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No. A11-128

STATE OF MINNESOTA
IN SUPREME COURT

78th Street OwnerCo, LLC,

Relator,

vs.

County of Hennepin,

Respondent.

BRIEF OF RELATOR 78TH STREET OWNERCO, LLC

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LEGAL ISSUES

- I. Did the Tax Court err when it determined that the lease in issue must be produced under the pre-2008 version of the 60-Day Rule when the uncontested evidence in the record was that the lease and its contents were wholly irrelevant to the analysis of the income and expenses attributable to the property in the determination of value of the subject hotel?**

How issue was raised in the trial court:

The issue of whether the pre-2008 version of the 60-Day Rule required leases when the lease and its contents were not relevant to the income and expenses attributable to the property in the determination of value of the subject hotel was raised expressly by Relator in its response to Hennepin County's Motion to Dismiss.

Trial court decision:

The Tax Court never addressed the issues of: (i) whether the lease or its contents were relevant to the income and expenses attributable to the property in the determination of value; (ii) the undisputed appraisal evidence in the record regarding relevancy; or (iii) how the broad standard of relevance announced by this Court should impact the analysis of whether the lease is required under the 60-Day Rule.

How issue was preserved on appeal:

The issue was preserved on appeal through Relator's response to Hennepin County's Motion to Dismiss.

Most Apposite Authority:

Irongate Enterprises, Inc. v. County of St. Louis, 736 N.W.2d 326 (Minn. 2007)
Kmart v. County of Stearns, 710 N.W.2d 761, 766 (Minn. 2006)

- II. Did the Tax Court fail to adequately address the 2008 amendments to Minn. Stat. §278.05, subd. 6, (the "60-Day Rule") and to correctly interpret those amendments as intended, when the Tax Court held that the Lease must be produced under the post-2008 version of the 60-Day rule?**

How issue was raised in the trial court:

The 2008 amendments to the 60-Day Rule were addressed in Relator's response to Hennepin County's Motion to Dismiss and the issue of whether the Tax Court correctly addressed the 2008 amendments to the 60-Day Rule was raised in Relator's Motion for Amended Findings and Conclusions of Law ("Motion for Amended Findings").

Trial court decision:

The Tax Court did not address the issue of the 2008 amendments to the 60-Day Rule in its November 23, 2010 Order. In its April 26, 2011 Order, the Tax Court disregarded both the plain meaning of the 2008 amendments to the 60-Day Rule as well as the Legislative History and decided instead to focus solely on certain language in the statute that did not change.

How issue was preserved on appeal:

This issue was preserved on appeal through Relator's response to Hennepin County's Motion to Dismiss and Relator's Motion for Amended Findings.

Most Apposite Authority:

Minn. Stat. §278.05, subd. 6(a) (2003)

Minn. Stat. §278.05, subd. 6(a) (2008)

Irongate Enterprises, Inc. v. County of St. Louis, 736 N.W.2d 326 (Minn. 2007)

- III. Did the Tax Court err when it determined that a rent roll must be produced when the uncontested evidence was that neither the Relator nor the hotel operator have ever created, prepared or maintained a rent roll of any kind, and none is customary in the hotel industry?**

How issue was raised in the trial court:

The issue of whether a rent roll was unavailable under the statutory exception to the 60-Day Rule was raised expressly by Relator in its response to Hennepin County's Motion to Dismiss and also in Relator's reply memorandum submitted in support of its Motion for Amended Findings.

Trial court decision:

The Tax Court concluded that the Relator should have created a rent roll, even though a rent roll did not exist and had never existed, and despite the unavailability provision of the 60-Day Rule, because information existed from which one could create a rent roll.

How issue was preserved on appeal:

The issue was preserved on appeal through Relator's response to Hennepin County's Motion to Dismiss.

Most Apposite Authority:

Minn. Stat. §278.05, subd. 6(a) (2008)

- IV. Did the Tax Court err when it determined percentage rent information must be produced when the uncontested evidence was that the lease in issue and its contents were wholly irrelevant to the income and expenses attributable to**

the property or the determination of value of the subject hotel, and when the Relator nevertheless did provide information regarding the total amount of rent paid including any percentage rent?

How issue was raised in the trial court:

The issue of whether percentage rent information must be produced was not raised in Hennepin County's Motion to Dismiss. This issue was first raised by Hennepin County during oral argument on its Motion to Dismiss and then discussed by the Tax Court in its November 23, 2010 decision. The issue of whether percentage rent information must also be produced, even though the total amount of rent paid, including percentage rent, was already provided, was addressed by Relator in its memorandum submitted in support of its Motion for Amended Findings.

Trial court decision:

The Tax Court concluded that the Relator had to produce the lease, because it contained percentage rent information, and rejected Relator's argument that percentage rent information need not have been produced in this case, despite the fact that the only evidence submitted on the issue unequivocally provided that the lease (and thus the percentage rent provisions of that lease) was not relevant to income and expense analysis under any of the three valuation methodologies in determining the fair market value of the real estate component of the subject hotel. The Tax Court did not address the issue of whether percentage rent information must also be produced when the total amount of rent paid was already produced.

How issue was preserved on appeal:

This issue was preserved on appeal through Relator's Motion for Amended Findings.

Most Apposite Authority:

Kmart Corp. v. County of Douglas, 639 N.W.2d 863 (Minn. 2002)

Kmart Corp. v. County of St. Louis, 639 N.W.2d 866 (Minn. 2002)

- V. **Does the Tax Court's decision render both the pre-2008 and post-2008 versions of the 60-Day Rule unconstitutionally vague as applied to the facts and circumstances of this case?**

How issue was raised in the trial court:

The issue of whether the Tax Court's decision rendered the pre-2008 and post-2008 versions of the 60-Day Rule was raised expressly by Relator in its Motion for Amended Findings.

Trial court decision:

The Tax Court determined that the Relator did not timely raise the issue and therefore refused to consider the issue.

How issue was preserved on appeal:

The issue was preserved on appeal through Relator's Motion for Amended Findings.

Most Apposite Authority:

State v. Orsello, 554 N.W.2d 70, 76 (Minn. 1996).

Montgomery Ward and Co., Inc. v. County of Hennepin, 450 N.W.2d 299 (Minn. 1990)

Kmart Corporation v. County of Stearns, File No. CX-00-404, et al. (Minn. Tax Ct. Order, March 3, 2005)

STATEMENT OF THE CASE AND THE FACTS

Relator 78th Street OwnerCo, LLC brought the underlying actions to contest the 2008 and 2009 property taxes on its hotel property located in Bloomington, Minnesota, commonly referred to as the Sofitel Hotel.¹ Both years, within the deadline to submit information under the 60-Day Rule, Relator provided the Hennepin County Assessor with detailed income and expense statements and other 60-Day Rule information related to the subject property. The income and expense statements identified all real estate-related income generated by the hotel, as well as all real estate-related and other operating expenses, including the total amount of rent paid by the hotel operator to the Relator. **Affidavit of Mark Reichel, Case File No. 27-CV-08-13046 (Reichel Aff. 1) Ex. A; and Affidavit of Mark Reichel, Case File No. 27-CV-09-08071 (Reichel Aff. 2) Ex. A.**

¹ Relator also contested the 2010 property taxes on the subject property and Hennepin County also moved to dismiss that appeal. However, after Hennepin County filed its motion to dismiss, the parties and the Tax Court discovered that on October 16, 2010, Relator's 2010 tax appeal had already been statutorily dismissed pursuant to Minn. Stat. §278.03 for the Relator's failure to pay the 2010 taxes when due. Accordingly, the Tax Court's subsequent Order dismissing the 2010 tax petition was vacated by the Tax Court and stipulated by the parties as moot.

The rent paid to the Relator was paid pursuant to a related party lease, which lease was entered into solely for purposes of compliance with rules governing REIT's under the Internal Revenue Code. **Affidavit of Barry Malkin ("Malkin Aff.") ¶ 3, A-013-014.** Because the subject property is a single tenant hotel, neither the Relator nor the hotel operator prepared or maintained a rent roll, so no rent rolls have ever been in existence and were not available to be produced. **Id. ¶ 4, A-14.** Hennepin County moved for dismissal of both cases, claiming that the 60-Day Rule statute, which statute was significantly amended in 2008, had not been satisfied on the grounds that both the pre-2008 and post-2008 versions required production of the actual lease and the post-2008 version also required production of a rent roll.

The County's motions were heard before Judge Kathleen H. Sanberg at the Minneapolis City Hall Courtroom on September 1, 2010. After the motion was submitted after briefing and argument, the Tax Court entered an Order Granting Motion to Dismiss on November 23, 2010, in which it held that Relator's 60-Day Rule compliance materials were incomplete because they did not include a copy of the lease, percentage rent information or a rent roll. **Order Granting Motion to Dismiss (Nov. 23, 2010) p. 2, Add., p. 02.** The Tax Court issued its decision notwithstanding the uncontested appraisal evidence by affidavit that the lease and its contents were not relevant to the analysis of income and expenses or the valuation of the subject hotel under any of the three approaches to value under generally accepted appraisal practices, and that neither Relator nor the hotel operator had ever prepared, produced or maintained any sort of rent rolls. **Malkin Aff. ¶ 4, A-14; Boris Aff. ¶ 5, A-17-18.** The appraisal

evidence in Mr. Boris' affidavit has never been refuted or responded to by Hennepin County by way of any affidavit or any other evidence of any kind at any time.

Thereafter, on December 8, 2010, Relator filed a motion for amended findings of fact and conclusions of law pursuant to Minn. Stat. §271.08 and Minn. R. Civ. P. 52.02 with regard to the Tax Court's November 23, 2010 Order. **Pet. Mot. for Amended Findings of Fact and Conclusions of Law (Dec. 8, 2010), A-019-020.** Relator's motion was heard on January 19, 2011, and the Tax Court issued its decision denying Relator's motion on April 26, 2011. **Order Denying Motion for Amended Findings (Apr. 26, 2011), Add., pp. 06-14.** In its decision, the Tax Court concluded that it was inappropriate to consider the issue of whether its November 23, 2010 Order rendered the 60-Day Rule unconstitutionally vague, because Relator had not raised that issue prior to the November 23, 2010 Order granting Hennepin County's original motion to dismiss. The Tax Court also reaffirmed its conclusion that the lease should have been produced under the pre-2008 version of the 60-Day Rule; that the 2008 amendments to the 60-Day Rule did not change its decision, because the language it relied upon did not change, notwithstanding the plain meaning and intention of the 2008 amendments; and that the post-2008 version of the 60-Day Rule required the Relator to create a rent roll for purposes of satisfying the 60-Day Rule, even though a rent roll did not exist and had never been created in the normal course of Relator's business. **Id. pp. 6-9, Add., pp. 11-14.**

STANDARD OF REVIEW

This Court has consistently held that “we review a Tax Court decision to determine whether the Court lacked jurisdiction, whether the Court’s decision is supported by the evidence and is in conformity with the law, and whether the Court committed any other error of law.” Eden Prairie Mall, LLC v. County of Hennepin, ___ N.W. 2d ___ (Minn. 2011), slip op. at 5, citing Jefferson v. Commissioner of Revenue, 631 N.W.2d 391, 394 (Minn. 2011).

This Court has summarized the standard of review applicable to a Tax Court summary judgment decisions as follows:

On appeal from summary judgment, we must determine “whether there are any genuine issues of material fact and whether the lower court erred in its application of the law.” Brookfield I, 584 N.W.2d at 392-93. This case involves the interpretation of a statute. Conclusions of law, including the interpretation of statutes, are reviewed by this court de novo. *See id.* at 393.

Brookfield Trade Center, Inc. v. County of Ramsey, 609 N.W.2d 868, 873-74 (Minn. 2000) (“Brookfield II”). *See also* Dealers Manufacturing Co. v. County of Anoka, 615 N.W.2d 76, 79 (Minn. 2000). An order granting dismissal, like summary judgment, is a dispositive order subject to de novo review. *See, e.g.,* BFW Co. v. County of Ramsey, 566 N.W.2d 702, 704 (Minn. 1997) (concluding that 60-Day Rule dismissal is reviewed “on a de novo basis”). Here, the Tax Court made erroneous rulings on questions of law, including questions of statutory interpretation, which this Court reviews de novo. Kmart Corporation v. County of Stearns, 710 N.W.2d 761, 765 (Minn. 2006).

This Court has also ruled that a decision of the Tax Court is erroneous and will be overturned if the Tax Court does not “carefully explain its reasoning for rejecting the

appraisal testimony ... and adequately describe the factual support in the record for its determination.” Eden Prairie Mall, LLC, N.W.2d at ____, slip op. at 15. It is reversible error if the Tax Court’s decision is not “reasonably supported by the record as a whole.” Id., slip op. at 12, *citing* Lewis v. County of Hennepin, 623 N.W.2d 258, 261 (Minn. 2001).

ARGUMENT

I. THE TAX COURT ERRED WHEN IT DETERMINED THAT THE LEASE IN ISSUE MUST BE PRODUCED UNDER THE 60-DAY RULE, AS IT EXISTED BOTH BEFORE AND AFTER THE 2008 AMENDMENTS, WHEN THE UNCONTESTED APPRAISAL EVIDENCE IN THE RECORD WAS THAT THE LEASE AND ITS CONTENTS WERE WHOLLY IRRELEVANT TO ANY DETERMINATION OF INCOME AND EXPENSES IN THE VALUATION OF THE SUBJECT HOTEL UNDER GENERALLY ACCEPTED APPRAISAL PRACTICES.

A. This Court’s Holding in Irongate Enterprises, Inc. v. County of St. Louis, 736 N.W.2d 326 (Minn. 2007) Was Based Upon Its Determination That The Leases In Question In That Case Were Directly Relevant To The Income and Expense Analysis in the Valuation of the Irongate Regional Shopping Center.

In June of 2008, when Relator complied with the requirements of the 60-Day Rule in connection with its 2008 appeal, the pre-2008 amendment version of the 60-Day Rule was in effect. It is the pre-2008 amendment version of the 60-Day Rule that was interpreted by this Court in Irongate Enterprises, Inc. v. County of St. Louis, 736 N.W.2d 326 (Minn. 2007). Respondent is correct that this Court held that leases must be produced in the Irongate case, which involved a *shopping center*, under the 60-Day Rule. However, the reasoning articulated by this Court in Irongate as applied to that shopping center does not apply to the present case involving a hotel.

In Irongate, this Court determined that leases were required based on this Court's articulated standard of relevancy; the Irongate decision affirmed the "broad standard of relevancy" described in Kmart v. County of Stearns, 710 N.W.2d 761, 766 (Minn. 2006). Based on this broad standard of relevancy, this Court stated that the 60-Day Rule required production of all information in a party's possession "bearing on the income and expenses attributable to the property" in the valuation analysis under generally accepted appraisal practices. Irongate Enterprises, Inc., 736 N.W.2d at 331. Because the undisputed assessor testimony in Irongate was that the leases in the Irongate shopping center "bear directly on the ability of the property to produce income, and in turn, are directly related to the value of the property," this Court held that such leases must be produced. Id. at 333.

B. The Requirement That A Document Must Be Relevant To The Determination of Value Before It Will Be Required Under The 60-Day Rule is Consistent With Other Minnesota Supreme Court Decisions Interpreting The Pre-2008 Version Of The 60-Day Rule.

This Court has used a relevancy analysis similar to its analysis in Irongate when determining whether other documents must be produced in other cases interpreting the pre-2008 version of the 60-Day Rule as well.

For example, in Kmart v. County of Becker, 639 N.W. 2d 856 (Minn. 2002), the issue was whether information regarding the business income (i.e.: the level of retail sales) of a Kmart department store must be produced in connection with the 60-Day Rule. In that case, there was a contingency clause in the lease triggering an increase in rent if the level of store sales exceeded an identified level. Because the level of store retail sales

directly impacted the level of rent, this Court determined that, in that case, information regarding the store retail sales was relevant, because without it, “the assessor could not begin the valuation process.” Id. at 861.

Similarly, in Kmart v. County of Stearns, the disputed information related to certain tenant paid real estate related expenses. This Court held:

[c]onsistent with our past decisions, we interpret the 60-Day Rule to require production of expense information that is useful and relevant to the appraisal process. ***Because*** the undisputed facts of this case and the generally recognized principals of real estate appraisal make it clear that tenant-paid real estate expenses are useful and relevant to the appraisal process, ***we interpret*** the 60-Day Rule to require that they be produced.

Kmart v. County of Stearns, 710 N.W.2d at 766 (*emphasis added*).

C. Related Party Hotel Leases Created Solely To Meet Income Tax Requirements Related to REITs Are Not Relevant or Useful To The Appraisal of the Market Value of the Fee Simple Interest In A Hotel, And Therefore Are Not Required Under The 60-Day Rule.

The significant and dispositive distinction between this Court’s holding in Irongate and the facts of the present controversy relate to the type of property under appeal and the appropriate valuation analysis under generally accepted appraisal practices. The property under appeal in the Irongate case was a shopping center; thus, the leases in issue were market rate leases with unrelated parties, namely the tenants of the shopping center. Such leases and the income stream they produce are central to the analysis of income and expenses attributable to the property when valuing a shopping center under the income approach. See e.g., Shopping Center Appraisal and Analysis, 2nd Ed., Vernor, Amundson, Johnson and Rabianski (Appraisal Institute 2009), pp. 197-198.

A hotel, on the other hand, economically functions as a very different type of property, which therefore requires a very different type of appraisal analysis and consequently a very different result in the interpretation of the 60-Day Rule. As explained in detail in the Affidavit of Daniel Boris, any lease (much less a related party lease² created solely to meet the requirements of a REIT under income tax law such as the lease in issue in this case) is wholly irrelevant to the analysis of value when valuating a hotel under generally accepted appraisal practices involving the three valuation methods utilized by appraisers. **Boris Aff. ¶ 5, A-017-018.** This appraisal evidence was not contradicted or even responded to in anyway by Hennepin County in these proceedings. Nonetheless, the Tax Court ignored this uncontested evidence in its decision entirely. The Tax Court's failure to consider or even address this uncontested appraisal evidence was error as a matter of law. This Court has recently stated that if the Tax Court is to reject the appraisal evidence offered it must adequately describe the factual support in the record for doing so, and must base its decision on reasonable support in the evidentiary record. Eden Prairie Mall, LLC, ___ N.W.2d at ___ slip op. at 15.

Hennepin County simply did not submit any evidence of any nature whatsoever that the lease in this case was even remotely relevant or useful to determine value under

² The Minnesota Tax Court had determined that the existence of a related party lease renders a property "income-producing" under the 60-Day Rule. See e.g., SPX v. Corp. v. County of Steele, File No. CX-01-342 (Order, Minn. Tax Ct. Dec., 26, 2002). However, that is not the issue here. Relator does not dispute that the subject property is income-producing, and the Relator has provided extensive financial information in compliance with the 60-Day Rule. Rather, Relator argues that a related party financing lease is wholly irrelevant to valuing a hotel property under the 60-Day Rule, and since not relevant or useful to the appraisal process, that document need not be produced.

any of the three valuation methods utilized by appraisers when valuing a hotel. Hennepin County failed to produce such evidence, because no such evidence exists. A lease is not relevant to the inquiry under either the cost or sales comparison approach. Moreover, in valuing a hotel under generally accepted appraisal practices, the income used in the income approach is not derived from any lease related to the hotel ownership, whether a financing lease, related party lease, or otherwise. See Boris Aff. ¶ 5, A-017-018.

Rather, the income customarily and properly used in the income approach when valuing the fee simple interest in a hotel is instead derived from the analysis of room revenues plus other ancillary revenue sources such as food and beverage sales, telephone charges and other miscellaneous income. Hotels & Motels Valuations and Market Studies, Rushmore and Baum (Appraisal Institute 2001), p. 243. In some hotels, the hotel will lease a minor portion or portions of the real property to another business, such as a gift shop or restaurant; in those circumstances, the rent received from such a lease would be included in the stream of income. Id. at p. 261. However, those facts do not exist in the present controversy; there are no such leases here. Under the facts at issue in this case, we are addressing only a single lease between related entities of the entire hotel real property created solely for REIT qualification purposes under the Internal Revenue Code.

As referenced in the Affidavit of Mark Reichel, City of Bloomington Assessor's Office, the lease is identified as an expense on the profit and loss statements of the hotel. **Reichel Affs. 1 and 2 ¶¶ 6.** The hotel lease is an expense to the business operations of the hotel. However, as explained by Mr. Boris, because the lease was created for REIT

income tax related purposes only, it has no relevance or materiality in estimating the value of the fee simple interest of the taxable real property in issue. **Boris Aff. ¶ 5, A-017-018.** The lease expense is treated similar to other business related expenses, such as interest, depreciation and amortization expenses, and is not an expense considered in the valuation of the fee simple interest in the real estate. Like other business related expenses, the lease expense is specifically omitted from the analysis of the value of the fee simple interest under the income approach. Hotels & Motels Valuations and Market Studies, Rushmore and Baum (Appraisal Institute 2001), pp. 241-242. Therefore, for a hotel property, as contrasted to a shopping center, the lease does not “bear directly on the ability of the property to produce income, and in turn, [is not] directly [or even indirectly] related to the value of the property” under this Court’s holding in the Kmart cases and Irongate. Accordingly, such a lease need not be produced in the present controversy under the requirements of the 60-Day Rule.

D. BFW Co. v. County of Ramsey Does Not Stand For The Proposition That Relevance Is Not Considered A Factor In Determining Whether A Document Is Required Under The 60-Day Rule.

In support of its motion to dismiss Relator’s tax appeals, Hennepin County relied on a solitary sentence from BFW Co. v. County of Ramsey, 556 N.W.2d 702 (Minn. 1997) to imply that a standard of relevancy is not considered and that a lease must be produced in every case under Irongate, even if the lease is wholly irrelevant to value. The conclusion of the Tax Court agrees with Hennepin County. The problem is that the sentence cited by Respondent is not only dicta, but is presented out of context, and the BFW decision fails to provide any meaningful support for the Tax Court’s conclusion.

The case in BFW involved a taxpayer who failed to produce any documents under the 60-Day Rule, including documents admittedly relevant and required under the 60-Day Rule. The taxpayer did not produce any documents, whatsoever, for the stated reason that the income and expense statements that did exist were preliminary and incomplete and had not been verified as accurate by the outside accountants. Accordingly, the taxpayer argued the statutorily required documents were “unavailable” under the 60-Day Rule.

This Court in BFW disagreed with the taxpayer, holding although incomplete and unverified, preliminary income and expense statements are not “unavailable” and must be produced, even if the preliminary income and expense statements themselves might not ultimately allow the assessor to reach a final conclusion regarding value. That is a radically different holding than one stating that a standard of relevance to the valuation process need not be considered. This Court’s decisions issued subsequent to BFW make clear that a standard of relevance not only must be considered, but is a threshold factor in determining whether a document is required under the 60-Day Rule. Because a lease is not relevant to analyzing income and expenses or in any other way when valuing a hotel under generally accepted appraisal practices, it is not required in a hotel case under the 60-Day Rule.³

II. THE TAX COURT FAILED TO ADEQUATELY ADDRESS THE 2008 AMENDMENTS TO THE 60-DAY RULE AS INTENDED BY THE LEGISLATURE OR TO CORRECTLY INTERPRET THOSE

³ Notably, the Hennepin County Attorney’s office agreed that under the proper interpretation of the 60-Day Rule, leases need not be produced in any case. See Reichel Affs. 1 and 2, Exhibits B.

AMENDMENTS TO CONCLUDE THAT A LEASE NEED NOT BE PRODUCED UNDER THE POST-2008 VERSION OF THE 60-DAY RULE.

A. The Legislative History Confirms That The 2008 Amendments to The 60-Day Rule Were Intended to Eliminate The Requirement That Leases Be Produced.

On March 7, 2008, the Minnesota legislature enacted an amendment to the 60-Day Rule, which expressly took effect and applied to the Chapter 278 property tax appeal filed by Relator in 2009, the second proceeding at issue in this appeal. Prior to the amendment, the statute read as follows:

Information, including income and expense figures, verified net rentable areas, and anticipated income and expenses, for income-producing property must be provided to the county assessor no later than 60 days after the applicable filing deadline contained in section 278.01, subdivision 1 or 4. Failure to provide the information required in this paragraph shall result in the dismissal of the petition, unless (1) the failure to provide it was due to the unavailability of the evidence at the time that the information was due, or (2) the petitioner was not aware of or informed of the requirement to provide the information.

Minn. Stat. §278.05, subd. 6(a) (2003). The term “income and expense figures” in the pre-2008 version statute was not specifically defined.

It was the Irongate decision of this Court, discussed above, that ultimately prompted the 2008 amendment to the 60-Day Rule. In Irongate, this Court acknowledged that leases were not identified in the statute as required, but nevertheless held that they were required in that shopping center case because they contained information “*bearing on the income and expenses* attributable to the property.” Irongate Enterprises, Inc., 736 N.W.2d at 331 (*emphasis added*). This Court expressly noted in Irongate that “any disagreement with the policy underlying that decision or the rule

should be directed to the Legislature.” *Id.*

The 60-Day Rule statute was amended during the next legislative session following the Irongate decision, reportedly due to widespread perceptions of vagueness in the statute regarding what must and must not be produced. The bill amending the 60-Day Rule (HF 1947) had been originally introduced during the 2007 legislative session; on March 16, 2007, the Property Tax Relief and Local Sales Tax Division of the Minnesota House of Representatives held a public hearing on the bill that was introduced. **Pet. R. Memo. in Support of Mot. for Amended Findings of Fact and Conclusions of Law (Jan. 7, 2011) p. 4, A-040.**

As is frequently the case in the legislative process, if not the very purpose of the legislative process, after the public hearings and additional committee meetings, the language of HF 1947 was amended from the language originally introduced. One of the most significant amendments was to specifically include the list of items on the one-page form that Mr. Tom May, now retired Hennepin County Assessor, submitted and discussed during his testimony on the March 16, 2007 hearing. ***Id.*** Mr. May testified that that list constituted the items required in Hennepin County’s estimation to meet the purposes of the 60-Day Rule. ***Id.*** This amended language was then incorporated into a new bill, HF 2268, along with many other tax related matters to become the “2007 Tax Bill” that was ultimately approved by both Houses of the Minnesota Legislature. ***Id.* pp. 4-5, Ex. A, A-049-050.**

Subsequently, then Governor Pawlenty did not approve of certain unrelated provisions of the 2007 Tax Bill, and on March 28, 2007, he vetoed the 2007 Tax Bill in

its entirety. **Id. p. 5, A-041.** Almost a year later, on March 4, 2008, the Minnesota House of Representatives approved HF 3201, which was virtually identical to the 2007 Tax Bill, and included language identical to the language amending the 60-Day Rule which the Legislature had adopted during the 2007 legislative session. **Id.** The Minnesota Senate then removed from the 2008 Legislations the provisions taken from the 2007 Tax Bill to which the Governor had previously objected, and passed HF 3201 on March 6, 2008. On March 7, 2008, the Governor signed the modified 2007 Tax Bill, which bill included the amendments to the 60-Day Rule that were originally introduced in HF 1947, albeit with some refinements in language. **Id. p. 5, Ex. B, A-051.**

The final language of the amended statute expressly defined the phrase “income and expense figures” to constitute documents in the form of the following:

- (1) year-end financial statements for the year prior to the assessment date,
- (2) year-end financial statements for the year of the assessment date, and
- (3) rent rolls on the assessment date including tenant name, lease start and end dates, option terms, base rent, square footage leased and vacant space.

Minn. Stat. §278.05, subd. 6(a) (2008). Contrary to the vagueness of the pre-2008 version of the 60-Day Rule, the list contained in the post-2008 amendments version is identified as a complete list of items required to satisfy the “income and expense figures” portion of the 60-Day Rule. The clarifying language expressly does not require that leases be produced. The list includes only a requirement that rent rolls be produced, notably containing the most relevant information found in most leases, subject to the unavailability provision. Thus, under the plain meaning of the statute, leases were

specifically intended to be omitted, since the list does not identify leases. If the Legislature had intended the production of the leases, the statute would have said so.

A review of the transcript of the Minnesota House Legislative Committee meeting on the 2008 amendments to the 60-Day Rule strongly supports the conclusion that in amending the 60-Day Rule, the Legislature intended to clarify what documents must be produced and purposefully intended to eliminate any requirement that leases be produced. Significant testimony was offered that requiring the production of leases is onerous and burdensome on taxpayers. **Pet. Memo in Support of Mot. for Amended Findings of Fact and Conclusions of Law (Dec. 8, 2010), Ex. A p. 3, A-030.** Additionally, then Senior Assistant Hennepin County Attorney, Robert Rudy, testified not only that it was his opinion that the language of the pre-2008 version of the statute did not identify leases, but that by and large his office did not require leases even under the pre-2008 version of the rule. **Pet. R. Memo. (Jan. 7, 2011) p. 7, A-034.**

Notably, the 60-Day Rule has since been amended again in 2011, this time primarily in response to the Tax Court's decision below in the present controversy requiring that leases must still be produced even under the post-2008 version of the 60-Day Rule. The amended statute, now sometimes referred to as the "August 1 Rule" (because the deadline has now been extended from 60 days after April 30 to August 1) removes the word "including" from the statute and specifically states the intention that "[t]he information required to be provided to the county assessor under paragraph (a) does not include leases." Minn. Stat. §278.05, subd. 6 (2011). The Bill Summary prepared by the Minnesota House of Representatives Research Department in connection

with the amendment states that “under current law” (i.e.: the post-2008 version of the 60-Day Rule in issue in the present appeal) property owners are required to provide a “listed set of documents.” **A-062.** The Bill Summary goes to state that the amendment will remove any requirement that leases be produced “which is not explicitly contained in the statutory language but has been interpreted by the tax court to apply.” **Id.** Notably, no intention by the Legislature that leases were ever required under the 60-Day Rule is expressed.

Taken together, these two statements by the Legislature indicate that it did not intend to require that leases be produced when it modified Minn. Stat. §278.05, subd. 6 in 2008. This interpretation of Legislative intent is further supported by the comments of Representative Loon, one of the authors of the 2011 amendments to Minn. Stat. §278.05, subd. 6., who stated at the hearing during which the 2011 amendment was introduced that one of the purposes of the amendment was to increase “understandability for taxpayers.” **A-061.** If the Tax Court below had interpreted the post-2008 version of the statute in the present controversy as the Legislature originally intended, “understandability” would not have needed to be increased by the Legislature.

The Tax Court’s November 23, 2010 Order Granting Motion to Dismiss failed to acknowledge or address the 2008 change in the 60-Day Rule statute by the Legislature in any way, despite the fact that one of the two Petitions in issue were filed *after* the amendment to the statute took effect. Instead, this Court cited the post-2008 version of the statute, and applied that version of the statute to both Petitions in issue without any recognition of the Legislature’s intention as confirmed by both: (i) the plain meaning of

the changes in the wording of the statute, and (ii) the Legislative history. Moreover, the Court applied case law interpreting the pre-2008 version of the 60-Day Rule to interpret the application of the 60-Day Rule to facts occurring both before and after the effective date of the 2008 amendment.

In its April 26, 2011 Order Denying Motion for Amended Findings, the Tax Court concluded that the change in the wording of the 60-Day Rule did not mandate a change in its previous Order below, because the statutory language it relied on did not change. While the Tax Court did not state precisely what language in the statute it was relying upon, it was apparently relying on the word “including” in the statute that was not removed from the statute when the statute was amended in 2008. The Tax Court’s conclusion fails to give adequate consideration to the Legislature’s manifest intention and the plain meaning of the change in wording when the Legislature amended the statute.

B. This Court’s Holding In the Irongate Case Was Not Based on the Word “Including” in the 60-Day Rule.

The error in the Tax Court’s reasoning is found in the Tax Court’s erroneous conclusion regarding this Court’s holding in Irongate. This Court did not hold that the word “including” in the statute should be interpreted to require the production of leases in all cases as a separate but unidentified category under the 60-Day Rule. Id., at 330-331.

In Irongate, this Court concluded that

(b)ecause leases provide information bearing on income and expense data, Irongate could reasonably anticipate providing leases under the 60-day rule.

Id., at 331.

There is a dispositive distinction between a lease being required as a document included in the specifically defined category of “income and expenses figures”, and a lease being required as a separate category of information not expressly identified in the pre-2008 version of the 60-Day Rule. At the time the Irongate case was decided, the category of “income and expense figures” was not defined in the statute. This Court interpreted the pre-2008 version of the statute to require leases under some circumstances where leases are relevant to the determination of the “income and expense figures” in the valuation process.

However, the 2008 Legislative amendment to the statute expressly changed the law. After the 2008 Legislative amendment, the category of required “income and expense figures” was specifically defined to be

in the form of (1) year-end financial statements for the year prior to the assessment date, (2) year-end financial statements for the year of the assessment date, and (3) rent rolls on the assessment date including tenant name, lease start and end dates, option terms, base rent, square footage leased and vacant space.

Minn. Stat. §278.05, subd. 6 (2008) (*emphasis added*). This specific list of items, which notably does not include leases, is the same list of items included on the one the one-page form that Mr. May submitted and discussed during his testimony during the March 16, 2007 House Tax Committee hearing, where he testified the listed items were the only documents required in Hennepin County’s estimation under the 60-Day Rule. Similarly, Mr. Rudy testified at that same hearing that by and large Hennepin County did not require leases. **Pet. Memo in Support of Mot. For Amended Findings of Fact and Conclusions of Law (Dec. 8, 2010), attachment at p. 8, A-035.** It was after that hearing

that the Legislature amended the 60-Day Rule to expressly define the category of income and expense figures to be in the form of the three enumerated items only, which enumerated items expressly did not include leases.

Accordingly, the plain meaning of the 2008 amendments and the Legislative history of the 2008 amendments to the 60-Day Rule both confirm that the Legislature intended to expressly exclude any requirement that leases be produced. Any finding to the contrary would defy the plain meaning of the words enacted, since it would render the amendment adding the phrase “income and expense figures *in the form of*” the enumerated items to be essentially meaningless, if not inaccurate.

This Court provided guidance regarding statutory construction in BFW.

When interpreting statutes, Minnesota law requires us to ‘ascertain and effectuate the intention of the legislature.’ Minn. Stat. § 645.16 (1996). In doing so, we must first look to a statute’s text, and only if we find those words to be ambiguous, are we to look into other matters to determine such intention. Id. If we find the words of the statute to be ‘free from all ambiguity,’ the legislature has directed us to not disregard ‘the letter of the law ... under the context of pursuing the spirit.’ Id.

BFW, 566 N.W.2d at 705.

Thus, if the plain meaning of the 2008 amendments is not sufficient, then the Irongate decision and the Legislative history in response to Irongate are properly considered collectively along with the plain meaning of the 2008 amendments in ascertaining the intention of the Legislature. The Legislature’s retention of the word “including” suggests that while there may be some other information, which in some circumstance might be required under the 60-Day Rule, information related to the

category of “income and expense figures” is intended to be limited to the three enumerated items and does not require the production of leases.

III. THE TAX COURT ERRED WHEN IT DETERMINED THAT A RENT ROLL MUST BE PRODUCED WHEN THE UNCONTESTED EVIDENCE WAS THAT NEITHER THE RELATOR NOR THE HOTEL OPERATOR EVER CREATED, PREPARED OR MAINTAINED A RENT ROLL.

The Tax Court also determined that the post-2008 version of the 60-Day Rule expressly requires the production of rent rolls, and Relator’s 2009 Petition should be dismissed because it did not provide a rent roll.

A. A Rent Roll Was Never Prepared by The Relator or the Hotel Operator in this Case, Because It is Not a Document that Would be Relevant to the Operation Of or The Valuation Of The Hotel.

The Tax Court adopted Hennepin County’s argument that the production of a rent roll is critical because the rent total identified on the profit and loss statement produced may represent the rent payments of more than one tenant. While that argument may hold water for a multi-tenant property, like the properties in Irongate or BFW, the property in issue here is a hotel. The only evidence before the Tax Court established that the rent identified as an expense on the hotel profit and loss statement appeared solely because the Relator produced the profit and loss statement of the tenant operator of the hotel. The Tax Court ignored the undisputed evidence in the record in its conclusion that the landlord’s income and expense figures must be produced. The relevant financial information for the valuation of a hotel, such as the room revenues, room expenses, franchise fees, operations and maintenance expenses, are all found on the profit and loss statement of the operator of the hotel. See Boris Aff. ¶ 4, A-017; see also, Hotels &

Motels Valuations and Market Studies, Rushmore and Baum, Appraisal Institute (2001), p. 286 -302. This is the reason that Relator produced the hotel operator's income and expense statements: to provide the County and the assessor with information necessary to value a hotel under generally accepted appraisal practices.

The profit and loss statement of the landlord, which would have the lease identified as an income item, is wholly irrelevant to the analysis of income and expenses and the determination of the fee simple value in this case. The only and uncontested evidence before the Court is that the lease in issue is a related party lease entered into solely for purposes of maintaining REIT rules under the Internal Revenue Code, and that such a hotel lease is wholly irrelevant to any valuation analysis of the subject hotel. The landlord's income and expense statement would include none of the income and expenses required to value a hotel under generally accepted appraisal practices. See Boris Aff. ¶ 5, A-017-018. It is precisely that reason that the income and expenses statements of the hotel operations were provided – they are the only ones relevant to the valuation issues in these proceedings. The Tax Court's confusion on this issue represents a fundamental disregard of the undisputed appraisal evidence and the valuation methodologies used to value the real property of a hotel, and thereby deviates from the only evidence offered on the issue – the Affidavit of Mr. Boris.

B. The Tax Court’s Conclusion That the Relator Had a Duty to Create a Rent Roll Solely for Purposes of Satisfying the 60-Day Rule Is Not Supported By Existing Law and Causes Taxpayers Significant Confusion About What is Required Under the 60-Day Rule.

The Tax Court’s analysis on the issue of unavailability is incomplete and incorrect. Both the pre-2008 and the post-2008 version of the 60-Day Rule contain the following provision:

[f]ailure to provide the information required in this paragraph shall result in the dismissal of the petition, unless (1) the failure to provide it was due to the unavailability of the evidence at the time that the information was due...

Minn. Stat. §278.05, subd. 6(a). As is explained in detail in the Affidavit of Barry Malkin, neither related entity to the so called lease had ever prepared at any time any form of rent roll in connection with the property in the ordinary course of business. **Malkin Aff. ¶ 4, A-014.** Accordingly, no rent rolls currently exist or ever have existed in connection with the property. Therefore, Relator’s failure to produce rent rolls in connection with the 60-Day Rule in 2008 and 2009 “was due to the unavailability of the [rent rolls] at the time the information was due.” The plain meaning of the 60-Day Rule does not support the dismissal of the Petitions.

The Tax Court concluded that the unavailability clause does not apply because the information was available that would otherwise be contained in a rent roll if one existed, and that therefore, the Relator had a duty to create a rent roll solely for purposes of satisfying the 60-Day Rule. **Order (Apr. 26, 2011) pp. 6-7, Add., pp. 11-12.** No Court has ever interpreted the 60-Day Rule to require a taxpayer to create documents that do not exist solely for purposes of satisfying the requirements of the 60-Day Rule.

To the contrary, this Court has held that unaudited financial statements that did exist and that were within the taxpayer's possession, must be produced, because they are "available." BFW, 556 N.W.2d at 705-706. However, this Court did not hold that the taxpayer was required under the 60-Day Rule to create audited financial statements. The Tax Court below in this case required the Relator to create documents that are not even in any preliminary or unaudited form in order to comply with the 60-Day Rule. This requirement eviscerates the unavailability exception and contradicts the plain meaning of the statute.

This Court should not expand the 60-Day Rule to include a requirement that a taxpayer must create documents that do not already exist solely to satisfy the 60-Day Rule.⁴ The Tax Court's stated basis for its conclusion – the concern that tax court litigants might intentionally avoid keeping written or electronic records, solely to avoid production of such data under the 60-Day Rule – is without any reasonable support in the evidentiary record. **Order (Apr. 26, 2011) p. 7, Add., p. 12.** The types of documents required by the 60-Day Rule are documents relevant and useful to the appraisal process precisely because they are used by owners and managers of income producing property in the management of the property itself. Documents relevant and useful to the ownership and management of the property are maintained because they are essential. It would make no business sense for a property owner or manager to intentionally fail to keep such records solely to avoid production under the 60-Day Rule. Property owners and

⁴ The County's argument, that "unavailability" only related to events in the future which have not yet occurred, is contrary to the plain meaning of the term "unavailable".

managers are in the business of owning and managing property, and they maintain records and create documents that are helpful and necessary for them to do so. There is no evidentiary support for the notion that taxpayers would avoid preparing income statements and rent rolls solely to avoid sending them to the assessor in the event of a tax appeal. Any such action would impair their own successful operation of their property.

Requiring taxpayers to create documents that do not already exist, solely for purposes of satisfying the 60-Day Rule, would place a burden on taxpayers that is undue and unprecedented. It would create a slippery slope of precedent leaving taxpayers with significant confusion regarding precisely what types of documents they must create and under what circumstances they must create them. For example, would a taxpayer be required to create a budget if they don't normally create a budget in normal course of their business? Under the Tax Court's ruling, it could be argued that the information necessary to prepare a budget is available.

Such a requirement would place a tremendous burden on taxpayers, especially smaller taxpayers, and ultimately would be of little use to an assessor in estimating market value. The purpose of the 60-Day Rule is to "provide an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the court in matters where the taxpayer claims that his real estate has been partially, unfairly, or unequally assessed." BFW, 566 N.W.2d at 702. "It is not to provide the county with the means to snare unwary petitioners because they did not provide every bit of possibly relevant data within the 60-day Period." Eden Prairie Mall,

L.L.C. v. County of Hennepin, File No. TC-27206 (Minn. Tax Court Order, Dec. 16, 1999).

IV. THE TAX COURT ERRED WHEN IT DETERMINED PERCENTAGE RENT INFORMATION MUST BE PRODUCED WHEN THE UNCONTESTED EVIDENCE IN THE RECORD WAS THAT THE LEASE IN ISSUE AND ITS CONTENTS WERE WHOLLY IRRELEVANT TO ANY DETERMINATION OF VALUE OF THE SUBJECT HOTEL, AND WHEN THE RELATOR NEVERTHELESS DID PROVIDE INFORMATION REGARDING THE TOTAL AMOUNT OF RENT PAID.

The Tax Court also concluded that the Relator had to produce the lease because it contained percentage rent information, based upon two pre-2008 60-Day Rule cases. The Tax Court rejected Relator's argument that percentage rent information need not have been produced in this case, despite the fact that the only evidence submitted on the issue clearly provided that the lease (and thus the percentage rent information) was not relevant to any of the valuation methodologies in determining the fair market value of the real estate component of the subject hotel. **Boris Aff. ¶ 5, A-017-018.** Relator has already addressed the Tax Court's error in refusing to properly consider the uncontested evidence regarding relevancy in this matter and why the 60-Day Rule does not require the production of irrelevant material. See supra, commencing at p. 8. Relator will not reargue those points here.

The more significant error of the Tax Court on this specific issue, however, is the fact that the Relator did produce sufficient information regarding percentage rent. The cases interpreting the pre-2008 version of the 60-Day Rule involved a retail store and held that in those circumstances percentage rent calculations must be produced. See e.g., Kmart Corp. v. County of Douglas, 639 N.W.2d 863 (Minn. 2002); Kmart Corp. v.

County of St. Louis, 639 N.W.2d 866 (Minn. 2002). However, that case law is readily distinguishable from the facts of this case. In the Kmart cases, the taxpayer produced lease information identifying a percentage rent clause, but failed to provide information regarding how much total rent (i.e., base rent plus percentage rent) it had actually paid. Under those circumstances, this Court held that Kmart did not satisfy the requirements of the 60-Day Rule. Here, the total rent figures missing from the Kmart cases were admittedly provided. Accordingly, information regarding how the total rent was calculated is unnecessary, since that information would be duplicative and redundant. The 60-Day Rule does not require a taxpayer to produce the same information in multiple forms.

V. THE TAX COURT'S DECISION RENDERS BOTH THE PRE-2008 AND POST-2008 VERSIONS OF THE 60-DAY RULE UNCONSTITUTIONALLY VAGUE AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS CASE.

“The doctrine of vagueness is embodied in the due process clauses of the Fifth and Fourteenth Amendments. Due process incorporates notions of fair notice or warning.” Geiger v. City of Eagan, 618 F.2d 26, 28 (8th Cir. 1980). In order to comply with due process, “statutes must be written in such a manner that persons of ordinary intelligence need not guess at their meaning or differ as to their application.” State v. Orsello, 554 N.W.2d 70, 76 (Minn. 1996). Orsello relied upon the seminal United States Supreme Court opinion of Connally v. General Construction Co., 269 U.S. 385, 391 (1926), in which the Court held:

[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its

meaning and differ as to its application violates the first essential of due process of law.

As the United States Supreme Court explained in Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972):

Vague laws offend several important values. . . . Vague laws may trap the innocent by not providing fair warning. . . . A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

The Tax Court refused to consider Relator's argument that its decision rendered both the pre-2008 and post-2008 versions of the 60-Day Rule unconstitutionally vague on the ground that the Relator did not raise that issue in its original response to Hennepin County's Motion to Dismiss. The Tax Court's refusal to consider this issue makes no logical sense. Relator's constitutional argument is that the Tax Court's interpretation of the 60-Day Rule in its November 23, 2010 Order Granting Motion to Dismiss has rendered the statute so vague as to make it unconstitutional. The Tax Court's analysis could not have been known, and this argument, by definition, could not have been made, until after the Court issued its November 23, 2010 Order. Accordingly, Relator's argument was timely, since it was made at the first possible opportunity.

Even though the Minnesota Legislature expressly intended to clarify the 60-Day Rule through its 2008 amendment, the Tax Court fundamentally blurred the requirements of the statute in its legal analysis and decision to the point of rendering it unconstitutionally vague as applied to the facts and circumstances in this case by ignoring the plain meaning and intention of the Legislative amendments.

As applied to the facts and circumstances of the present controversy, the Tax Court has ultimately interpreted the 60-Day Rule to require a taxpayer to turn over a document relating to an income-producing property: (1) whether that document is relevant to or has any bearing on the income and expenses attributable to the subject property and the fee simple valuation process or not; (2) whether that document is identified in the statute as being required or not; (3) whether the document is duplicative of other information already produced or not; and (4) whether the document has ever even physically existed at any time. The net effect of the Tax Court's ruling is to gauge compliance with the 60-Day Rule by a vague, subjective, unpredictable and inherently unachievable standard, governed by whatever a county, its assessors or attorneys might argue relates to a property in some arguably tangential way years later, even where not relevant to the valuation issues in a Chapter 278 property tax appeal, and in any event long after the 60-day period has expired.

In Kmart Corp. v. County of Stearns, File No. CX-00-404, *et al.* (Minn. Tax Ct. Order, March 3, 2005), the Tax Court acknowledged that, upon adoption of such a wide and all-encompassing interpretation of the Rule, “a petitioner would be well-advised to produce all information rather than withhold when unsure about meeting the 60-Day Rule requirements.” *Id.* Thus, the Tax Court has necessarily recognized that there is a genuine concern that taxpayers may legitimately be unsure and unable to determine what is required under the 60-Day Rule. The Tax Court's ruling, by stripping away this Court's broad standard of relevance and ignoring the plain meaning of the statute's language and the Legislature's intent, has established a subjective (and not objective) standard for

compliance, under which the scope of what must be produced becomes wholly arbitrary and unconstrained by any standard. A requirement that everything related to the ownership, operation and leasing of a property must be provided is meaningless, ultimately unachievable, and therefore hopelessly vague and ambiguous in violation of constitutional underpinnings of statutory construction.

Ultimately, taxpayers have no way to know what information creative county assessors and attorneys may seek in the future, and the identification of the “additional documents” may take place literally years (here more than two years) after the proceeding is commenced. Taxpayers have statutory and constitutional rights to appeal their assessment for property tax purposes under Minn. Stat. Chapter 278. See e.g., *Montgomery Ward and Co., Inc. v. County of Hennepin*, 450 N.W.2d 299 (Minn. 1990). These statutory and constitutional rights must not be negated by requiring taxpayers to somehow read the minds of their adversaries in litigation and to predict the future in order to comply with the 60-Day Rule.

Likewise, the 60-Day Rule should not be interpreted to dismantle the plain meaning of the “unavailability” exception and to require a taxpayer to create documents that don’t already exist in the ordinary course of business or otherwise; to turn over documents in its possession which are duplicative of other information otherwise provided; or to turn over documents wholly irrelevant to the valuation process. To do so would ignore the decisions of this Court and the specifically identified documents included in the information that the Legislature required taxpayers to turn over, and would render the statute so vague and ambiguous that its application would become

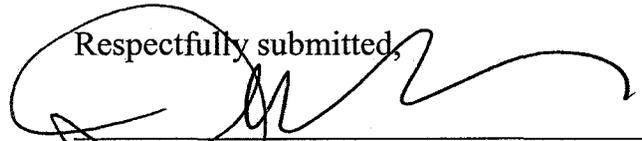
wholly arbitrary and capricious, leaving taxpayers to guess at what must be done in order to comply.

CONCLUSION

Based on the foregoing, the Relator respectfully requests this Court reverse the Tax Court's orders dismissing Relator's 2008 and 2009 property tax appeals, reinstate the Relator's 2008 and 2009 property tax appeals, and remand the cases for valuation.

Dated: July 6, 2011

Respectfully submitted,

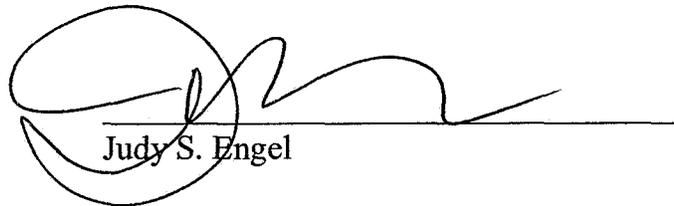


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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that Relator's Brief submitted herein contains 9,705 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.



Judy S. Engel