STATE OF MINNESOTA

IN THE SUPREME COURT

BEUNING FAMILY, LP,

Petitioner-Respondent,

and

COUNTY OF STEARNS,

Relator.

Case No. A11-1479
A11-1480

RELATOR'S BRIEF

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STATEMENT OF ISSUES

I. Whether the Tax Court's Ruling, that the action is not time barred, was an error of law.

A. Whether the taxpayers' failure to file its petition within the time limits specified by Minn. Stat. §278.01 deprived the Tax Court of Jurisdiction.

This issue was raised in Relator's Memorandum in Support of Summary Judgment (RA pp. A293-A30), as well as in Relator's Reply (RA pp. A163-164). Judge Sanberg of the Minnesota Tax Court held that taxpayers are not prohibited from making an election as to which statute to file under (Minn. Stat. §278.01 or §278.14)(RA p. A172); there is no requirement that a classification claim be filed under §278.01 (RA p. A174); and that there is no deadline for filing a verified claim under §278.14 (RA p. A176).

The issue was preserved on appeal by the filing of a petition for writ of certiorari on the Tax Court's denial of Relator's Motion for Summary Judgment. Apposite cases and statutes: Beuning Family Limited Partnership v. County of Stearns (Beuning I), 2009 WL 4589795, Minn.Tax Regular Div. Dec. 3, 2009 (No. 73-CV-09-5831); Point Rejuvenate of Minnesota v. County of St. Louis, 2002 WL 31651161, Minn.Tax Regular Div. Nov. 14, 2002 (No. C2-01-100656); Programmed Land, Inc. v. O'Connor, 633 N.W.2d 517 (Minn.2001); Odunlade v. City of Minneapolis, 2011 WL 3925620, Minn.Tax Regular Div. Aug. 31, 2011 (No. 27-CV-10-26849); and Minn. Stat. §278.01, subd. 1 and §278.01, subd. 4.

B. Whether the Tax Court's order granting summary judgment based on time limits in an earlier proceeding, Beuning I, served as res judicata.

This issue was raised in Relator's Memorandum in support of summary judgment (RA pp. A31-A32), as well as in Relator's Reply (RA pp. A164). Judge Sanberg of the Minnesota Tax Court held res judicata did not bar the case as there was no final judgment of the merits in the earlier case (Beuning I) and the deadlines of Minn. Stat. §278.14 had now been met (RA pp. A175-A176).

The issue was preserved on appeal by the filing of a petition for writ of certiorari on the Tax Court's denial of Relator's Motion for Summary Judgment. Apposite cases and statutes: State v. Joseph, 636 N.W.2d 322 (Minn.2001); Beuning Family Limited Partnership v. County of Stearns (Beuning I), 2009 WL 4589795, Minn.Tax Regular Div. Dec. 3, 2009 (No. 73-CV-09-5831); and Hauschildt v. Beckingham, 686 N.W.2d 829 (Minn.2004).

II. Whether the Tax Court improperly construed and applied Minn. Stat. §278.14.

A. Whether the Tax Court's failure to construe and apply Minn. Stat. §278.14 in conjunction with Minn. Stat. §278.01 was an error of law.

This issue was raised in Relator's Supplemental Memorandum in Support of Summary Judgment; (RA pp. A106-A107) and in Relator's Reply (RA pp. A164-A165). Judge Sanberg, in her decision, held that there is no requirement that a classification claim be filed under §278.01 (RA p. A174); and that there is no deadline for filing a verified claim

under §278.14 (RA p. A176).

The issue was preserved on appeal by the filing of a petition for writ of certiorari on the Tax Court's denial of Relator's Motion for Summary Judgment. Apposite cases and statutes: Minn. Stat. §645.16; Minn. Stat. §645.17; Minn. Stat. §278.01 subd. 1(c) and subd. 4; Minn. Stat. §278.01; Minn. Stat. §278.14.

B. Whether the Tax Court's application of Minn. Stat. §278.14 to all claims involving classification of real property, not just those involving unintended and unnoticed changes, was an error of law.

This issue was raised in Relator's Supplemental Memorandum in Support of Summary Judgment (RA pp. A106-1070 and Relator's Reply (RA pp. A164-165). Judge Sanberg held that the language of Minn. Stat. §278.14 does not specifically limit the claims to unintended acts or mistakes (RA p. A173).

The issue was preserved on appeal by the filing of a petition for writ of certiorari on the Tax Court's denial of Relator's Motion for Summary Judgment. Apposite cases and statutes: Programmed Land, Inc. v. O'Connor, 633 N.W.2d 517 (Minn.2001); Odunlade v. City of Minneapolis, 2011 WL 3925620, Minn.Tax Regular Div. Aug. 31, 2011 (No. 27-CV-10-26849); Hovanec v. County of Carver, 1993 WL 241360, Minn.Tax Regular Div. June 29, 1993 (No. C6-92-1296); Hartmann v. Sibley County Board of Commissioners, 2010 WL 696969, (Minn.App. Feb. 3, 2010)(No. A09-1307)(unpublished opinion); Minn. Stat. §645.16, Minn. Stat. §278.14, and Minn. Stat. §278.01.

III. Whether the Tax Court's failure to address the classification argument contained within the summary judgment motion, and failure to recognize that no issue of material fact had been raised on that issue, was an error of law.

This issue was raised in Relator's Memorandum in Support of Summary Judgment (RA pp. A32-A34) and in Relator's argument at the summary judgment motion (Transcript "T" pp. 32-33)(noting that the burden is on petitioner to establish the classification for the property differs from the assessor's judgment).

The issue was preserved on appeal by the filing of a petition for writ of certiorari on the Tax Court's denial of Relator's Motion for Summary Judgment. Apposite cases and statutes: Brookfield Trade Center, Inc. v. County of Ramsey, 609 N.W.2d 868 (Minn.2000); DLH, Inc. v. Russ, 566 N.W.2d 60 (Minn.1997); Schmieg v. County of Chisago, 2010 WL 3219140, Minn.Tax Regular Div. July 23, 2010 (No. 13-CV-09-746); Brackey v. County of Washington, 2008 WL 2573299, (Minn.Tax Regular Div. June 23, 2008)(No. C4-06-7837); Minn. Stat. §414.0325, subd. 5; Minn. Stat.§273.13, subd. 33(b); Minn. Stat. §271.06, subd. 6; Minn.R.Civ.P. 56.03; and Minn.R.Civ.P. 56.05.

RELATOR'S STATEMENT OF THE CASE

On June 4, 2010, Respondent Buening Family LP filed a petition (hereinafter the 'petition', attached at pages A-19 – A-26 of Relator's Appendix (hereinafter "RA pp. A19-A26"), with the Minnesota Tax Court challenging 2008 real estate taxes payable in 2009 for a parcel of property located in Le Sauk Township, Stearns County, Minnesota (hereinafter the 'subject property'). This petition raises a single claim concerning the subject property, namely that is has been improperly classified (RA pp. A19-A26). Tax Court File No. 73-CV-10-4868 was assigned to this petition and on June 21, 2011, the Minnesota Tax Court issued an order denying Relator summary judgment. Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868). This appeal has been assigned Supreme Court File No. A11-1479.

A prior petition from Respondent concerning the same Property, same tax year and containing a claim alleging misclassification was previously dismissed by the Tax Court on summary judgment. Beuning Family Ltd. Partnership v. County of Stearns, 2009 WL 4589795, Minn. Tax Regular Div. December 03, 2009 (No. 73-CV-09-5831) (hereinafter Beuning I). The order granting Stearns County summary judgment in Beuning I was never appealed.

On or about January 3, 2011 Relator, Stearns County, served and filed a motion for summary judgment in the instant case, A11-1479; seeking to dismiss Respondents single-claim Petition concerning property classification. See Memorandum in Support of

Summary Judgment (RA pp. A27-A34). Relator's primary argument on summary judgment in Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868) was jurisdictional – i.e. that the Petition was not timely filed and "absent effective and timely service, the Tax Court lacks jurisdiction to hear the [Petition] and dismissal is the only alternative available to the Tax Court." (RA p. A29). Relator raised additional arguments before the Tax Court, including the finality of the Tax Court's prior order, the failure to Respondent to appeal that order, res judicata and that, indeed, there has been no misclassification. (RJA pp. A30-A34).

On July 7th, 2011 the Tax Court, Judge Kathleen H. Sanberg, entered its judgment and order denying Relator's motion for summary judgment. Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868). The only motion in Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868), on appeal here as Supreme Court File No. A11-1479, was Relator's motion for summary judgment. The Tax Court denied Relator's summary judgment motion rejecting Relator's jurisdictional argument, among the others. Absent this appeal, this case would proceed to trial on all issues raised by the petition.

During a pretrial telephone conference before the Tax Court on Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No.

73-CV-10-4868), Relator, the parties and the Tax Court agreed that the decision in Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868), in light of the Tax Court's decision regarding the subject property for a subsequent tax year (See A11-1479), would potentially result in conflicting judgments and multiple appeals as the cases involved, among other issues, application and interpretation of Minnesota Statutes by the Tax Court. Relator requested, and Respondent and the Tax Court agreed that the matters were properly appealed at this time. The Tax Court agreed to direct entry of the order denying summary judgment and directed there was no just reason to delay, pursuant to Minn.R.Civ.P. 54.02. See Order (RA pp. A79-A181) Relator Stearns County timely served and filed the Petition for Writ of Certiorari, Statement of the Case, proposed Writ of Certiorari, together with a copy of the order denying summary judgment and the Rule 54.02 order. See Petition for Writ and Writ of Certiorari (RA pp. A182-A183) On September 23, 2011, the Minnesota Supreme Court ordered that jurisdictional briefs be served and filed addressing several jurisdictional issues outlined in its order. Those briefs have previously been filed.

I. STATEMENT OF FACTS

On May 18, 2009, Beuning Family Limited Partnership (hereinafter "Respondent") filed a petition for review of real estate tax relating to a parcel of real property located in Le Sauk Township, County of Stearns and State of Minnesota, property identification number R.17.09237.0000 (hereinafter "the subject property"). This petition was for review of the 2008 real estate taxes payable in 2009, and was assigned Court File Number 73-CV-09-5831. A copy of said petition is included in Relator's Appendix at pages A-8 to A-11 (hereinafter "RA pp. A8-A11) and that case shall be referenced herein as Beuning I.

The petition in Beuning I alleged the subject property, among other allegations, "was fully or partially improperly classified"; and sought a judgment, among other things, "that the classification of said property be corrected". (RA pp. A10-A11) Respondent, in the petition to Beuning I, alleged not receiving notice of change in classification of the real property for purposes of taxes payable in 2009 until after February 28, 2009, therefore meeting the April 30 filing exception as provided in Minnesota Statute Section 278.01, subdivision 4.[1] (RA p. A1) However, following Relator's filing of a motion for summary judgment, Respondent conceded having received proper notification of the change in classification, prior to February 28, 2009. (RA p. A16) Respondent's counsel, as an alternative argument, during the October 6,

[1] All references to Minnesota Statute within this brief are to the current version of the statute, unless stated otherwise.

2009 summary judgment hearing, alleged a claim under Minn. Stat. §278.14, entitled "Refunds of Mistakenly Billed Taxes". (RA p. A3) The Minnesota Tax Court in deciding Beuning I determined that Respondent had failed to meet the deadline for challenging the real property taxes assessed in 2008 and payable in 2009; and with respect to Respondent's claim pursuant to Minn. Stat. §278.14, failed to file a verified claim or receive a denial of that claim from Stearns County. See Beuning Family Limited Partnership v. County of Stearns, (Beuning I) (Minn. Tax Court 73-CV-09-5831, decided December 3, 2009). A copy of the decision in Beuning I is attached at (RA pp. A12-A18). Relator was granted summary judgment and Respondent's petition in Beuning I was dismissed by the Tax Court as untimely. (RA p. A18). Respondent did not appeal the Tax Court's Order granting Relator Summary Judgment in Beuning I.

Subsequently, on June 4, 2010, Respondent filed another petition challenging the real property taxes on the subject property for real estate taxes assessed in 2008 and payable in 2009. A copy of said petition is attached, (RA pp. A19-A26). Respondent entitled this petition, "Appeal for Review of Denial of Claim Under Minn. Stat. §278.14", and the Tax Court assigned it Court File No. 73-CV-10-4868. This case is the present case before the Minnesota Supreme Court.

In Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868), Respondent once again alleges with regard to the subject property "[t]hat said property was fully or partially improperly classified in violation of Minnesota Statute Section 273.13". (RA p. A20) Respondent

attaches a copy of a letter dated March 9, 2010, directed to the Stearns County Assessor, which is entitled notice of claim under Minn. Stat. §278.14 as Exhibit A to the petition. (RA pp. A24-A25) Also attached to the petition is a letter dated March 29, 2010 from the Stearns County Assessor to Respondent denying Respondent's claim pursuant to Minn. Stat. §278.14. (RA p. A26).

Relator brought a motion for summary judgment in Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868), arguing that the petition should be dismissed as the Tax Court had no jurisdiction to hear the case. See memorandum in support of motion for summary judgment and supporting affidavits, Tax Court File No. 73-CV-10-4868 (RA pp. A27-A34) Relator argued that Respondent Beuning Family Limited Partnership had failed to meet the filing deadlines of Minn. Stat. §278.01, failed to follow the appeal process of the Tax Court's prior order in Beuning I, and that res judicata precluded re-examination of the matter. (RA pp. A29-A32) As an alternative argument in support of summary judgment, Relator also argued that the subject property had been properly classified as commercial property by the Stearns County Assessor as vacant land pursuant to Minn. Stat. §273.13, subd. 33; that there was no misclassification, as the highest and best use of the subject property was and is commercial. (RA pp. A32-A34).

In support of the summary judgment motion, Relator included sworn affidavits from the Stearns County Assessor and the Planning and Community Director for the City of Sartell. (RA pp. A35-A57 and A58-A85 respectively) The affidavits established that

the subject property is located in LeSauk Township, which is an orderly annexation area for the City of Sartell. (See Affidavit of Stearns County Assessor, Gary Grossinger, hereinafter "Aff.GG", RA pp. A41-A47)) See also Affidavit of Anita M. Rasmussen, Planning and Community Development Director City of Sartell, hereinafter "Aff.AMR", RA pp. A59-A67)) The subject property is vacant property, which is not being used. (Aff. GG, RA p. A35) It is located in a commercial growth area for the City of Sartell, and is surrounded by commercial businesses. (Aff.GG, p. A36) It is visible from County Road 1 and State Highway 15, major arterial routes in the area. (Aff.GG, RA pp. A36, A38-A40) The subject property is advertised and listed for sale as a commercial site. Id. The Stearns County Assessor reclassified the property in 2008, designating it as commercial property. (Aff. GG RA p. A36). It was the Stearns County Assessor's opinion that classification of the property as commercial was appropriate, as it was the property's most probable, highest and best use. (Aff. GG, RA pp. A35-A36)

The Affidavits also established, through attached documentation, that LeSauk Township and the City of Sartell entered into an orderly annexation agreement on November 6, 1992. (Aff.GG , RA pp. A41-A47)(Aff.AMR, RA pp. A59, A67) Pursuant to Minn. Stat. §414.0325, subd. 5 (RA p. A6), the City of Sartell and the Town of LeSauk signed a joint resolution designating the entirety of the Town of LeSauk as an orderly annexation area, and created the City of Sartell-LeSauk Township Joint Planning Board, which has exclusive authority over land use and zoning issues within the orderly annexation area. (Aff.GG, RA pp. A44, A41-A47)(Aff.AMR, RA pp. A64, A61-A67)

The zoning staging plan or land use plan map for the City of Sartell identifies zoning for the subject property as "General Business". (Aff. AMR, RA pp. A60, A75-A85). According to the Sartell/LeSauk Comprehensive Plan, "General Business" or B-2 districts provide space for concentrated general business and commercial activities. (Aff. AMR, RA pp. A76-A85) Additionally, Stearns County and the Joint Planning Board for the Town of LeSauk and City of Sartell entered into a Memorandum of Understanding which specifically negates application of the Stearns County Zoning and Land Use Ordinance from the orderly annexation area, which would include the subject property. (RA pp. A52, A72)

Respondent argued in opposition to summary judgment that the petition could be maintained under Minn. Stat. §278.14 as the process required by that statute had been met following the Tax Court's decision in Beuning I. See response of Respondent to motion for summary judgment and supporting affidavit, Tax Court File No. 73-CV-10-4868 (RA pp. A90-A97) Respondent argued misclassification of the subject property based on the Stearns County land use zoning map. (RA pp. A92-A93) Respondent did not support his argument regarding zoning of the subject property with a sworn affidavit or verified documents.

Relator's summary judgment motion was heard by telephone conference call on October, 6, 2009 by the Honorable Kathleen H. Sanberg, Judge of the Minnesota Tax Court, on the same date as another summary judgment motion relating to a petition on the subject property for assessment year 2009, payable 2010, Tax Court File No. 73-CV-10-

3592. (Transcript "T" pp. 1-46) Following the hearing, Judge Sanberg directed the parties to submit additional briefs, as to both tax court files, and discuss the interplay between Minnesota Statutes §§278.01 and 278.14, legislative history on Minn. Stat. §278.14, statutory construction for reconciling the two statutes, case law relating to the application of Minn. Stat. §278.14, and public policy arguments on the interplay between the two statutes. Judge Sanberg's post hearing briefing schedule also allowed the parties a reply brief. See letter confirming briefing schedule included in Relator's Appendix (RA p. A98) Relator and Respondent each submitted a supplemental brief with supporting affidavits. (RA pp. A99-A139 and RA pp. A140-161, respectively). Relator also submitted a reply brief. (RA pp. A162-A165)

In her Order and Judgment dated June 21, 2011, which was filed and entered on July 7, 2011, Judge Sanberg denied Relator's motion for summary judgment. (RA pp. A166-A178) Judge Sanberg, although noting that in the Order of December 3, 2010 in Beuning I, the Respondent's misclassification claim was untimely under either section 278.14 or 278.01, denied Relator's motion for summary judgment as now the Respondent had followed the procedures under Minn. Stat. §278.14. (RA pp. A170-A171) Judge Sanberg determined that there was nothing in either Minn. Stat. §278.01 or §278.14 which would prohibit a petitioner from making an election as to which statute to file under (RA p. A172); that Minn. Stat. §278.14 does not differentiate its application between intentional and unintentional changes in classification (RA p. A172); that taxpayers are not limited to filing misclassification claim under only Minn. Stat. §278.01

or Minn. Stat. §278.14 (RA p. A174); that res judicata does not apply, as there was no final judgment on the merits and was now timely under a Minn. Stat. §278.14 (RA pp. A175-A176); that there is no deadline for submitting a verified claim under Minn. Stat. §278.14 and taxpayers can assert a verified claim of misclassification under Minn. Stat. §278.14 for the current year or up to two prior years. (RA pp. A176-A177)

On August 18, 2011, by Order dated August 16, 2011, Judge Sanberg entered final judgment in this matter pursuant to Rule 54. 02 of the Minnesota Rules of Civil Procedure. (RA pp. A179-A181) On August 19, 2011, Relator served and filed by mail Relator's petition for writ of certiorari (RA p. A182, Relator's statement of the case and proposed writ of certiorari. The Minnesota Supreme Court issued the Writ of Certiorari on August 22, 2011. (RA p. A183)

II. ARGUMENT

A. THE TAX COURT'S RULING THAT RESPONDENT'S ACTION IS NOT TIME BARRED WAS AN ERROR OF LAW.

Respondent initially served and filed a tax petition alleging improper classification for assessment year 2008, payable 2009, on May 18, 2009, in Beuning I. (RA pp. A8-A11) Respondent argued in Beuning I that his classification claim survived under both Minnesota Statute §§278.01 and 278.14. See Tax Court Order, File No. 73-CV-09-5831 (RA pp. A13-A18) Respondent subsequently conceded in Beuning I that it did not qualify for the exception for an extension of time for a change in classification pursuant to Minn. Stat. §278.01, subd. 4. (RA p. A16) However, Respondent did argue that its petition in Beuning I qualified as the filing of a verified claim with Stearns County as

required by Minn. Stat. §278.14, and therefore the claim of improper classification survived. (RA pp. A17-A18) The Minnesota Tax Court disagreed with Respondent in Beuning I, found that it lacked jurisdiction; and dismissed the entire petition as untimely, including the claim of improper classification of the subject property. (RA p. A18)

Subsequently, Respondent filed a second petition, the present case, Tax Court File No. 73-CV-10-4868, on June 4, 2010; once again challenging the change in classification of the subject property for assessment year 2008, payable 2009. (RA pp. A19-A26) Respondent argues that it has now met the preliminary requirements of Minn. Stat. §278.14 and therefore, the current petition is timely. The Tax Court agreed with Respondent and denied Relator's motion for summary judgment. (RA pp. A170-A177)

Standard of Review. The Minnesota Supreme Court reviews tax court decisions to determine whether there was subject matter jurisdiction, whether the decision was supported by evidence, and whether there was error of law. Hohmann v. Commissioner of Revenue, 781 N.W.2d 156, 157 (Minn.2010). Where there are no relevant factual disputes, and the review is based on application of Minnesota law, the Minnesota Supreme Court's review is de novo. Id. Application of the doctrine of res judicata to preclude a claim is a question of law and is subject to de novo review. Hauschildt v. Beckingham, 686 N.W.2d 829, 840 (Minn.2004).

1. RESPONDENTS FAILURE TO TIMELY FILE ITS PETITION DEPRIVED THE TAX COURT OF JURISDICTION, AND THE TAX COURT'S DENIAL OF SUMMARY JUDGMENT WAS AN ERROR OF LAW.

In the present case, Respondent completely disregarded the filing requirements of Minnesota Statute §278.01, and, on June 4, 2010, filed a second property tax petition covering the subject property, on the sole issue of classification, for assessment year 2008 for taxes payable in 2009. (RA pp. A19-A26) Respondent's petition in Tax Court File No. 73-CV-10-4868 alleges improper classification of the subject property pursuant to Minn. Stat. §278.14. (RA pp. A20-A21) The Minnesota Tax Court determined that Respondent met the requirements of Minn. Stat. §278.14 and denied Relator's motion for summary judgment. (Beuning Family LP v. County of Stearns, 2011 WL 2517522, Minn.Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868 (RA pp. A166-178) It is Relator's position that the Tax Court lacks jurisdiction over the claim, as Respondent failed to timely file the petition in accordance with Minnesota Statute §278.01, Subd. 1(c), which specifies a time limitation for filing a challenge to the classification of real property, and Respondent, having missed that time limitation, is now time barred from asserting the claim.

Minnesota Statute §278.01 sets forth requirements for initiating, with the district court or the Tax Court, certain enumerated legal challenges and objections to real and personal property taxes levied by local governments. Minn. Stat. §278.01, subd. 1(a).[2]

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[2] The Minnesota legislature provided other avenues of seeking redress which occur during the real property's assessment year, including redress for classification errors, through local and county boards of adjustment and equalization. See Minn. Stat. §§274.01 and 274.13.

The statute provides that proof of service must be filed by April 30th of the year in which the tax is payable. Id. Minnesota Statute §278.01, Subd. 1(c) provides:

> (c) For all counties, the petitioner must file the copies with proof of service, in the office of the court administrator of the district court *on or before April 30 of the year in which the tax becomes payable.* A petition for determination under this section may be transferred by the district court to the Tax Court. An appeal may also be taken to the Tax Court under chapter 271 at any time following receipt of the valuation notice required by Court under chapter 271 at any time following receipt of the valuation notice required by section 273.121 *but prior to May 1 of the year in which the taxes are payable.*

Minn. Stat. §278.01, Subd. 1(c) (emphasis added) (RA pp. A1-A2) Thereafter, Minn. Stat. §278.01 provides an exception regarding certain challenges, including challenges to classification of properties:

> Filing of appeal deadline; exception. Notwithstanding the April 30 date in subdivision 1, whenever the exempt status, valuation, or *classification* of real or personal property is changed other than by an abatement or a court decision, and the owner responsible for payment of the tax is *not given notice of the change until after February 28 of the year the tax is payable* or after July 1 in the case of property subject to section 273.125, subdivision 4 [grievances involving tax assessments of manufactured homes], an eligible petitioner, as defined and limited in subdivision 1, *has 60 days from the date of mailing of the notice* to initiate an appeal of the property's exempt status, *classification*, or valuation change under this chapter.

Minn. Stat. §278.01, Subd. 4 (emphasis added). The jurisdiction of the Minnesota Tax Court is invoked in property tax cases only if the petitioner meets the service and filing requirements of Minn. Stat. §278.01. Hovanec v. County of Carver, 1993 WL 241360, Minn.Tax Regular Div. June 29, 1993 (No. C6-92-1296) The Minnesota Tax Court has consistently dismissed petitions which were filed untimely. Id. Respondent's failure to

meet the filing requirements of Minnesota Statute 278.01, subd. 1(c) deprived the Tax Court of jurisdiction to hear the matter.

The right to tax and to challenge taxation are rights statutorily granted by the legislature. Point Rejuvenate of Minnesota v. County of St. Louis, 2002 WL 31651161, 2-3, Minn.Tax Regular Div. Nov. 14, 2002 (No. C2-01-100656) "The Minnesota Supreme Court has held that a limitation in a statutorily created right must be complied with or the right ceases to exist. . . . 'The conditions so imposed qualify the right and are an integral part thereof; they are conditions precedent which must be fully complied with, or the right does not exist.'" Id., quoting State v. Bies, 258 Minn. 139, 103 N.W.2d 228 (Minn.1960). Respondent's failure to timely file the classification claim pursuant to Minn. Stat. §278.01, subd. 1(c) precludes Respondent from invoking the jurisdiction of the Tax Court and the Tax Court, in denying Relator's motion for summary judgment, assumed a matter over which it does not have subject matter jurisdiction.

The Minnesota Supreme Court in Programmed Land, Inc. v. O'Connor, 633 N.W.2d 517, 522-528 (Minn.2001), examined the scope of Minn. Stat. §278.01, subd. 1 and determined that it not only provided the limitation period for asserting challenges to classification of real property, but also challenges to class rates assigned to parcels of real property by the county assessor. Id.

> Having provided a means to challenge property taxes for the purpose of ensuring their prompt payment, the legislature would not then undermine that purpose by allowing a significant number of tax grievances to be free of the chapter 278 filing limitation and, consequently, actionable years after the taxes were due. When taxpayers have missed an opportunity to bring a claim under section 278.01, we have consistently rejected their efforts to

> seek an alternative statutory remedy, in part because we have recognized that the legislature established a limited time frame to bring a property tax action to promote the prompt collection of taxes and avoid a multiplicity of suits.

Programmed Land, supra., at 526. "If [Respondent] wants to challenge the reclassification of his property, he must comply with the procedure set forth in section 278.01." Hartmann v. Sibley County Board of Commissioners, 2010 WL 696969, 2-3 (Minn.App.)(unpublished opinion) (RA pp. A200-A205) The Minnesota Courts have concluded that Minnesota Statute §278.01 is the exclusive remedy for challenging property tax assessments and classification, which is a part of the assessment process. Id. Respondent cannot resuscitate a claim from past years by claiming ignorance as an excuse for failing to timely pursue an adequate remedy that was available at law. Odunlade v. City of Minneapolis, 2011 WL 3925620, 9-11 Minn.Tax Regular Div. Aug. 31, 2011(No. 27-CV-10-26849) Respondent did not file his petition challenging classification of the subject property for the 2008 assessment until June 10, 2010 in the present case. Minnesota Statute §278.01, subd. 1(c) provides the process for challenging a classification or reclassification of real property, and Respondent's failure to comply with the timelines for asserting that claim deprived the Tax Court of subject matter jurisdiction over Respondent's case.

2. THE TAX COURT'S DECISION, THAT THE SUMMARY JUDGMENT ORDER IN BEUNING I DID NOT SERVE AS RES JUDICATA WAS AN ERROR OF LAW.

The doctrine of res judicata prevents relitigation of claims already determined in a prior action. Nelson v. Short-Elliot-Hendrickson, Incorporated, 716 N.W.2d 394, 398

(Minn.App.2006). Res judicata consists of four components: (1) a final judgment on the merits, (2) a second suit involving the same cause of action, and (3) parties in privity or identical parties, and (4) the stopped party had a full and fair opportunity to litigate the matter. State v. Joseph, 636 N.W.2d 322, 327-29 (Minn.2001). If all four components are met, then res judicata applies. All four components exist in this case, and the doctrine of res judicata mandates dismissal.

On June 4, 2010, Respondent filed an "Appeal for Review of Denial of Claim Under Minn. Stat. §278.14", alleging misclassification of the subject property for the assessment year 2008, payable 2009. (RA pp. A19-A26) Respondent had previously, on May 18, 2009 in Beuning I, filed a petition objecting to the real property taxes assessed against the subject property for the 2008 assessment year, payable in 2009; and had included a claim based on classification. (RA pp. A8-A11) The Minnesota Tax Court in Beuning Family Limited Partnership v. County of Stearns, File No. 73-CV-09-5831, 2009 WL 4589795 (Minn.Tax Regular Div. Dec. 3, 2009)(Beuning I), granted Relator's motion for summary judgment as to all of Respondent's claims and dismissed the petition on the grounds that the tax court lacked jurisdiction over the petition. The Tax Court dismissed the petition as it was not timely filed; that the filing deadline exception provided by Minn. Stat. §278.01, subd. 4, for late notification of a change in classification, did not apply as Respondent conceded timely notice of the change; and that the provisions of Minn. Stat. §278.14 did not apply as Respondent had not filed a verified claim with the County as required by that statute. (Order Beuning I, RA pp. A12-A18)

Res judicata is a doctrine of finality which mandates an end to litigation where each of the components to the doctrine have been met. Hauschildt, supra., at 840. "Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." Id. at 837.

The res judicata doctrine's component, privity of parties, is met. See petitions (RA pp. A8-A11 and pp. A19-A26) The component requiring commonality of causes of action is also met. A common test applied by Minnesota courts is to determine whether the same evidence would support both the first cause of action as well as the second, and determine whether the second cause of action arose at the same time as the right to assert the first. Semler v. Klang, 603 F.Supp.2d 1211, 1224-25 (D.Minn.2009) citing McMenomy v. Ryden, 276 Minn.55, 58, 148 N.W.2d 804, 807 (Minn.1967). It is not necessary that the Respondent have asserted identical legal theories of recovery in both actions, Semler, supra., at 1225 quoting Hauschildt v. Beckingham, supra. at 840-41; the determinative issue is whether the facts surrounding both claims are identical. Id. Both petitions include the claim of improper or misclassification of the subject property by the Stearns County Assessor for assessment year 2008 and taxes payable in 2009. (RA pp. A9-A10 and pp.A20-A21) The components of commonality of parties and of claims are met.

The Minnesota Tax Court, in its Order denying summary judgment stated that there was no final judgment on the merits in the first action, Beuning I, "rather the case

was dismissed on failure to meet the deadline stated in Section 278.01. (RA p. A175) In order for res judicata to apply, there must have been a final judgment on the merits. Hauschildt, supra. Litigation of a dispositive issue, such as failure to meet a statute of limitations, is sufficient for res judicata to apply to subsequent claims arising from the same facts. State v. Joseph, supra., 636 N.W.2d at 328 (which held a declaratory judgment action ending in summary judgment based on statute of limitations was a final adjudication on the merits). "[W]hen judgment was entered and the time for appeal from that judgment expired, the judgment became a final judgment on the merits, thereby satisfying the third requirement for the application of res judicata." Id. See also, Simington v. Minn. Veterans Home, 464 N.W.2d 529, 530 (Minn.App.1990) (which held that summary judgment on statute of limitations grounds was a decision on the merits and applied the doctrine of res judicata). But see, Beutz v. A.O. Smith Harvestore Prods., Inc., 416 N.W.2d 482 (Minn.App.1987), aff'd 431 N.W.2d 528 (Minn.1988) which held that a dismissal as a sanction for failing to file a legal brief was not a full and final adjudication on the merits. In Beuning I, Relator was granted summary judgment and Respondent's petition was dismissed in its entirety, including the claim relating to classification of the subject property. (RA p. A18) Respondent did not appeal Beuning I, and the time to appeal that case has expired. There was a final judgment on the merits.

The final component to the doctrine of res judicata is whether the stopped party had a full and fair opportunity to litigate the matter, Hauschildt, supra. at 840. The doctrine applies not only to the claims actually litigated, ". . . but to all claims that could

have been litigated in the earlier action." Hauschildt, supra., 686 N.W.2d at 840. Whether there has been a full and fair opportunity to litigate a matter, depends on "whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." State v. Joseph, supra., 636 N.W.2d at 328. Respondent had a full and fair opportunity to litigate the issue of misclassification, as evidenced in the Tax Court's Order in Beuning I. (RA pp. A12-A18)

In Beuning I, the Tax Court held that Minnesota Statute §278.01 specifies a filing deadline of April 30, of the year taxes are payable, for certain legal challenges and objections to real property taxes. (RA p. A15) The Tax Court also noted that Minnesota Statute §278.01, subd. 4, provided an exception to this deadline, allowing a later filing of claims based on a change in a property's exempt status, classification, or valuation, when notification of the change had not taken place until after February 28th of the year taxes are payable. (RA p. A15) The Tax Court noted in its Order in Beuning I that Respondent, through counsel, conceded having received notice of the change in classification in 2008, prior to the date allowing an exception to the April 30th filing deadline. (RA p. A16) Additionally, the Tax Court determined that the misclassification claim was not covered by Minnesota Statute §278.14 as a verified claim and a denial of that claim had never been made. (RA pp. A17-A18) The Tax Court held in Beuning I:

> First, we note that Petitioner's claims for unequal assessment, overvaluation, illegality and unconstitutionality, do not fall under Section

> 278.14. Those claims are therefore governed by the April 30 deadline stated in Section 278.01, subd. 1 (c); the filing on May 19, 2009, was thus untimely. . . .
> . . . Because Petitioner's misclassification claim is not covered by the longer filing period under Section 278.14, and because the claim was filed after the April 30 deadline required by Section 278.0(sic)[278.01], the claim is untimely. The Court therefore lacks jurisdiction.

Beuning I, supra., 2009 WL 4589795 at 3. (RA pp. A17-A18). Respondent never sought review of, nor appealed the Tax Court's decision in Beuning I. Res judicata applies to litigation of dispositive issues, including statute of limitation issues. State v. Joseph, supra., 636 N.W.2d at 328. "A litigant who 'is willing to gamble on the outcome of a lawsuit and sit silent when he has an opportunity to present evidence' or who foregoes the opportunity to appeal 'should be bound by the result, whatever it may be.'' Id. (quotation omitted). All of the components of res judicata exist in this case and preclude the present action. The Tax Court's failure to apply the doctrine of res judicata was an error of law.

B. THE MINNESOTA TAX COURT IMPROPERLY CONSTRUED AND APPLIED MINNESOTA STATUTE §278.14.

The Minnesota Tax Court, in denying Relator's motion for summary judgment, allowed Respondent to assert its classification dispute for the 2008 assessment year a second time. Respondent's claim for the same assessment year was previously dismissed as untimely in Beuning I, supra. The Minnesota Tax court held: "[W]e do not conclude that classification claims can only be brought under Section 278.01 or Section 278.14. We will not construe one statute to abrogate another involving the same subject matter without clear legislative intent." Tax Court Order in Beuning Family LP v. County of

Stearns, 2011 WL 2517522, Minn. Tax Regular Div. June 21, 2011 (No. 73-CV-10-4868), p. 8 (footnote omitted) (RA pp. A174). However, the Tax Court's interpretation and application of Minn. Stat. §278.14 does just that by abrogating the filing requirements of Minn. Stat. §278.01.

Standard of Review. The Minnesota Supreme Court reviews decisions from the Minnesota Tax Court to determine whether: (1) the tax court had jurisdiction, (2) the tax court decision was supported by the evidence and was in conformance with the law, and (3) the tax court committed any other error of law. Hohmann v. Commissioner of Revenue, 781 N.W. 2d 156, 157 (Minn. 2010). The Minnesota Supreme Court reviews the tax court's interpretation of statutes and conclusions of law de novo. Id. The Minnesota Supreme Court is "not bound by decisions of the tax court, especially in the area of statutory interpretation." Kmart Corp. v. County of Stearns, 710 N.W.2d 701, 765 (Minn. 2006).

1. THE TAX COURT'S INTERPRETATION AND APPLICATION OF MINN. STAT. §278.14 WAS UNREASONABLE; THE LEGISLATURE INTENDED THE STATUTE TO BE READ IN CONJUNCTION WITH §278.01.

Minnesota Statute §§278.01(RA pp. A1-A2) and 278.14 (RA p. A3) must be read together. "Every law shall be construed. . . to give effect to all its provisions." Minn. Stat. §645.16. In its Order denying Relator summary judgment, the Minnesota Tax Court in the present case, Beuning Family LP v. County of Stearns, 2011 WL 2517522, 3 (Minn. Tax Regular Div), referencing an earlier decision, Soo Line Railroad Company v. County of Washington, 2011 WL 941466, Minn.Tax Regular Div. Mar. 15, 2011 (No.

82-CV-09-5251), states that there is nothing prohibiting a taxpayer from making an *election* as whether to file a claim under either Minn. Stat. §278.01 or under §278.14 (emphasis added). (RA p. A172) The Tax Court then states: "[W]e do not conclude that classification claims can only be brought under Section 278.01 or Section 278.14. We will not construe one statute to abrogate another involving the same subject matter (here contesting property tax misclassifications) without clear legislative intent. There is no reference in either statute to the other, which would indicate such intent." Tax Court Order in Beuning Family LP, supra., p. 8 (footnote omitted). (RA p. A174.) However, the Tax Court's interpretation and application of Minn. Stat. §278.14 does just that, by subverting the filing deadlines contained within Minn. Stat. §278.01.

A brief review of the historical and statutory notes to Minn. Stat. §278.01 establishes that the legislature did not intend to abrogate the service and filing deadlines of Minn. Stat. §278.01 when they enacted Minn. Stat. §278.14. Minnesota Statute § 278.01 was originally enacted in 1935. It states, in relevant part:

> Subdivision 1. Determination of validity. (a) Any person having . . . interest in . . . any parcel of land, who claims that such property has been partially, unfairly, or unequally assessed in comparison with other property . . . , or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied, may have the validity of the claim, defense, or objection determined . . . (c) For all counties, the petitioner must file. . . with proof of service, . . . on or before April 30 of the year in which the tax becomes payable. . .
> Subd. 4. Filing of appeal deadline; exception. Notwithstanding the April 30 date in subdivision 1, whenever the exempt status, valuation, or *classification* of real or personal property is changed other than by an abatement or a court decision, and the owner responsible for payment of the tax is not given notice of the change until after February 28 of the year the

> tax is payable or after July 1 in the case of property subject to section 273.125, subdivision 4, an eligible petitioner, as defined and limited in subdivision 1, has 60 days from the date of mailing of the notice to initiate an appeal of the property's exempt status, *classification*, or valuation change under this chapter.

Minn. Stat. § 278.01 (pertinent provisions with emphasis added). The Minnesota Legislature's amendments to Minn. Stat. §278.01included amendments to filing deadlines both before and after enactment of Minn. Stat. §278.14, which was enacted in 2000.

Minnesota Statute § 278.01's service and filing deadlines were amended in 1994, requiring service and filing on or before March 31 and amending the time for taking an appeal pursuant to chapter 271 prior to April 1. Minnesota Laws 1994, c. 587, art. 5, §14. (RA pp. A184-A187) Minnesota Laws 1996, c. 471, art 3, §24, eff. April 13, 1996, added subdivision 4, relating to the deadline for filing an appeal, to Minnesota Statute § 278.01. (RA pp. A188-A191)

Then, in 2002, following enactment of Minnesota Statute § 278.14, the Minnesota Legislature once again amended the service and filing deadlines under § 278.01, substituting "April 30" for "March 31" and "May 1" for "April 1". Laws 2002, c. 377, art. 9, § 4. (RA pp. A192-A195) Minnesota Statute § 278.01 was further amended by the Minnesota Legislature in 2003, when the subdivision 4, deadlines were amended to "April 30" and "February 28". Minnesota Laws 2003, c. 127, art. 2, §18. (RA pp. A196-A199) There was no exception created, nor provision enacted within Minnesota Statute § 278.01 which references Minnesota Statute § 278.14.

Minnesota Statute §278.14 was adopted by the Minnesota Legislature in 2000. It states in pertinent part:

> Subdivision 1. Applicability. A county must pay a refund of a mistakenly billed tax as provided in this section. As used in this section, "mistakenly billed tax" means an amount of property tax that was billed, to the extent the amount billed exceeds the accurate tax amount due to a misclassification of the owner's property under section 273.13 or a mathematical error in the calculation of the tax on the owner's property, together with any penalty, or interest paid on that amount. This section applies only to taxes payable in the current year and the two prior years. . . [3] The remedy provided under this section does not apply to a misclassification under section 273.13 that is due to the failure of the property owner to apply for the correct classification as required by law.

Minn. Stat. §278.14, subd. 1. Minnesota Statute §278.14 goes on to provide prerequisites to asserting a claim for a mistakenly billed tax:

> Subd. 2. Procedure. A refund of mistakenly billed tax must be paid upon verification of a claim made in a written application by the owner of the property or upon discovery of the mistakenly billed tax by the county. Refunds of overpayments will be made as provided in section 278.12.
> Subd. 3. Appeals. If the county rejects a claim by a property owner under subdivision 2, it must notify the property owner of that decision within 90 days of receipt of the claim. The property owner may appeal that decision to the Tax Court within 60 days after receipt of a notice from the county of the decision. Relief granted by the Tax Court is limited to current year taxes and taxes in the two prior years.

Minn. Stat. §278.14, subds. 2-3. There is no reference within Minn. Stat. §278.14 to Minn. Stat. §278.01 and its service and filing deadlines and exceptions thereto.

The Minnesota Legislature has provided instructions for construing legislative intent. Minn. Stat. §645.17. "The object of all interpretation and construction of laws is

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[3] The remaining language of Minn. Stat. §278.14, subd. 1, provides the definition for "mathematical error". There is no allegation of a mathematical error in the present case.

to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. §645.16. Among the presumptions are "(1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;" and "(2) the legislature intends the entire statute to be effective and certain." Minn. Stat. §645.17. The Tax Court's decision in Beuning Family LP, supra., allows Respondent a second petition challenging classification of the subject property for the 2008 assessment year, without meeting the filing deadline contained within Minn. Stat. §278.01. This effectively eliminates the filing deadlines and exception for classification claims contained within Minn. Stat. §278.01, subd. 1(c) and subd. 4. The Order allows a taxpayer a second bite at the apple on issues concerning the classification of real property. Failing to meet the filing deadlines of Minn. Stat. §278.01 and accordingly having their case dismissed as untimely, or having their case dismissed for some other reason, a taxpayer, under the Tax Court's interpretation of Minn. Stat. §278.14, could simply bring another petition alleging misclassification pursuant to Minn. Stat. §278.14, and start over.

It is inconceivable that the Minnesota Legislature intended Minn. Stat. §278.14 as a mechanism to effectively repeal the long standing service and filing requirements specified by Minn. Stat. §278.01, particularly when there is little to no comment or legislative history relating to enactment of Minn. Stat. §278.14. If the Minnesota Legislature intended this purported result, the amendments made to Minn. Stat. §278.01 subsequent to enactment of Minn. Stat. §278.14, particularly those amendments relating

to service and filing deadlines, could have easily repealed those deadlines or amended them to reference and incorporate Minn. Stat. §278.14.

2. THE TAX COURT'S INTERPRETATION OF MINN. STAT. §278.14 WAS UNREASONABLE, AS THE LEGISLATURE INTENDED THE STATUTE TO APPLY TO "MISTAKES" NOT TO INTENTIONAL CHANGES IN CLASSIFICATION.

The goal of statutory construction is "to ascertain and effectuate the intention of the legislature." Minn. Stat. §645.16. Every statute "shall be construed, if possible, to give effect to all its' provisions." Id. The Tax Court may not engage in further construction of a taxing statute's intended meaning, if the language of that statute is clear and unambiguous. Id. A tax statute is not ambiguous when the legislature's intent is clear. Winnetka Partners, Ltd. v. County of Hennepin, 538 N.W.2d 912, 914 (Minn. 1995); Piney Ridge Lodge, Inc. v. Comm'r of Revenue, 718 N.W.2d 861, 864 (Minn. 2006). If the tax statute is "subject to more than one *reasonable* interpretation", it is ambiguous or doubtful, and doubt is to be resolved in favor of the taxpayer. Charles W. Sexton Co. v. Hatfield, 263 Minn. 187, 195, 116 N.W.2d 574, 580 (1962)(emphasis added). In the present case, the Tax Court's interpretation and application of Minnesota Statute §278.14 is not a reasonable interpretation and is contrary to the plain language of the statute, which applies to errors or mistakes.

Minnesota Statute §278.14 is entitled "Refunds of Mistakenly Billed Taxes", and was an addition in the year 2000 to Minnesota Statutes Chapter 278, which relates to objections and defenses to real or personal property taxes. Minnesota Statute §278.14 reiterates, in the body of the statute itself, that this provision requires a county "pay a

refund of a *mistakenly billed tax* as provided in this section, ..." and proceeds to define "mistakenly billed tax" as

> an amount of property tax that was billed, to the extent the amount exceeds the accurate tax amount due to a *misclassification* of the owner's property under section 273.13 or a mathematical error in the calculation of the tax on the owner's property, together with any penalty or interest paid on that amount. This section applies only to taxes payable in the current year and the two prior years. . .

Minn. Stat. §278.14, Subd. 1 (2000) (pertinent portion)(emphasis added). The plain language of this statute denotes errors, mistakes, 'misclassifications' as opposed to intentional changes to a parcel's classification based upon the assessor's judgment.

Minnesota Statute §278.14 provides that "upon *discovery* of the mistakenly billed tax", the county assessor is able to initiate the process for refunds for "misclassifications". Minn. Stat. §278.14, Subd. 2. (emphasis added) "A refund of mistakenly billed tax must be paid upon verification of a claim made in a written application by the owner of the property or upon discovery of the mistakenly billed tax by the county. . ." Id. The plain language of Minnesota Statute §278.14 provides for application of the statute to an unintended billing by the county assessor.

Taxpayers have a vehicle for challenging classification or reclassification of their real property through Minn. Stat. §278.01. Programmed Land, Inc. supra., 633 N.W.2d at 525-526 (holding classification is part of the assessment process and is subject to challenge under Minn. Stat. §278.01). Minnesota courts have consistently held that such challenges must be made within the filing deadlines of Minn. Stat. §278.01 or be dismissed. Hovanec v. County of Carver, 1993 WL 241360, Minn.Tax Regular Div.

June 29, 1993 (No. C6-92-1296); Hartmann v. Sibley County Board of Commissioners, 2010 WL 696969 (Minn.App.)(unpublished opinion RA pp. A200-A205); Programmed Land, Inc., supra.; Odunlade v. City of Minneapolis, 2011 WL 3925620, Minn.Tax Regular Div. Aug. 31, 2011 (No. 27-CV-10-26849).

> Having provided a means to challenge property taxes for the purpose of ensuring their prompt payment, the legislature would not then undermine that purpose by allowing a significant number of tax grievances to be free of the chapter 278 filing limitation and, consequently, actionable years after the taxes were due. When taxpayers have missed an opportunity to bring a claim under section 278.01, we have consistently rejected their efforts to seek an alternative statutory remedy, in part because we have recognized that the legislature established a limited time frame to bring a property tax action to promote the prompt collection of taxes and avoid a multiplicity of suits.

Programmed Land, Inc., supra., 633 N.W.2d at 526. The Minnesota Tax Court in the present action noted that Programmed Land was winding its way through the court during the time that Minn. Stat. §278.14 was enacted. (RA p. A172) Programmed Land, in fact acknowledges this in a footnote to a dissenting opinion, and relates the enactment of Minn. Stat. §278.14 to providing a remedy for misapplied classification rates. Programmed Land, 633 N.W.2d at 532, FN4.

In Programmed Land, Inc. v. O'Connor, 633 N.W.2d 517 (Minn. 2001), the Minnesota Supreme Court reviewed a class action suit where taxpayers brought an action alleging two counties had failed to apply the reduced class rate to the class 3(a) properties as provided for under Minn. Stat. § 273.13, subd. 24; resulting in the taxpayers overpaying their real property taxes between 1987 and 1997. The class rate was corrected in 1997 and the reduced class rate applied thereafter. Abatements were granted

to the taxpayers for taxes payable in 1996, but the counties had rejected claims for refunds and abatement applications for the earlier years, as the claims and applications had not been filed within the time limitations of Minn. Stat. §§ 278.01, subd. 1 and 375.192.

The taxpayers in Programmed Land were assessed the wrong class rates to their 3(a) property. Although they received proper notification of their property taxes and the classification of their property, the notices they received did not contain information about which *class rate* had been applied and did not put them on notice so that they could file timely claims challenging the property taxes under Minn. Stat. § 278.01, subd. 1. Respondent in this case is not alleging a clerical mistake relating to improper application of a class rate. Respondent's argument in this case relates to the Stearns County Assessor's decision to classify the subject property as commercial property in assessment year 2008/payable tax year 2009. Respondent admitted having received timely notice of the change in classification. See Order, Beuning I, supra., (RA p. A16) Respondent could have met the statutory filing deadlines of Minnesota Statute § 278.01, but failed to do so. Most, if not all acts relating to assessment, including classification, occur before April 30 of the year taxes are due, and are known or knowable prior to that deadline. The Minnesota Supreme Court in Programmed Land, supra., notes this and references the numerous opportunities provided to taxpayers to contest issues that are noticed, or capable of being known. This would include the classification or reclassification of property, which is noticed to property owners in both the "truth in

taxation" statement which is mailed in November of the year taxes are assessed; and in the final property tax statement, which is sent out no later than March 31 of the year taxes are due. Programmed Land, Inc., 633 N.W.2d at 528-29. However, the class rate which is applied to a specific parcel of property is something which is not necessarily discernible from the property tax notices and statements which are sent out, and challenging mistaken application of those rates within the timelines provided by Minn. Stat. §278.01 may not be easily accomplished.

Justice Stringer, in the dissenting opinion provides the logical explanation for enactment of Minn. Stat. §278.14, that it was enacted to provide a remedy to taxpayers, who, without any notice, have paid a mistakenly billed tax due to the mistaken application of class rates to their real property.

> It appears that the legislature may also have concluded that there was a need for relief, as in 2000 it adopted Minn. Stat. 278.14 (2000), which provides that a county must refund a "mistakenly billed tax" as provided in the section. Act of May 15, 2000, ch. 490, art. 5, § 19, 2000 Minn. Laws 2014, 2086 (codified at Minn. Stat. § 278.14). While the question of whether a misapplied class rate is a "mistakenly billed tax" is not before us, adoption of section 278.14 suggests that the legislature saw the need to provide an administrative remedy for mistakenly billed taxes because a statutory remedy was not available under section 278.01.

Programmed Land, supra., at 532, FN4. The dissent notes that classification of property involves discretionary judgments that, after an extended period of time, become difficult to defend. Programmed Land, 633 N.W.2d at 531. The classification of the parcel is facially apparent on the notices received by the taxpayers and accordingly, the taxpayer should be expected to challenge it expeditiously. Programmed Land, 633 N.W.2d 528.

Conversely, knowledge of mistaken application of class rates, clerical and mathematical errors are not always apparent to the taxpayer.

A basic premise of statutory construction is that every law is to be construed, if possible, to give effect to all its provisions. Minn. Stat. 645.16. When the intention of the legislature is unknown, and the words of the law are not explicit, these factors should be considered: the occasion and circumstances under which the law was enacted, the mischief or object to be remedied, the former law, consequences of a particular interpretation, contemporaneous legislative history and legislative and administrative interpretations of the law. Id. See Amaral v. Saint. Cloud Hospital, 598 N.W. 2d 379, 384 (Minn. 1999) and Schaeffer v. Newberry, 235 Minn. 282, 290, 50 N.W. 2d 477, 482 (Minn. 1951). The way to reconcile and give effect to both statutory provisions is to interpret the legislative intent in passing Minnesota Statute § 278.14 was to address a particular mischief that needed to be remedied, and apply it to unintended, unnoticed clerical type mistakes resulting in mistakenly billed property taxes. When Minnesota Statute §278.14 is interpreted and applied in this manner, limiting its application to unintended mistakes and clerical errors, the two statutes may be read together by differentiating the types of claims that could be asserted under each statutory provision.

C. THE TAX COURT'S FAILURE TO CONSIDER WHETHER ANY MATERIAL FACT AS TO CLASSIFICATION OF THE SUBJECT PROPERTY HAD BEEN RAISED BY RESPONDENT WAS AN ERROR OF LAW.

The Minnesota Tax Court filed its order in Beuning Family LP v. County of Stearns, File No.: 73-CV-10-4868, 2011 WL 2517522 (Minn.Tax Regular Div. June 21,

2011), denying Relator's motion for summary judgment in this matter on July 7, 2011. (RA pp. A166-A178) The Tax Court's order fails to address Relator's argument on the issue of whether Respondent had raised any issue of material fact as to classification of the subject property. Id. Relator raised this argument in the memoranda filed in support of summary judgment. (RA pp. A32-A34) It is Relator's position that the subject property in this case was properly classified as commercial property by the Stearns County Assessor that the Assessor's classification of the property was supported by testimony and documentation included in the Affidavit of Gary Grossinger, Stearns County Assessor, and Anita M. Rassmussen, Planning and Community Development Director for the City of Sartell. Respondent failed to produce any admissible facts or evidence in response to Relator's summary judgment motion on the issue of classification in this case, which was required in order to establish the existence of an issue of material fact. (See Respondent's submissions RA pp. A90-A97, A140-A161) The Tax Court's failure to address whether an issue of material fact had been raised in this case, and the Tax court's entry of an order denying Relator summary judgment in this matter were errors of law.

Standard of Review. The Minnesota Supreme Court reviews tax court decisions to determine whether there was subject matter jurisdiction, whether the decision was supported by evidence, and whether there was an error of law. Hohmann v. Commissioner of Revenue, 781 N.W.2d 156, 157 (Minn. 2010). The Minnesota Supreme Court is not bound by the Tax Court's decisions, and will overrule the tax court if its'

decision is clearly erroneous and the evidence as a whole does not reasonably support the decision. Schmieg v. County of Chisago, 740, N.W.2d 770, 772 (Minn. 2007) On review from summary judgment proceedings, the Minnesota Supreme Court must determine "'whether there are any genuine issues of material fact and whether the lower court erred in its application of the law'. . . . Conclusions of law, including the interpretation of statutes, are reviewed by this court de novo. . . . The determination of whether a genuine issue of material fact exists is also subject to de novo review." Brookfield Trade Center, Inc. v. County of Ramsey, 609 N.W.2d 868, 873-874 (Minn. 2000)(pertinent part, citations omitted).

Upon the service and filing of a properly supported motion for summary judgment, the court must render judgment to the moving party, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Rule 56.03 of the Minnesota Rules of Civil Procedure. The nonmoving party has the burden of establishing a material fact through the production of "substantial evidence." Brookfield Trade Center, Inc. v. County of Ramsey, 609 N.W.2d 868, 874 (Minn. 2000). Evidence produced in a summary judgment motion is viewed in the light most favorable to the nonmoving party. Id.

> The party resisting summary judgment may not simply rest on its pleadings, but must produce affirmative evidence to show an issue of material fact. However, there is no issue of material fact if the nonmoving party 'presents evidence which merely creates a metaphysical doubt as to a factual issue

> and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.'

Brookfield, supra., quoting DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). In the present case, Relator, the moving party properly supported its' motion for summary judgment. Respondent failed to properly resist the motion and chose to rest on argument alone.

Relator established, through sworn affidavit with attached documentation that the subject property is located in LeSauk Township, which is an orderly annexation area for the City of Sartell. (See Affidavit of Stearns County Assessor, Gary Grossinger, hereinafter "Aff.GG", RA pp. A40-A46) See also Affidavit of Anita M. Rasmussen, Planning and Community Development Director City of Sartell (Aff.AMR, RA pp A59-A66)) The subject property is vacant property, which is not being used. Id. It is located in a commercial growth area for the City of Sartell, and is surrounded by commercial businesses. (Aff.GG, p. A36, Aff AMR p. A58) It is visible from County Road 1 and State Highway 15, major arterial routes in the area. Id. The subject property is advertised and listed for sale as a commercial site. Id. The Stearns County Assessor reclassified the property in 2008, designating it as commercial property. (Aff. GG RA p. A36). It was the Stearns County Assessor's opinion that classification of the property as commercial was appropriate, as it was the property's most probable, highest and best use. Id.

LeSauk Township and the City of Sartell entered into an orderly annexation agreement on November 6, 1992. (Aff.GG , RA pp. A41-A47, Aff.AMR, RA pp. A59-A67) Pursuant to Minn. Stat. §414.0325, subd. 5 (RA pp. A4-A7), the City of Sartell and the Town of LeSauk signed a joint resolution designating the entirety of the Town of LeSauk as an orderly annexation area, and created the City of Sartell-LeSauk Township Joint Planning Board, which has exclusive authority over land use and zoning issues within the orderly annexation area. (Aff.GG, RA p. A44, Aff.AMR, RA p. A64) The zoning staging plan or land use plan map for the City of Sartell identifies zoning for the subject property as "General Business". (Aff. GG, RA pp. 36, 55, Aff. AMR, RA pp. A60, A75). According to the Sartell/LeSauk Comprehensive Plan, "General Business" or B-2 districts provide space for concentrated general business and commercial activities. (Aff. GG, RA pp. A36-37, A56-57, Aff. AMR, RA pp. A59-60, A76-85) In early 2001 Stearns County and the Joint Planning Board signed an Memorandum of Understanding, negating coverage of the orderly annexation area by the Stearns County zoning ordinance. (Aff. GG, RA p. A52, Aff. AMR, RA p. A72) All of the facts and information relating to the classification of the subject property in this matter was supplied by Relator through sworn affidavit.

When property is vacant and has no identifiable current use, Minnesota law requires the assessor classify the property at the property's highest and best use, taking into consideration the most likely potential use of the property based on the use of surrounding properties.

> If the ordinance permits more than one use, the land must be classified according to the highest and best use permitted under the ordinance. If no such ordinance exists, the assessor shall consider the most likely potential use of the unimproved land based upon the use made of surrounding land or land in proximity to the unimproved land.

Minn. Stat. §273.13, subd. 33(b). Highest and best use is "the reasonable probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value." The Appraisal of Real Estate, (12th ed. 2001), American Institute of Real Estate Appraisers p. 305. (RA p. A208)

The Stearns County Assessor's classification for this property as commercial was appropriate, supported by the facts, and was not contradicted by any affidavits submitted by Respondent in this matter. Respondent failed to raise an issue of material fact relevant to this case and Relator is entitled to summary judgment.

Respondent presents no facts to contradict those presented by Relator. See Respondent's memoranda submitted in this matter, Tax Court File No. 73-CV-4868 (RA pp. A90-97 and pp. A140-161). Respondent simply argues that LeSauk Towsnhip zoned the property R-1 and that the assessor is limited to uses permitted according to local zoning ordinances. Id. Respondent failed to produce the local zoning ordinance or any other documentation to support its' argument in this case. Supporting affidavits based on personal knowledge are required in opposing a motion for summary judgment. Minn.R.Civ.P. 56.05.

> When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or

> denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Rule 56.05, Minnesota Rules of Civil Procedure. While Relator acknowledged an R-1 designation for the subject property on the County's comprehensive plan, (RA p. A33) that does not constitute a local zoning ordinance or restriction.

Stearns County has no zoning authority over the property as all zoning and planning authority for the orderly annexation area was vested in the Joint Planning Board. (Aff. GG, RA p. A44, Aff.AMR, RA p. A59-60, A64). Additionally, Stearns County officially renounced having any zoning and land use authority over the orderly annexation area in 2001, when the County entered into a Memorandum of Understanding with the Joint Planning Board. (Aff. GG, RA p. A52, Aff. AMR, RA p. A72)

Even if the subject property were zoned R-1, an allegation that is denied, Respondent's legal position would be untenable. Zoning is not determinative of classification. Brackey v. County of Washington, 2008 WL 2573299, 2, Minn.Tax Regular Div. June 23, 2008 (No. C4-06-7837). "We find no authority, and Petitioner cites none, that zoning and classification are interchangeable." Id. The Minnesota Tax Court has classified property based upon current use as well as upon prospective use, despite the property having a different zoning designation. See Kaiser v. County of Becker, 2010 WL 1541463, Minn.Tax Regular Div. April 14, 2010 (No. 03-CV-08-1110) Relator's classification of the subject property as commercial based on its highest

and best use was the only position supported by any evidence in the present case, and is deemed correct.

The property at issue is classified as commercial property by the Stearns County Assessor. "The assessor's classification is prima facie valid and correct. Minn. Stat. § 271.06, subd. 6. Respondent has the burden of proving the subject property's actual classification differs from the county determination. Schmieg v. County of Chisago, 2010 WL 3219140 Minn. Tax Regular Div. July 23, 2010 (No. 13-CV-09-746), citing Schleiff v. County of Freeborn, 231 Min. 389, 43 N.W.2d 265 (1950); Borglund v. County of Scott, 1998 WL 726418, Minn.Tax Regular Div. Oct. 13, 1998 (No. 98-05080). Respondent has produced no evidence in this case to sustain its' burden in opposing Relator's motion for summary judgment. Relator is entitled to summary judgment as a matter of law.

III. CONCLUSION

For the reasons set forth above, the Minnesota Supreme Court has authority to reverse the order of the Minnesota Tax Court, and grant Relator summary judgment.

Respectfully submitted,

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