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APPELLATE COURTS

SEP 21 2005

FILED

STATE OF MINNESOTA

IN SUPREME COURT

RAYMOND M. THEOBALD AND  
SHIRLEY A. THEOBALD, Petitioners,

Vs.

LAKE COUNTY, MINNESOTA,  
Respondent.SHORT LETTER  
ARGUMENT OF APPELLANT  
UNDER RULE 128.01, Subd. 2

SUPREME COURT NUMBER A05-1657

TAX COURT NUMBER CX-04-181

As set forth in the statement of the case of Appellant, the issue is whether land that is comparable can be valued differently by the County Assessor based only on the number of parcels that are given separate taxpayer numbers by the County Auditor. The Lake County assessor has consistently maintained to Appellants and testified at trial that Appellant's land would have been valued \$29,200 less if the land was valued as one parcel rather than as eleven separate parcels with individual taxpayer numbers.

The County Auditor determines the legal description for property assigned a parcel number in accordance with Minn. Stat. Sec. 273.03. The assessor has the responsibility of assigning a value for each parcel. Minn. Stat. Sec. 273.08. In the assignment of value the assessor must give due weight to lands which are comparable in character, quality and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination. Minn. Stat. Sec. 273.12. The question is whether the assessor's obligation to give due weight to lands which are comparable is constrained by the auditor's determination of parcel descriptions. The overwhelming

purpose of the tax laws to provide that owners of comparable properties share the tax burden equally dictates that the number of parcels comprising comparable properties is of no consequence.

The Tax Court decision makes the issue especially significant because the court adopted the County Assessor's total valuation for eleven parcels, but attributed that valuation to only the three parcels on the lakeshore. The court, in its memorandum, concluded that those three parcels which comprise an area less than an acre (the minimum under the land use ordinance) were grandfathered. The lake frontage of 150 feet (rather than the 200 feet required by the land use ordinance) is grandfathered, but the total acreage of Appellant's property exceeded the required minimum area before and after the adoption of the land use ordinance. The assessor has the obligation to place a value on each description certified to him by the auditor, but it would not be difficult for the assessor to develop a formula for lakeshore parcels with more than one description. In the instant case it is not fair to place a full front foot value on the part of the land bordering the lake when that part is not sufficient to satisfy the land use ordinance and is actually physically inadequate to make a desirable property.

The Respondent's assessor offers the solution that the taxpayer can petition the auditor to consolidate the taxable parcels. When offering this advice the assessor presumably knows that the auditor makes his own rules for combining parcels into one description, and that one of those rules is that combined parcels will not include property in more than one platted block. In Appellant's case that means no less than three descriptions will be certified to the assessor. The assessor should not be able to discriminate against taxpayers who happen to own platted property.

Probably the biggest concern of any appellant from a tax court decision is whether the decision is within the wide discretion allowed the tax court. If the tax court addressed the issue raised in this appeal, its findings would probably be sustained. Appellants believe the court did not address the issue. All relevant portions of the findings of fact and memorandum are as follows:

Page 2, Paragraph 2: "All improvements are constructed on the lakeshore component which approximates 150 feet of lake shore frontage by an average 210-foot depth or .72 acre."

Page 4, Paragraph 9: "The Subject Property is comprised of the eleven parcels subject to separate valuations."

Page 6, Paragraph 1: "The Subject Property has approximately 150 feet of frontage and a depth of 210 feet, for a total of 31,500 square feet or just under ¼ acre. The Subject Property is considered grandfathered under the current zoning classification. It is comprised of eleven separate parcels of land."

Page 12, Paragraph 1: "At trial, Mr. Theobald indicated agreement with the County Assessor's valuation but argued that the land should be valued as one parcel. However, the Subject Property is comprised of eleven parcels and must be valued as such. We accept the figure of \$119,200 as representing the market value of the land."

As indicated in the last quote above, Appellants did agree with the assessor's determination of front foot value for land on White Iron Lake, but believe the front foot value should determine the value for all of Appellant's land, as is the case with comparable properties which are valued as one parcel.

It may seem apparent that this appeal is taken more out of frustration than out of a great need to correct a wrong. However, there are others in Lake County that are being treated similarly. Moreover, it is this taxpayers belief that valuation of property for tax purposes should be an open and transparent process. If the assessor is not willing to disclose his method of valuation and not willing to correct an incorrect method when it is discovered, the matter must be pursued in the courts. If the Tax Court won't deal with it, the Supreme Court is the last resort.

Respectfully submitted September 16, 2005

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A handwritten signature in cursive script, appearing to read "Raymond M. Theobald", written over a horizontal line.