%, but the market real estate tax recoveries are only 70% of the taxes paid, or on 70% of the space. (Id.)

Because the mall leases reflect market conditions, applying the 30% rate as opposed to the 6% rate as a tax load factor is not a leased fee analysis, like Respondent claims. The Tax Court relied heavily on the actual revenue from the mall tenants *assuming* it reflected 100% triple net rents. This assumption is not supported by the evidence in the record taken as a whole. The evidence was that, in the fee simple analysis, the mall was unable to negotiate all triple net leases and paid 30% of the real property taxes, even though vacancy was 6%. Thus, if the Tax Court loads the capitalization rate by 6% based on market vacancy alone, but then uses revenues including partially gross rents where the landlord pays the property taxes, the Tax Court overestimates the net operating income and the real estate tax recoveries which a reasonably prudent buyer would expect to achieve. The Tax Court therefore overestimates market value.

The fact that the Relator labeled the 30% tax load factor as “market vacancy” in its summary chart of calculations at the close of Relator’s Brief is not, as Respondent pretends, an implicit acknowledgement by Relator that the tax load should be based on market vacancy alone. For convenience and ease of reference only, Relator was simply using the same formatting and labels used by the Tax Court when it presented its final calculations.

Regardless, the analysis remains the same. In the analysis of market rents and revenues for the Eden Prairie Mall, 6% of the space was vacant and not generating rent.

In the analysis of market expenses for the Eden Prairie Mall, 30% of the property taxes were paid by the property owner. The appropriate percentage that therefore must be considered as market is 30% when an addition to the capitalization rate is made to reflect property taxes paid by the owner.

**B. Respondent's Related Argument in Favor of the Use of Actual Income As If It Equals Fee Simple Market Rent in the Income Capitalization Approach is Also Erroneous, Because Actual Rents at the Mall Include Partially Gross Rents, Not Triple Net Rents.**

Respondent also argues that the Tax Court's use of the actual income at the Mall was appropriate to reflect fee simple market triple net rents. Respondent claims that the actual cash revenues received at the Mall were consistent with the market. (Respondent's Brief at p. 7.) Therefore, Respondent incorrectly and inconsistently contends, the leased fee interest in the subject property was equal to the fee simple interest. *Id.*, at p. 8.

Once again, Respondent fails to cite any evidence in the record that any of the three experts believed the actual cash revenue (or actual income) from the subject property was equal to the fee simple market triple net rents or that the leased fee interest in the property was equal to the fee simple interest. Respondent cites no evidence in the record, because there is no such supporting testimony. In fact, the County's appraiser, Mr. Messner, expressly testified that he believed the actual income received at the Mall was not consistent with the market. (Tr., 1187: 16 – 1178:2.)

While Mr. Lennhoff did testify that he felt the subject property was essentially performing at market levels, he did so after studying the mall leases, researching tenant improvements and basing his income capitalization approach on effective market rent.

(Exhibit 1, pp. facing 19, facing 26, facing 27, 27-28 and 30, 33 and facing 40); (Tr., 144:19 – 146:14). Most significantly, Mr. Lennhoff recognized and made an adjustment to account for the fact that the market income at the subject property included partially gross rent leases by adding the 30% tax load factor to his capitalization rate.

The Tax Court's income capitalization approach analysis adopts the same general methodology utilized by Mr. Lennhoff in his appraisal report<sup>2</sup>; however, the Tax Court wrongly assumes that the income stream was based on all triple net rents when using a 6% factor for property taxes as the addition to the capitalization rate. The 6% factor is only appropriate if all the rents were triple net, but the undisputed evidence is that the property owner paid at least 30% of the property taxes. (Relator's May 7, 2012 Brief at p. facing 37.

Ultimately, the problem identified by Relator in its May 7, 2012 Brief is not that the income figures used by the Tax Court cannot be found anywhere in the record, like Respondent suggests in its Brief. (Respondent's Brief at p. 6.) The Tax Court started its analysis using the actual cash revenue from the subject mall. Instead, the problem is that

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<sup>2</sup> Respondent's claim that the Tax Court adopted Mr. Messner's methodology is patently wrong. Mr. Messner started with estimated NOI, then deducted for management fees and personal property and then added the entire estimated amount of real estate taxes to get to an adjusted NOI. Mr. Messner then loaded his capitalization rate with the full effective tax rate. The Tax Court's analysis, on the other hand, is more similar to Mr. Lennhoff's analysis.

no expert testified at trial that the actual income figures from the subject Mall were the correct starting point for the income capitalization approach calculations.<sup>3</sup>

This Court made this same point in Eden Prairie Mall I when it stated that the “tax court did not address whether changing one of EPM appraiser Lennhoff’s revenue assumptions would impact other revenue and expense assumptions, such as tenant revenues.” Eden Prairie Mall I, 797 N.W.2d at 197. In its decision on remand, the Tax Court changed Mr. Lennhoff’s income assumptions to actual rents, which actually included partially gross rents. Despite the mandate of this Court, the Tax Court did not analyze or discuss whether that change would impact Mr. Lennhoff’s other revenue assumptions, let alone make the necessary corresponding adjustments to accurately reflect Mr. Lennhoff’s undisputed testimony that the market required the property owner to pay 30% of the property taxes.

Ultimately, the cases cited by Respondent support Relator, not Respondent with respect to its argument that the Tax Court appropriately used actual income. In Continental Retail, LLC v. County of Hennepin, 801 N.W.2d 395, 401 (Minn. 2011), this Court held that there was insufficient evidence to support the petitioner’s argument that the actual rents were the same as market rents or that the leased fee interest was equal to the fee simple. The record is similarly insufficient here for the Tax Court’s determination that actual rents or rental income equal fee simple rents. In Crossroads Center v. Commissioner of Taxation, 176 N.W.2d 530, 535 (Minn. 1970), this Court held that

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<sup>3</sup> In its Brief, the Respondent did not, and was unable to, reference any citation to the record supporting its argument that its expert opined that the actual income was the correct starting point for calculating income under the income approach.

market rents, rather than the existing income stream, should be used in calculating value. Relator agrees, and the evidence in record taken as a whole indicates that market rents, not the existing actual income stream, should be used in this case as well.

**C. Respondent’s Misstates the Evidence When it Claims That the Tax Court’s NOI Falls Within the Range of the Expert’s Opinions.**

Respondent also argues that the Tax Court’s use of actual income as a starting point was not error because it leads to an NOI that falls within the range of the expert’s opinions. (Respondent’s Brief at pp. 9-10.) Respondent’s argument is factually wrong.

Respondent asserts that this Court should bracket the Tax Court’s NOI with Mr. Lennhoff’s “Income to TAB” figures *on the high end*. The evidence in the record taken as a whole does not support Respondent’s assertion.

First, Mr. Lennhoff expressly rejected the idea of capitalizing his “Income to TAB” as being inconsistent with generally accepted appraisal practices. (See, Exhibit 1, p. facing 37.) Mr. Lennhoff’s opinion was that his “Income to Real Property” figures should be capitalized into value. (Id.) Accordingly, while the Tax Court’s NOI may be lower than Mr. Lennhoff’s “Income to TAB,” it is certainly not lower than Mr. Lennhoff’s opinion of the appropriate income to capitalize in the income capitalization approach when calculating fee simple market value.

Second, the only way Respondent is able to argue that the Tax Court’s NOI falls within the range of the evidence is to use Mr. Messner’s NOI *as the low end* of the bracket and Mr. Lennhoff’s “Income to TAB” *as the high end*. However, bracketing the figures in this manner misstates the evidence in the record taken as a whole. The

evidence in the record taken as a whole fairly brackets the evidence only if Mr. Lennhoff's "Income to Real Property" serves *as the low end* of the bracket and Mr. Messner's NOI serves *as the high end*. Bracketing the NOI based on the evidence in the record taken as a whole establishes that the Tax Court's January 2, 2005 NOI is still outside the range of the expert's opinions.

**D. Respondent's Mischaracterizes the Korpacz Survey and Fails to Account for the Lack of Evidence in the Record Regarding the Survey's Respondents.**

Respondent's argument that the Korpacz survey supports the Tax Court's failure to analyze the issue of tenant improvements as directed by this Court is flawed for several reasons.

First, as discussed in detail above, this Court's express instructions on remand did not authorize the Tax Court to simply ignore the analysis of tenant improvements as "unnecessary" regardless of what the Korpacz survey does or does not provide. (See discussion at pp. 2-6, supra.)

Second, Respondent claims "the rates reported by Korpacz capitalize the NOI before tenant improvements, leasing commission and capital replacement reserves." (Respondent's Brief at p. 13.) Respondent's statement mischaracterizes the evidence. The Korpacz survey represents a summary of responses to a survey of market participants. (See e.g., Exhibit 108, second to last page.) As such, "the information represents investor's investment expectations and does not reflect actual property performances." (Id.) In other words, the survey is not a comparable sale, or even a

summary of comparable sales, unlike the authorities cited on page 12 of Respondent's Brief.

The survey participants include, but are not limited to, pension funds, investment bankers, REITs and pension fund advisors. (Id. at p. 36.) Some of those survey participants, but not all, report their projected capitalization rates before the deduction of tenant improvements. (Id.) In the case of some of the Korpacz survey participants that is not the case. For example, TI's are "an important cash flow forecast item" for investment bankers. (Id.) Moreover, "due to space constraints, not all responses are included" in the published report. (Id.) Therefore, Respondent's statement that "the rates reported by Korpacz capitalize the NOI before tenant improvements, leasing commission and capital replacement reserves" is an overgeneralization that is simply not supported by the evidence in the record taken as a whole.

Third, the the undisputed evidence is that the subject mall faces market conditions that require significant tenant improvements and the landlord's payment of 30% of the property taxes. There is no evidence in the record that these undisputed characteristics of the subject mall, drawn directly from the leases at the Mall, which only Mr. Lennhoff reviewed and analyzed, are also the prevailing characteristics of the properties the survey participants were considering in their responses.

The Korpacz survey does not identify the exact nature of the survey participants, the properties they are discussing or the markets in which they operate. This fact is highly relevant, since there is therefore no way to know whether the properties discussed by the survey participants are similar to the subject property in terms of their leases, store

sales, occupancy levels, or their respective market requirements for landlord paid tenant improvements and property taxes. For example, survey participants may be describing the purchase of malls with significantly less vacancy than the subject and in markets where landlords are not required by the market to invest significant funds into tenant improvements. If that is the case, whether or not tenant improvements are deducted before capitalizing income into value has a significantly lesser impact on value than is the case for the subject mall.

Therefore, without specific information regarding the comparability between the properties considered by the Korpacz survey respondents and the subject property, the capitalization rates reported in the survey alone – without additional corroborating evidence such as is contained in Mr. Lennhoff’s appraisal report – are neither a reliable indication of the appropriate capitalization rate to use in this case nor do they provide any reliable indication of how an appraiser should analyze tenant improvements and effective market rents. This is especially true here, where neither of Respondent’s experts conducted any analysis of the leases at the mall or conducted any research on tenant improvements at the subject property or in the market. (Tr., 1417:20-23.) (Tr., 925:13-22.)

### **III. THIS COURT HAS AUTHORITY TO REMAND THIS CASE TO THE DISTRICT COURT.**

Finally, Respondent argues that this Court lacks authority to remand this case to the district court as opposed to the Tax Court as requested by Relator. Respondent is wrong.

The governing Minnesota statute provides that

*[e]xcept for an appeal to the supreme court or any other appeal allowed under this subdivision, the Tax Court shall be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state, as defined in this subdivision, 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. § 271.05, subd. 5, *emphasis added*.

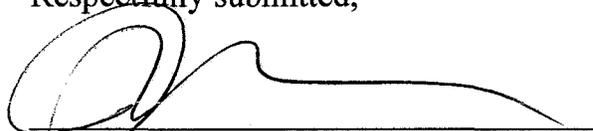
Here, the underlying petitions were each originally filed in the Hennepin County District Court. Each petition was then automatically transferred by the Hennepin County District Court by standing order to the Tax Court. Accordingly, these cases were originally filed under the mantle of the jurisdiction of the Hennepin County District Court, and jurisdiction was transferred to this Court when they were appealed to this Court.

As described in detail above, the Order on Remand exhibits a refusal by the Tax Court to comply with the unmistakable guidance, directions and mandate of this Court on remand in Eden Prairie Mall I. This Court has no reasonable basis upon which to presume that the Tax Court will comply with the guidance and instructions of this Court on remand from this appeal. Under the circumstances, there is good cause for this Court to either decide the issues presented and enter judgment, or in the alternative to remand the case back to the Hennepin County District Court under whose jurisdiction these cases were originally filed.

**CONCLUSION**

Based on the foregoing, Relator respectfully requests this Court issue a decision consistent with Eden Prairie Mall I and the arguments and requests contained in Relator's May 7, 2012 Brief.

Respectfully submitted,



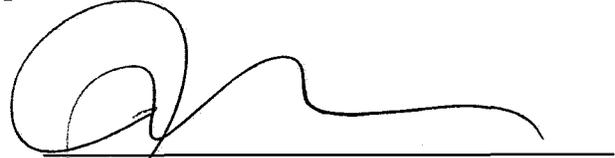
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**CERTIFICATE OF COMPLIANCE  
WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that Relator's Reply Brief submitted herein contains 5,037 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 Plus 2010, the word processing system used to prepare this Brief.



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