

State of Minnesota  
In Supreme Court

County of Ramsey,

Relator,

v.

Federated Retail Holdings, Inc.,

Respondent.

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**BRIEF AND ADDENDUM OF  
RELATOR COUNTY OF RAMSEY**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE ISSUES

- I. Is the right secured by a lease (“Lease”) to use real property (“Leased Basement Space”) adjacent to the subject tax parcel (“Subject Property”) a right that “belongs or appertains to the land” and which must therefore be valued as part of the subject “real property” pursuant to Minnesota Statutes § 272.03, subdivision 1?

Ramsey County’s appraiser included the value of 45,436 square feet of Leased Basement Space located on property identified as P.I.D. No. \_\_\_\_\_ (“Parcel 0005”) as part of the value of the Subject Property for tax purposes [Add. at 62-63; Tr. at 371-81]. Respondent’s appraiser did not include any value contributed by the Leased Basement Space in the value of the Subject Property. The tax court did not include any portion of the value of the Leased Basement Space in its Conclusion of Value for the Subject Property because the tax court concluded that “the right to use the Leased Basement Space does not run with the land.” [Add. at 52]. That conclusion was not in conformity with the evidence, nor a proper application of the law.

**Preservation of Issue:** The interpretation of a contract is a question of law that is reviewed *de novo*. Business Bank v. Hanson, 769 N.W.2d 285, 288 (Minn. 2009). Substantive questions of law that were properly raised below are preserved for review on appeal. Alpha Real Estate Co. v. Delta Dental Plan of Minnesota, 664 N.W.2d 303, 311 (Minn. 2003).

**Most Apposite Cases:** Alvin v. Johnson, 241 Minn. 257, 63 N.W.2d 22 (1954); Schleiff v. County of Freeborn, 231 Minn. 389, 43 N.W.2d 265 (1950); Pelser v. Gingold, 214 Minn. 281, 8 N.W.2d 36 (1943).

**Most Apposite Statutes:** Minnesota Statutes § 272.03, subd. 1 (2010); Minnesota Statutes § 273.11 (2010); Minnesota Statutes § 273.12 (2010).

- II. Did the tax court have jurisdiction to determine the value contributed to the Subject Property by the right to use the Leased Basement Space?

The tax court found that because the Subject Property and the Leased Basement Space were on separate tax parcels, the court did not have jurisdiction to value the

Leased Basement Space's contribution to the value of the Subject Property without an easement transferring that value to the Subject Property [Add. at 23; 55]. The tax court misapplied the law, failing to recognize that value can be transferred from one parcel to another for property tax purposes by vehicles other than an easement, and that the court only needs jurisdiction over the Subject Property to determine the value of the Subject Property as enhanced by its rights in other property. The tax court's failure to include the value that the Leased Basement Space contributes to the Subject Property in its finding of value is contrary to law and clearly erroneous.

**Preservation of Issue:** Substantive questions of law that were properly raised below are preserved for review on appeal. Alpha Real Estate Co. v. Delta Dental Plan of Minnesota, 664 N.W.2d 303, 311 (Minn. 2003).

**Most Apposite Cases:** Alvin v. Johnson, 241 Minn. 257, 63 N.W.2d 22 (1954); Meritex Enterprises, Inc. v. County of Ramsey, No. CX-06-4506, 2009 WL 2366285 (Minn. Tax Ct. July 24, 2009); 444 Lafayette, LLC and Meritex Enterprises, Inc. v. County of Ramsey, Nos. 62-CV-08-4369, 62-CV-09-4709, 62-CV-10-166, 2011 WL 1364461 (Minn. Tax Ct. April 07, 2011), *appeal docketed* A11-1014 (Minn. 2011).

**Most Apposite Statute:** Minnesota Statutes § 272.03, subd. 1 (2010).

## STATEMENT OF THE CASE

This matter comes to the Supreme Court by certiorari for review of the Order of the Minnesota Tax Court dated September 27, 2011, determining the value for property tax purposes of the Macy's Department Store at Rosedale Mall (the "Subject Property") for the January 2, 2006, and January 2, 2007, assessment dates. The Subject Property is identified by the assessor for property tax purposes as P.I.D. No. 09.29.23.0004 ("Parcel 0004") [Add. at 20]. The assessor's estimated market value for the Subject Property for both assessment dates at issue was \$17,000,000 [Add. at 15, ¶11]. The trial of the matter was held before Judge Sheryl A. Ramstad from April 4 through April 7, 2011 [Add. at 13].

At trial Ramsey County presented the expert appraisal and testimony of Dwight Dahlen, MAI (Member of the Appraisal Institute), who testified that the Subject Property had a value of \$19,465,000 for both assessment dates [Add. at 16, ¶ 13]. His conclusion of value was based on his opinion that the value of the Subject Property included the value of the Leased Basement Space which was being used as part of the Macy's Department Store [Add. at 62-63; Tr. 371-81]. The Subject Property since 1991 has had the exclusive, long-term right to the use of the Leased Basement Space as part of its department store pursuant to the Lease from the owners of Rosedale Mall for nominal rent, which Lease is automatically renewable by the lessee or its assignees for 100 years [App. at 5; 9, art. 3; 29, art. 40].

Petitioner below, Federated Retail Holdings, Inc. (“Federated”) introduced the expert appraisal and testimony of Daniel T. Boris, MAI, who testified that the Subject Property had a value of \$10,400,000 on January 2, 2006, and \$11,300,000 on January 2, 2007 [Add. at 15, ¶ 12]. Mr. Boris did not include any contributory value to the Subject Property from the Leased Basement Space when valuing the Subject Property [Tr. at 178-87].

At the conclusion of the hearing, Judge Ramstad ordered that Ramsey County’s estimated market value of \$17,000,000 be decreased to \$14,894,830 for the 2006 assessment and to \$15,245,024 for the 2007 assessment [Add. at 46]. Federated then moved for two Amended Findings of Fact and Conclusions of Law with Respect to the August 23, 2011 Order [App. at 39]. Federated argued that the court’s values should be further reduced because the court’s calculation included figures in the income approach which were based on the combined value of the Leased Basement Space and the main department store [App. at 43-45]. Ramsey County responded, claiming the tax court erred by finding that the value of the Subject Property does not include any contributory value from the Leased Basement Space [App. at 69]. On September 27, 2011, Judge Ramstad ordered the valuation reduced from her August 23, 2011 determination to \$10,590,088 for 2006 and \$12,575,281 for 2007 [Add. at 49]. Judge Ramstad decreased the Subject Property’s value, in part, because her original calculation of the value of the Subject Property by the income approach included the Leased Basement Space [Add. at 52-53].

Relator, Ramsey County, obtained a writ of certiorari for review on November 21, 2011.

### STATEMENT OF FACTS

The Subject Property of both petitions on appeal is an anchor department store attached to the Rosedale Mall in Roseville, Minnesota [Add. at 17]. The property was built as a Dayton's department store in 1990 [Add. at 14, ¶3] and operated as a Dayton's until 2001 [Add. at 17]. Between 2001 and 2004, the store operated as a Marshall Fields store [Add. at 17]. In 2004 the Subject Property was acquired by The May Department Stores Company ("May") as part of a large portfolio sale of former Dayton's stores and Mervyn's assets [Add. at 17]. In 2005, Federated merged with May and the store's name was changed to Macy's [Add. at 57].

At the time the department store on the Subject Property was constructed Rosedale Mall's owner, Equitable Life Assurance Society of the United States ("Equitable"), acquired the former Dayton's store ("Parcel 0005") for conversion to in-line mall stores [Add. at 20]. Equitable converted the first and second floors of Parcel 0005 to in-line mall space [Add. at 18], and leased the 45,436 square feet of basement space on Parcel 0005, the Leased Basement Space, "rent-free" to Dayton's for use as part of its department store [Add. at 17, n.1]. The long-term right to use the Leased Basement Space as part of its department store operation for virtually no rent stems from agreements between Rosedale Mall and the owner of Dayton's Department Store in 1988; concessions, including the construction of the department store on the Subject Property,

were given by the mall owner in exchange for the promise by Dayton's to not open a store at the Mall of America [Add. at 17, n.1; Tr. at 12-13, 201-02].

Equitable and Dayton's entered a fifteen-year lease (the "Lease") renewable for up to one hundred years at a rent of one dollar per year [App. at 6; 9-10, Art. 3]. The Lease requires the Leased Basement Space to be operated as part of a Dayton's department store [App. at 10, Art. 3(c)]. The Rider on the Lease also indicated that Dayton's would pay the taxes for the Leased Basement Space as long as the "premises are taxed with the Main Store." [App. at 16, Art. 10E]. Additionally, Rosedale Mall promised it would "not do anything which would hinder Tenant from having the Premises taxed with the Main Store" Id.

Although the Lease was originally negotiated between Dayton's and Equitable, the Lease was assignable by the tenant to a purchaser of the Subject Property and was, in fact, assigned upon sale of the Subject Property to May [App. at 21-22, Art. 21; 37-38]. After the merger between Federated and May, the owner of Rosedale Mall, PPF RTL Rosedale Shopping Center LLC, "ratified and confirmed" the Lease with Federated on June 21, 2006 [App. at 37-38].

In 2006 and 2007, Ramsey County assessed the Subject Property at an estimated market value of \$17,000,000, a rate of \$62.99 per square feet [Add. at 15, 18]. Ramsey County's assessment of the Subject Property included the value of the Leased Basement Space in the Subject Property's value [Add. at 65]. Federated challenged the valuation of the Subject Property for the 2006 and 2007 assessment years [Add. at 1-12].

In 2011, these petitions came before Minnesota Tax Court Judge Sheryl A. Ramstad and a hearing took place from April 4 to April 7, 2011 [Add. at 13]. Experts for Federated and the County testified to opinions of value for the Subject property [Add. at 15-16]. Federated's expert, Mr. Boris, testified that the property had a value of \$10,400,000 for 2006 and \$11,300,000 for 2007 [Add. at 15]. Ramsey County's expert, Mr. Dahlen, testified that the property's value was \$19,465,000 for both years [Add. at 16]. Mr. Dahlen's valuation included his opinion that "Macy's appears to enjoy a significant leasehold interest, one which has a positive impact on the subject" and his valuation included a calculation of the value of the Leased Basement Space at \$1,686,863 as a part of the rights of the Subject Property that were being valued [Add. at 62-63, 64].

Ramsey County submits the tax court erred when it failed to include in the value of the Subject Property the value contributed to the Subject Property by the use of the adjacent Leased Basement Space.

## INTRODUCTION

A petition filed under chapter 278 to contest the value of real property is an *in rem* proceeding. International Harvester Co. v. State, 200 Minn. 242, 245, 274 N.W.217, 218 (1937). It is important to know what is included in the *res* that is the subject of that petition to know what is being valued. Minnesota's statutes governing property taxation make it clear from the definition of "real property" that real property, for purposes of taxation, can include more than the land and the improvements on the land. The real

property includes, among other things, “all rights and privileges belonging or appertaining to the land.” Minn. Stat. § 272.03, subd.1 (2010). The assessor is required to value real property at its market value, and in doing so the assessor has the duty “to take into consideration every element and factor affecting such valuation.” Schleiff v. County of Freeborn, 231 Minn. 389, 394, 43 N.W.2d 265, 268 (1950). Thus, when valuing the “real property” that comprises the Subject Property the assessor must include the rights and privileges that the Subject Property has that “belong or appertain” to it. Therefore, the courts in a chapter 278 proceeding must include those rights and privileges in their determination of value as well.

In the petitions now on appeal, the tax court erred in valuing the Subject Property by not including in the Subject Property’s value one of the rights in its “bundle of rights”: the value to the Subject Property of its exclusive, long-term, “rent-free,” assignable right to the use of the Leased Basement Space as part of the department store it operates on the Subject Property. The tax court erred on two points of law.

First, the tax court concluded that:

the right to use the Leased Basement Space does not run with the land, but requires assignment of the lease to transfer rights under it. The bundle of rights Petitioner has with respect to parcel 0004 doesn’t include the right to use any of parcel 0005 in the absence of the parties entering into a lease agreement.

[Add. at 52]. The tax court appears to be of the opinion that a right cannot run with the land if it is acquired by the assignment of a lease. That position is not consistent with Minnesota law which recognizes that benefits and burdens created by contract can run

with the land, and the assignability of those rights and obligations is a necessary requirement for them to run with the land. Pelser v. Gingold, 214 Minn. 281, 285, 8 N.W.2d 36, 39 (1943).

Second, the court concluded that the Leased Basement Space would need to have its parcel number included in the subject petitions for the court to determine the value contributed to the Subject Property by the Leased Basement Space. This position contradicts the tax court's recent findings, based on the principle announced in Alvin v. Johnson, 241 Minn. 257, 262, 63 N.W.2d 22, 26 (1954), that value *was* contributed to a property by rights it had in a parcel not included in the petition before the court. *See Meritex Enterprises, Inc. v. County of Ramsey*, No. CX-06-4506, 2009 WL 2366285, at \*9 (Minn. Tax Ct. July 24, 2009); 444 Lafayette LLC v. County of Ramsey, Nos. 62-CV-08-4369, 62-CV-09-4709, 62-CV-10-16620, 2011 WL 1364461 (Minn. Tax Ct. 2011), *appeal docketed*, A11-1014 (Minn. 2011).

## ARGUMENT

### I. Standard of Review

This Court reviews 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, 797 N.W.2d 186, 189 (Minn. 2011). Errors of law are reviewed *de novo*. Id.

**II. The right to the use of property adjacent to the Subject Property for use in the operation of its department store, which right was transferred to the Subject Property by an assignable Lease automatically renewable for 100 years for nominal rent, was a right that “belongs or appertains to the land” and that right must therefore be valued as part of the subject “real property” pursuant to Minnesota Statutes § 272.03, subdivision 1.**

**A. Rights transferred from one parcel to another run with the land to which they are transferred when they touch or concern the land and are assignable.**

A right or obligation will “belong or appertain to” the land, as referenced in Minnesota Statutes § 272.03, subdivision 1, and

is said to “run with the land” when it touches or concerns the land granted or demised. Generally speaking, a covenant touches or concerns the land if it is such as to benefit the grantor or the lessor, or the grantee or lessee, as the case may be. As the term implies, the covenant must concern the occupation or enjoyment of the land granted or demised and the liability to perform it, and the right to take advantage of it must pass to the assignee.

Pelser v. Gingold, 214 Minn. at 285, 8 N.W.2d at 39.

Thus, assignability is one of the necessary hallmarks for covenants in a contract to run with the land. Otherwise, the rights would be specific to the original parties to the agreement and when the agreement was assigned the new party would no longer be obligated or benefited, as the case may be. The tax court ruled that the right to use the Leased Basement Space “does not run with the land.” [Add. at 52]. The tax court justified its conclusion by the fact that the Lease “requires assignment of the lease to transfer rights under it.” Id. To the contrary, assignability of a lease is the basic requirement for the rights there under to run with the land. Pelser, 214 Minn. at 285, 8 N.W.2d at 39. Thus, the tax court clearly erred when it disregarded the rights under the

Lease as not running with the land because the Lease “requires assignment of the lease to transfer rights under it.” [Add. at 52].

The tax court’s error is based on its too narrow application of Alvin v. Johnson. What it fails to consider is that rights that run with the land can be created in many ways.

**1. Rights that belong or appertain to the land can be created by an easement.**

The right of one parcel of land to the use and enjoyment of another parcel of land can be created to run with the benefitted land by the use of an easement. Alvin v. Johnson is the classic example. 241 Minn. at 262, 63 N.W.2d at 26. The tax court recognized that principle in Meritex and 444 Lafayette. 2009 WL 2366285, at \*\*8-9, 2011 WL 1364461, at \*7. The only material difference between the facts in those cases and the facts of the cases now before this Court is that the rights transferred from the adjacent parcel to the Subject Parcel are by means of a lease rather than by an easement. There is nothing in Minnesota law that requires the transfer of value from one parcel to another to be by use of an easement. Real property, as defined in Minnesota Statutes § 272.03, includes “*all* rights and privileges belonging or appertaining to the land” no matter how they are created (emphasis added).

**2. Rights that belong or appertain to the land can be created by a contract.**

The right to “occupation or enjoyment” of property is commonly transferred by contract. The covenants that the court was reviewing in Vawter v. Crafts were made in a mortgage, a contract that relates to real property. 41 Minn. 14, 16, 42 N.W.2d 483, 484

(1889). Vawter clearly considers the benefit bestowed by agreement in the mortgage to be part of the bundle of rights of the benefited land.

An exchange of rights and obligations that run with the land is in the Restatement of Operating Agreement, a contract between Rosedale Mall and its anchor tenants.

Article XXIV is titled “Covenants Running With The Land” and it states:

All of the easements, covenants, agreements, conditions and restrictions set forth in this ROOA are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the Parties, their respective successors and assigns, and their respective Parcels for the periods and upon the terms, provisions and conditions hereinabove set forth.

[Add. at 68]

There are no Minnesota Supreme Court cases that directly address the transfer of value for property tax purposes in the context of rights conveyed to another property through a lease, but in County of Du Page v. Property Tax Appeal Board, 708 N.E.2d 525, 527 (Ill. App. Ct. 1999) the Appellate Court of Illinois, Second District, concluded that the right of a store at a mall to use parking space on adjacent parcels, which right was granted by lease, added contributory value to the store parcel being valued for property tax purposes. That court relied on an earlier case where it had enunciated the principle of enhanced value for purposes of property taxation:

We therefore concluded that the Neiman Marcus and Saks Fifth Avenue parcels had to be assessed according to their enhanced market value as a result of their right to utilize the parking facilities on adjoining lots. We noted that such a conclusion was in harmony with section 1-130 of the Code, which defines real property as the land itself and “all rights and privileges belonging or pertaining thereto.”

County of Du Page v. Property Tax Appeal Board, 708 N.E.2d 525, 527 (Ill. App. Ct. 1999) (quoting County of Du Page v. Property Tax Appeal Board, 660 N.E.2d 985 (Ill. App. Ct. 1995) and (35 Ill. Comp. Stat. 200/1-130 (1994))).

The Illinois statute referred to has almost identical language to Minnesota's definition of real property in Minnesota Statutes § 272.03, subdivision 1. County of Du Page suggests that whether the transfer of rights is by easement or by lease is not material as long as the right belongs or appertains to the property being benefited.

When rights are conveyed by lease, the terms of the lease must be examined to determine whether the rights are being transferred to a particular lessee or whether the rights run with the land regardless of who holds the land. In this case, the Lease grants rights that belong or appertain to the Subject Property.

**B. The right to use the Leased Basement Space is a right that belongs or appertains to the Subject Property.**

**1. The Lease terms indicate that the right to the use of the Leased Basement Space belongs and appertains to the Subject Property.**

The Lease provides that the "Tenant shall occupy the Premises upon the commencement of the Term." [App. at 12, Art. 6]. Thus, the right to *possession* is granted by the lease. "An easement, whether it is a right to use the surface or a space above or below it, does not carry with it title to or right of possession of the land itself." Alvin v. Johnson, 241 Minn. at 264, 63 N.W.2d at 27. Thus, the Lease grants greater rights than an easement over Parcel 0004 would provide.

The Lease grants to the owner of the Subject Property the exclusive right to use

the Leased Basement Space as “an integrated part of the operation of [its] department store operated adjacent to the [Leased Basement Space].” [App. at 5, 7]. To that end, the tenant was allowed to “open a wall . . . so that the Premises may be operated in conjunction with the Main Store.” [App. at 7]. Further adding to the integrated nature of the two spaces, Article 13 of the Lease provides that all utility services (except sewer) are to be connected to the Subject Property’s utility systems [App. at 16]. Clearly, the intent of the Lease was to have the Leased Basement Space belong and appertain to the Subject Property for the operation of a department store.

The Lease provides to the Subject Property virtually rent-free use of approximately 45,436 square feet of store area [Add. at 15, ¶6]. The Lease was signed in 1991 for an initial term of 15 years [App. at 5]. There is an option to extend the term for up to 100 years [Add. at 15; App. at 9-10, Art. 3; 37-38]. That extension is automatic if the Leased Basement Space continues to be operated with the Main Store (the Subject Property) as a fashion oriented department store [App. at 9, Art. 3].

Some of the characteristics of the Lease noted so far could exist in a lease that does *not* run with the land, *i.e.* one that is specific to a given tenant. However, the Lease, by its terms is assignable, *and* it is assignable *only* to a party acquiring the Subject Property [App. at 21-22, Art. 21]. Thus, the rights to the use of the Leased Basement Space are not available to every potential tenant, but rather those rights attach only to the Subject Property, and only when it is being operated as an approved department store. To assure that these conditions will be met, there is a provision in Article 49 of the Lease

that a Certificate will be executed ratifying the Lease if there is an assignment of the Lease [App. at 31]. Clearly, all of these terms in the Lease indicate that the benefit of the use of the Leased Basement Space “belongs or appertains to” the Subject Property.

**2. The conduct of the parties to the Lease affirms that the right to the use of the Leased Basement Space belongs to and appertains to the Subject Property.**

The history of the Lease supports the same conclusion: the right to the use of the Leased Basement Space belongs and appertains to the Subject Property. Throughout the time the Lease has been in effect the parties to the Lease and their successors and assigns have acted in a way consistent with the Leased Basement Space “belonging to” the Subject Property. The Lease was originally signed by Equitable as Landlord and Dayton’s as Tenant [App. at 5].

May purchased the Subject Property from Dayton Hudson Corporation in 2004, as evidenced by the Certificate of Real Estate Value (CREV) they filed with the county assessor [Add. at 60-61]. May also acquired by assignment the right to use the Leased Basement Space as part of that department store. *See* letter dated June 21, 2006 referring to May as “successor to Dayton Hudson Corporation, as tenant” of the Lease [App. at 37-38].

When Federated merged with May in 2005, it acquired the Subject Property and the right to use the Leased Basement Space as part of the department store (re-named Macy’s) that it operated on the Subject Property [Add. at 17]. The assignment of the rights to the Leased Basement Space to Federated, as the new owner of the Subject

Property, was ratified by the owner of Rosedale Mall [App. at 37-38, ]. These assignments and ratification by the parties to the Lease affirm that the right to the use of the Leased Basement Space belongs to and is appurtenant to the Subject Property by virtue of the assignability of the Lease.

**C. The Subject Property's value includes the value contributed by the Leased Basement Space.**

**1. Value must be added to property for property tax purposes when rights that belong or appertain to the land confer a benefit on it.**

The principle of benefits running with the land is a long-standing one. This Court in Vawter v. Crafts observed the following:

Much abstruse and technical learning has been wasted in discussing the question what are and what are not covenants running with the land. But we think it will be found, by considering the principle underlying the subject, that, according to the best-considered modern authorities, the law corresponds with common sense, and annexes a covenant to the land when the subject of it is something to be done or refrained from, about or touching, concerning or affecting, the covenantee's land, (though not upon it,) which would benefit the same, or increase its value in the hands of the holder . . . . The rule, we think, is universal that the benefit passes with the land to which it is incident.

41 Minn. at 16, 42 N.W. at 484. When such rights are created by easement, the value of the benefited property increases according to the benefit conferred. In Alvin v. Johnson this Court determined that “[a]ppurtenant easements are factors definitely affecting values” whether the easement is recorded or not. 241 Minn. at 262, 266, 63 N.W.2d at 25, 28. Consequently, this Court ruled that “[a]n easement by prescription increases the value of the dominant tenement to the same extent as a recorded easement and, likewise, decreases the value of the servient tenement.” Id. at 266, 28.

Citing to Alvin v. Johnson, the Minnesota Tax Court increased the value of the subject property in a recent case due to its right to use an adjacent parcel for parking required by the business conducted on the subject property, saying:

We agree with Respondent that property benefitted by an easement interest has added value, whereas the burdened property loses value from it. . . . Since we are valuing the Subject Property on a fee simple basis, the easement adds value to the bundle of rights accorded the Subject Property. In other words, the Subject Property is a benefitted property with easement rights to parking that seem sufficient under the zoning regulations. Therefore, no subtraction in value should have been made for the fact that the parking rights existed on adjacent parcels rather than on the Subject Property.

Meritex, 2009 WL 2366285, at \*9. The transfer of value occurs regardless of the vehicle used to transfer the rights to the use or enjoyment of property because the definition of real property in section 272.03 applies to “*all* rights and privileges belonging or appertaining to the land” (emphasis added). Therefore the transfer of value should be fully recognized in this case.

The rights under the Lease directly and uniquely benefit the Subject Property. The various parties dealing with the Subject Property have recognized that the use of the Leased Basement Space does contribute substantially to the value of the Subject Property.

**2. The parties to the sale of the Subject Property considered the value of the right to the Leased Basement Space to be part of the Subject Property’s value.**

When the Subject Property was sold to May in 2004, May also acquired the rights to the Leased Basement Space [Add. at 22; App. at 37-38]. The purchase price allocated

by May for the Subject Property included the right to the use of the Leased Basement Space [Add. at 60-61, Tr. at 250-51]. No separate consideration was paid to acquire the right to the Leased Basement Space. Id.

**3. The Assessor considered the value of the Leased Basement Space to be part of the Subject Property's value.**

The original parties to the Lease notified the county assessor of the Lease [Add. at 65 & 66; Tr. at 380-81]. The county assessor thereafter treated the Leased Basement Space as "belonging to" the Subject Property, as evidenced by notations on the assessor's "field card" records [Add. at 65 & 66]. The notation indicates that in 1992 the value of the Leased Basement Space was added to the Subject Property for purposes of property taxation. Id. The field card notes are totally consistent with the definition of real property in Minnesota Statutes § 272.03, subdivision 1. Since 1991 the parties to the Lease have concurred in the value transfer to the Subject Property until this current litigation [Tr. at 380-81].

**4. Mr. Dahlen's appraisal is based on his opinion that the right to use the Leased Basement Space is a right that belongs or appertains to the Subject Property and must be valued with the Subject Property.**

Ramsey County's expert witness at trial, Mr. Dahlen, testified that what he valued was "The Macy's Store at Rosedale" [Tr. at 371]. He stated that it included *all* vested property rights [Tr. at 373 (emphasis added)]. As support for his opinion that the Leased Basement Space should be included in the value of the Macy's Store at Rosedale, Mr. Dahlen said he relied on the field card notes of the county assessor, which he included at

tab 1 of his appraisal report, trial Exhibit A [Add. at 65 & 66; Tr. at 379, line 10]. He also included the Lease terms as support for the conclusion of value in his appraisal [Add. at 62-63; Tr. at 378, 634, 641].

The tax court misstates Mr. Dahlen's opinion when it states that he did not take the position that the Leased Basement Space enhances the value of the Subject Property [Add. at 52]. On the contrary, that is precisely his position; it is why he included the value of the Leased Basement Space in his appraisal of the Subject Property, which he defined as "the Macy's Department Store." Mr. Dahlen may not have known how to articulate the legal argument for his position, but he clearly understood that the right of the Subject Property to the exclusive use of the Leased Basement Space for its operation of a department store on both parcels was part of the bundle of rights which he was valuing [Tr. at 603, 380].

**III. The tax court does not need to have jurisdiction over the Leased Basement Space to determine the value contributed by the Leased Basement Space to the value of the Subject Property.**

The tax court is a court of limited jurisdiction. Minn. Stat. § 271.01, subd. 5 (2010). It can only determine questions of law and fact arising under the tax laws of this state, as defined by Minnesota Statutes § 271.01, subdivision 5. When the court takes jurisdiction over "real property," it takes jurisdiction over *all* of that real property, including the rights and privileges "belonging or appertaining" to it. Minn. Stat. § 272.03, subd. 1. There is no requirement that the court needs to have additional jurisdiction over every parcel that affects or contributes to the value of

the property being valued. A contrary view would be totally unworkable. It would require a petitioner to include in a petition every parcel that might contribute to the subject's value. The court has jurisdiction over the Subject Property, and that is all that is necessary.

When the tax court takes *in rem* jurisdiction over property in a chapter 278 proceeding, it is for the limited purpose of determining the issues that were raised in the petition for that property for a given year. Minn. Stat. § 278.02 (2010). The issues are limited to the following: whether an assessment of property was a fair, impartial and equal assessment when compared to other similarly situated properties, or whether the property has been assessed at a value greater than its actual value, or whether the tax is illegal, or whether the property is exempt from tax. Minn. Stat. § 278.01, subd. 1 (2010). In this case the only issue on appeal is the value of the Subject Property.

In determining the value of property for tax assessment purposes, the assessor is required to take into account every factor affecting the property's market value. Minn. Stat. § 273.12 (2010); Schleiff, 231 Minn. at 394, 43 N.W.2d at 268. The tax parcel description does not limit the factors that affect that parcel's value to those contained in the same tax parcel. When surrounding property affects the subject property's value those factors must be taken into account. The court is not required to have jurisdiction over the surrounding properties in order to determine their effect on the subject property's value. For

example, section 273.11, subdivision 1 states that the “assessor shall take into account the effect on the market value of property of environmental factors in the vicinity of the property.” Minn. Stat. § 273.11, subd. 1 (2010). The courts have never held that the other properties generating the “environmental factors” must be included in a petition that raises the issue of value for a given property. In fact, in most cases that would be impossible because the petitioner would not necessarily have the requisite interest in those parcels to include them in its petition. Minn. Stat. § 278.01, subd.1.

At the conclusion of a chapter 278 hearing the court issues an order affirming or modifying the assessment of a given property with the resulting change, if any, to the amount of taxes for a given year. Minn. Stat. § 278.02 (2010); Minn. Stat. § 278.07 (2010). That order does not affect the assessment or tax of surrounding properties that may have contributed to the increase or decrease in the subject property’s market value.

Federated argued below, and the tax court agreed, that the tax court did not have jurisdiction over the Leased Basement Space because the Leased Basement Space is on Parcel 0005 and the Subject Property is located on Parcel 0004, and there is no easement between the two parcels [Add. at 23]. Ramsey County does not disagree with those facts. However, under Minnesota’s statutory definition of “real property” there is no reason for the court to have jurisdiction over Parcel 0005 to determine its impact on the value of Parcel 0004. The ability to enter judgment with regard to a given parcel is the object of

the court taking *in rem* jurisdiction under chapter 278. Minn. Stat. § 278.07. In this case neither party has asked the court to enter a judgment with regard to the taxes owed by Parcel 0005. In Meritex, 2009 WL 2366285, and 444 Lafayette LLC, 2011 WL 1364461, the tax court issued an order finding the value of the property for tax purposes, which value was enhanced by rights in an adjoining parcel, even though the court did not have jurisdiction over the adjoining parcel. Meritex, 2009 WL 2366285, at \*\*1, 8-9; 444 Lafayette LLC, 2011 WL 1364461, at \*\*1, 7. The tax court should have done the same in this case. There is no need for the court to have jurisdiction over Parcel 0005.

The tax court erroneously required jurisdiction over Parcel 0005 and faults Ramsey County for failing to combine Parcel 0004 and Parcel 0005. There is no evidence in the record that Federated or the mall owner, or any of their predecessors in interest ever requested that the auditor split Parcel 0005 and combine the Leased Basement Space portion with Parcel 0004. We do know that the value of the Leased Basement Space portion of Parcel 0005 was transferred to Parcel 0004 on the records of the county assessor [Add. at 65-66; Tr. at 645-46]. This was a way to account for the rights and value that belong or appertain to the Subject Property because of the Lease. This treatment of the Subject Property by the assessor has been consistent since 1992.

It must be remembered that Federated has an interest in Parcel 0005 by virtue of its succession to the Lease. Therefore it was totally within the discretion of Federated to include Parcel 0005 in the subject petitions if it thought it was necessary for valuation of the Subject Property. Federated chose not to include Parcel 0005 in its petition.

Federated now argues that the absence of parcel 0005 somehow lowers the Subject Property's value. Federate is attempting to strip the Subject Property of a substantial portion of its value for tax purposes by its decision to include only Parcel 0004. This position is a misstatement of the law. The result of incorrectly reducing the Subject Property's value is patent unfairness to the other taxpayers of Ramsey County.

### **CONCLUSION**

The tax court erred when it stated that the rights to the use of the Leased Basement Space conferred by the Lease did not "run with the land" of the Subject Property. Because the right to use the Leased Basement Space as part of the operation of the Subject Property runs with the Subject Property, it is part of the "real property" being valued when the Subject Property is being valued. The additional value that 45,436 square feet of department store space contributes to the Subject Property should be added to the value of the Subject Property. The fact that the tax court did not have jurisdiction over Parcel 0005 is irrelevant to a determination of the Subject Property's value.

This Court should find that as a matter of law the right to the use of the Leased Basement Space belongs to and appertains to the Subject Property for the years at issue and that the value to the Subject Property of the use of the Leased Basement Space must be included in the value of the Subject Property for purposes of property taxation. The tax court should be directed to re-determine the Subject Property's value including the

value contributed to the Subject Property by its right to the use of the Leased Basement Space as part of its department store.

Respectfully submitted,

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Dated: December 19, 2011

  
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**ATTORNEYS FOR RELATOR**

STATE OF MINNESOTA

IN SUPREME COURT

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County of Ramsey,

**CERTIFICATE OF COMPLIANCE**

Relator,

v.

Supreme Court No. A11-2093

Federated Retail Holdings, Inc.,

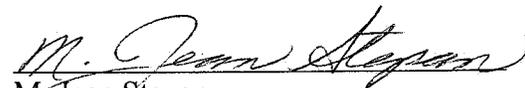
Respondent.

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 7,472 words. This brief was prepared using Microsoft Word 2007.

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