

STATE OF MINNESOTA
COUNTY OF MILLE LACS

TAX COURT
REGULAR DIVISION

Wal-Mart Real Estate Business Trust,
Petitioner,

**ORDER ON STIPULATION
TO VACATE**

vs.

County of Mille Lacs,

File Nos.: 48-CV-17-886
48-CV-18-854

Respondent.

Filed: July 15, 2019

These matters came before The Honorable Joanne H. Turner, Judge of the Minnesota Tax Court, on the parties' stipulation to vacate our February 21, 2019 judgment of dismissal.

Robert A. Hill, Attorney at Law, Wayzata, Minnesota, represents petitioner Wal-Mart Real Estate Business Trust.¹

Joe Walsh, Mille Lacs County Attorney, represents respondent County.²

In 2018, Mille Lacs County moved to dismiss the petitions filed by Wal-Mart Real Estate Business Trust contesting the assessment of real property taxes as of January 2, 2016 (File No. 48-CV-17-886), and January 2, 2017 (File No. 48-CV-18-854), on the ground that the Trust failed to timely disclose income and expense information as required by Minn. Stat. § 278.05,

¹ Jeffrey R. Mulder and Mark R. Bradford of the law firm of Bassford Remele are listed on the parties' Stipulation to Vacate Order, but have not filed notices of appearance with this court. At the same time, Aaron Thom and Samantha Ellingson of the law firm of Thom Ellingson appear on the records of this court as representing petitioner, but are not listed on the parties' Stipulation to Vacate Order and have not filed a notice of withdrawal of representation or substitution of counsel with this court.

² Mark Herzing, Assistant Mille Lacs County Attorney, filed the County's motion to dismiss on October 3, 2018. On December 28, 2018, Mr. Herzing was appointed to the district court in Mille Lacs County. The County has filed no substitution of counsel in this matter, and Mr. Herzing remains counsel of record for the County.

subd. 6 (2018). We granted the County's motion. The parties now ask that we vacate our dismissal and enter judgment reducing the assessed value of the subject property, as the parties subsequently agreed. We deny the parties' request.

Based upon all the files, records, and proceedings herein, the court now makes the following:

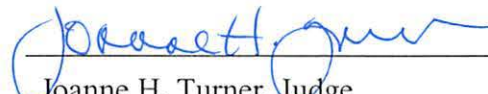
ORDER

The parties' joint request to vacate the February 21, 2019 judgment is denied.

IT IS SO ORDERED.

BY THE COURT:




Joanne H. Turner, Judge
MINNESOTA TAX COURT

DATED: July 15, 2019

MEMORANDUM

When a property tax petition has been filed with respect to income-producing property, Minn. Stat. § 278.05, subd. 6(a) (2018), requires the petitioner to provide certain information to the respondent county assessor by August 1 of the taxes-payable year. Failure to comply results in dismissal of the petition. *Id.*, subd. 6(b) (2018). Respondent Mille Lacs County moved to dismiss the petitions filed in this matter on the ground that petitioner Wal-Mart Real Estate Business Trust, the fee owner of the Walmart store in Princeton, Minnesota, failed to comply with section 278.05 with respect to the petitions challenging the January 2, 2016, and January 2, 2017 assessments. We agreed, and dismissed the petitions. The parties now ask us to vacate the

dismissals and enter judgment reducing the assessed value of the subject property as of January 2, 2017.³ Because the parties' request is contrary to law, we deny it.

For purposes of the County's motion to dismiss, we assumed the following facts were true. Wal-Mart Real Estate Business Trust is the fee owner of the Walmart store in Princeton, Minnesota.⁴ The Trust is wholly owned by Walmart, Inc., which operates the Princeton store.⁵ Within the Princeton store on January 2, 2016, and January 2, 2017, was a Smart Style hair salon operated by Regis Corporation.⁶ In 2017 and 2018, the Trust timely served and filed petitions under Minn. Stat. ch. 278 (2018) challenging the January 2, 2016, and January 2, 2017 assessed value of the Princeton property.⁷

When a petitioner contests the assessed value of rental property, the following information must be provided to the county assessor by August 1 of the taxes-payable year:

- (1) a year-end financial statement for the year prior to the assessment date;
- (2) a year-end financial statement for the year of the assessment date;
- (3) a rent roll on or near the assessment date listing the tenant name, lease start and end dates, base rent, square footage leased, and vacant space;
- (4) identification of all lease agreements not disclosed on a rent roll in the response to clause (3), listing the tenant name, lease start and end dates, base rent, and square footage leased;

³ Stip. Vacate Order & J. dated Feb. 21, 2019, Order J. & J. (filed Apr. 23, 2019).

⁴ Affidavit of Mark Herzing ¶¶ 2-4 (filed Dec. 21, 2018).

⁵ Tr. 14 (Dec. 18, 2018) (Mr. Hill stating that the operator of the Princeton store "owns 100 percent" of the Trust).

⁶ See Attachment A to July 14, 2005 Master Lease Agreement (filed Dec. 21, 2018), Herzing Aff. ¶¶ 8-9 & Exs. A & B.

⁷ Herzing Aff. ¶ 6; *Wal-Mart Real Estate Bus. Tr. v. Cty. of Mille Lacs*, File No. 48-CV-17-866 (filed Apr. 27, 2017) & *Wal-Mart Real Estate Bus. Tr. v. Cty. of Mille Lacs*, File No. 48-CV-17-854 (filed Apr. 14, 2018).

- (5) net rentable square footage of the building or buildings; and
- (6) anticipated income and expenses in the form of a proposed budget for the year subsequent to the year of the assessment date.

Minn. Stat. § 278.05, subd. 6(a). In addition, if the amount of rent due under the lease varies with, for example, the lessee's sales, the petitioner must disclose whether that provision was triggered. *Kmart Corp. v. Cty. of Douglas*, File No. C7-00-309, 2001 WL 40361, at *4 (Minn. T.C. Jan. 11, 2001). Except under circumstances not applicable here, failure to provide this information "shall result in the dismissal of the petition." Minn. Stat. § 278.05, subd. 6(b). The duty to disclose the information required by section 278.05 is strictly enforced, *78th St. OwnerCo., LLC v. Cty. of Hennepin*, 813 N.W.2d 409, 417 (Minn. 2012), even in the absence of prejudice to the county, *BFW Co. v. Cty. of Ramsey*, 566 N.W.2d 702, 706 n.6 (Minn. 1997).

On July 31, 2017, the County received the following spreadsheet concerning the Princeton Walmart store:⁸

Store #3102	Starting Date	Ending Date	Gross Amount	Rentable Area	Annual Sq Ft	Annual Gross
SMART STYLE						
	2/1/2013	12/31/2017	2,561.00	863	35.61	30,732.00

No financial statements were provided (whether for 2015 or 2016), nor did the Trust provide the net rentable square footage of the building or anticipated income and expenses for 2017 (the year after the assessment date).⁹

On July 30, 2018, Kari Alstad (a paralegal in the office of Mr. Hill, the attorney representing the Trust in these matters) sent an e-mail to the Mille Lacs County Assessor attaching

⁸ Herzing Aff. ¶ 8 & Ex. A.

⁹ See Herzing Aff. ¶ 8.

“the compliance information” for file 48-CV-18-854.¹⁰ Ms. Alstad’s e-mail identified three documents. The first, “3102 Income and Expense Report,” appeared to be a list of selected expenses of the Princeton Walmart store for 2016, 2017, and a portion of 2018.¹¹ The list of expenses included such things as “Equipment Rental,” “Electrical Maintenance,” and “Plumbing Maintenance,” and included “Management Fee Expense” of \$821,151 for FY16 and \$966,639 for FY17.¹²

The second, “Vestibule Tenant Report,” appeared to be the identical spreadsheet produced by the Trust for the Princeton store on July 31, 2017.¹³ Again, it showed starting and ending dates of the lease, monthly (\$2,561.00) and annual (\$30,732.00) gross rent on a total and per-square-foot basis, and rentable area (863 square feet) under lease.¹⁴

¹⁰ Herzing Aff. ¶ 9 & Ex. B & July 30, 2018 e-mail from Kari Alstad to al.heim@co.mille-lacs.mn.us (filed Dec. 12, 2018).

¹¹ Herzing Aff. ¶ 9 & Ex. B.

¹² Herzing Aff. Ex. B. In *Wal-Mart Real Estate Business Trust v. County of Anoka*, we questioned whether there was an undisclosed lease between the fee owner of the real property (the Trust) and the entity named as the lessor in the lease agreement with Subway. File No. 02-CV-17-2047, 2018 WL 4517952, at *6 n.31 (Minn. T.C. Sept. 7, 2018). The County similarly seems to question the relationship between the Trust and Wal-Mart Stores, Inc., here. See Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 8-9 (unnumbered) (filed Oct. 1, 2018). To have leased space in the Princeton store to Regis Corporation, Wal-Mart Stores, Inc., must have had at least a leasehold interest in the property, for which it presumably paid something. Although the curated list of expenses produced by the Trust on July 30, 2018, did not list any rent paid by Wal-Mart Stores to the Trust, it did indicate the payment of a near-seven-figure “management fee” to some unspecified entity. See Herzing Aff. Ex. B. The application of Minn. Stat. § 278.05, subd. 6, is not limited to payments specifically denominated as “rent.” See *KinderCare Learning Ctrs., Inc. v. Cty. of Hennepin*, File No. 30795, 2004 WL 895633, at *3-4 (Minn. T.C. Apr. 6, 2004) (concluding that the subject property was income-producing on the basis of an annual fee paid “for management of operation of the KinderCare Learning Centers properties nationwide,” even though “no portion of the management fee is assigned as a rental payment . . .”).

¹³ Herzing Aff. ¶ 9 & Ex. B.

¹⁴ Herzing Aff. Ex. B.

The third, “Licensure Agreement,” was a compendium of several documents: the July 14, 2005 Master Lease Agreement between Wal-Mart Stores, Inc., and Regis Corporation for the operation of Smart Style and Cost Cutters hair salons in Walmart stores; Attachment A to the Master Lease Agreement identifying the space (863 square feet) leased to Regis Corporation in the Princeton store, the term of the lease, and minimum and percentage rental rates; and a December 4, 2017 agreement for the termination of the Master Lease with respect to numerous Walmart stores, including Princeton store #3102.¹⁵ With respect to the third set of documents, Ms. Alstad offered this legal advice:

While titled “lease,” the documents are actually licensure agreements. The main difference is that a licensure agreement does not grant the licensees (tenant) any property rights. Therefore the property remains truly owner occupied. Licensee’s (tenants) pay a prorate [sic] share of the expenses.¹⁶

On August 28, 2018, the County sought “a copy of any actual lease(s) in effect on the [2016 or 2017] assessment date or during 2016 and 2017.”¹⁷ Ms. Alstad responded: “We are in receipt of your letter requesting the licensure agreements [sic] that were in place during 2016 and 2017. They are the same agreements that were provided as part of the compliance submission”¹⁸

The County filed its motion on October 1, 2018, asserting that dismissal of both petitions was required because, in each instance, the Trust failed to comply with its statutory disclosure requirements. Relying on our decision in *Wal-Mart Real Estate Business Trust v. County of Clay*,

¹⁵ Herzing Aff. ¶ 13; Sept. 18, 2018 e-mail from Kari Alstad to Mark Herzing (filed Dec. 12, 2018).

¹⁶ July 30, 2018 e-mail from Kari Alstad to al.heim@co.mille-lacs.mn.us (filed Dec. 12, 2018).

¹⁷ Herzing Aff. ¶ 10 & Ex. C.

¹⁸ Sept. 18, 2018 e-mail from Kari Alstad to Mark Herzing.

File No. 14-CV-17-1450, 2018 WL 1476179 (Minn. T.C. Feb. 13, 2018), Mille Lacs County asserted that the Princeton Walmart store was also income-producing by virtue of the presence of the Regis Corporation hair salon.¹⁹ The County noted that in 2017 the Trust had provided the county assessor “with only the same one-page spreadsheet this Court previously found insufficient to comply with the statute.”²⁰ The Trust had not provided a financial statement or anticipated income or expenses, according to the County.²¹ Nor had the Trust “identif[ie]d any percentage rent it received, explain[ed] the total amount of rent actually paid by its tenant, or identif[ie]d the rents received on an annual basis.”²² “Because this Court has recently found this precise spreadsheet to be insufficient under the statute,” the County urged, “there is no reason to reach a different result in this case.”²³

As to the disclosures made in 2018 (for taxes payable in 2018), the County relied on the similarities between the Trust’s disclosures here and its disclosures to Anoka County, as described in our decision in *Wal-Mart Real Estate Business Trust v. County of Anoka*, File No. 02-CV-17-2048, 2018 WL 4517831 (Minn. T.C. Sept. 7, 2018). There, the County noted, we found the one-page “Vestibule Report,” combined with a copy of the Master Lease between Wal-Mart and Regis Corporation, “inadequate to meet the requirements of Minn. Stat. § 278.05, Subd. 6(a)....”²⁴ In this case, the County pointed out, the Trust had also produced a one-page

¹⁹ Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 2-4 (unnumbered).

²⁰ Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 4 (unnumbered).

²¹ Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 4 (unnumbered).

²² Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 4 (unnumbered).

²³ Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 4 (unnumbered).

²⁴ Resp’t’s Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 5 (unnumbered) (footnote omitted).

document described in Ms. Alstad's email as "3102 Income and Expense Report."²⁵ Although that document listed actual expenses for "FY16" and "FY17," the County asserted that it did not "list the anticipated income and expenses for the year after the year of the assessment date."²⁶ Nor, the County maintained, was it a year-end financial statement for any year.²⁷ Even though the Trust had provided *some* of the required information with respect to the 2018 petition, the County insisted that the petition must nevertheless be dismissed because the Trust had not provided *all* of the required information.²⁸

The County's motion was initially supported by four documents simply attached to the County's memorandum, including Ms. Alstad's July 30 e-mail listing the "compliance information" submitted with respect to the 2018 petition.²⁹ The Trust complained that the County's failure to file the attachments to Ms. Alstad's July 30 e-mail (the "compliance information") doomed the motion to dismiss.

[H]ere, Mille Lacs County moves to dismiss on its assumption that the mere existence of what Mille Lacs County characterizes as a "lease[]" renders the Subject

²⁵ Resp't's Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 5-6 (unnumbered).

²⁶ Resp't's Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 6 (unnumbered) (footnote omitted).

²⁷ Resp't's Mot. & Mem. Supp. Dismissal Tax Ct. Pet. 6 (unnumbered).

²⁸ Resp't's Mot. & Mem. Supp. Dismissal Tax Court Pet. 6 (unnumbered). As a second, perhaps alternate, basis for dismissal, the County complained that the Trust had not disclosed revenues from sales of merchandise, nor the expenses commonly associated with revenues, such as the cost of goods sold. Resp't's Mot. & Mem. Supp. Dismissal Tax Court Pet. 8-9 (unnumbered). The Trust responded that the income generated by the business that operates on the property need not be disclosed. Pet'r's Opp'n Br. Resp't's Mot. Dismiss 8 (filed Dec. 10, 2018). We agreed. Information concerning income and expenses of operating the business located on the subject property need not be disclosed. *See, e.g., Kmart Corp. v. Cty. of Otter Tail*, File No. C9-00-551, 2000 WL 1719925, at *3 (Minn. T.C. Nov. 16, 2000) ("Income and expenses of operating the Store is not relevant to value the property."); *Menards, Inc. v. Cty. of Sherburne*, File No. C2-98-460, 1998 WL 668734, at *1 (Minn. T.C. Aug. 20, 1998).

²⁹ Resp't's Mot. & Mem. Supp. Dismissal Tax Ct. Pet., Exs. A-D.

Property income-producing. Mille Lacs County proffers no actual evidence to support this supposition. Instead, Mille Lacs County merely avers, in conclusory fashion—and without so much as providing a date on which the alleged lease was in effect—that Petitioner “leased” space to “Regis Corporation.”³⁰

[B]ecause Mille Lacs County chose not to submit any of what it describes as “leases” with its motion, Mille Lacs County has failed [to] establish, for example, that Petitioner has any direct relationship with any vestibule licensee, nor can Mille Lacs County prove that the relationship at issue is lessee-lessor as opposed to licensee-licensor.... The difference is legally significant. Petitioner has maintained throughout these proceedings that the vestibule licensees are just that—licensees, as opposed to lessees. Mille Lacs County chose not to introduce any agreements and, therefore, cannot support its contention that they are leases.³¹

The Trust further asserted that “any income received from any vestibule licensee would be business income because the business operations of such licensee would be tied to the business of the Walmart store operated on the premises.”³² According to the Trust, “the purpose of these vestibule arrangements is to create a symbiotic relationship in which the store draws consumers and the vestibule licensees enhance the consumers’ experience.”³³ The Trust conceded that Walmart received monies from Regis Corporation, but refused to concede that those payments amounted to rent: “To the extent that business-generated profits are shared with Petitioner, this is a business arrangement generating income for Walmart *as a business*, rather than for Petitioner as the Subject Property’s owner—it is not income attributable to the Subject Property.”³⁴ The Trust asserted that payments from the Smart Styles salon “would not be transferrable to a purchaser of

³⁰ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 6 (citations omitted).

³¹ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 11 (citation omitted).

³² Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 10.

³³ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 10.

³⁴ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 10.

the Subject Property because it is an income stream that would dry up if the Walmart business conducted on the Subject Property ceased.”³⁵

Finally, the Trust asserted that it need not have complied with Minn. Stat. § 278.05, subd. 6(a), in the first place because the information it did *not* produce to the County “would not be relevant to a determination of value in any event.”³⁶ “Payments from licensees could under no circumstances be characterized as rent,” the Trust maintained, “nor could they serve as any indication of what market rent could or should be.”³⁷

We heard arguments on the County’s motion on December 18, 2018. During the hearing, Mr. Hill continued to assert that the subject property could not be characterized as income-producing because the payments from Regis Corporation were contingent on Walmart itself operating a business in the subject property—a fact that (according to Mr. Hill) the County had deliberately concealed from this court by refusing to produce the document governing Regis’s relationship with Walmart.

[I]t is undisputed that the business income generated by Walmart, Inc. operations in its store that it occupies and owns by virtue of the fact that it owns 100 percent of the stock of its subsidiary, the trust, my client, *cannot pass to any buyer of the real estate ever*.

³⁵ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 10; *see also id.* at 15 (“[S]uch income-streams, if they existed, would be of no relevance to an income approach to valuation because they would be personal to the Walmart store operator and, consequently, would not transfer to a future purchaser of the Subject Property.”).

³⁶ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 14.

³⁷ Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 15; *see also, e.g.*, Tr. 16 (“Is there any possibility that the income streams here, whether it’s from the vestibule tenants or not, could survive a fee simple transfer of the real estate? And the answer is no.”), 18 (“When Wal-Mart and its vestibule occupants, regardless of how you want to denominate them, when they leave the store, the income leaves with them. The buyer of the real estate gets none of it.”), 23 (“The purpose of the income is here these guys don’t even want to talk about the fact that none of this survives a fee simple transfer of the real estate.”).

It remains *personal to Wal-Mart* by virtue of the very contracts that are being ignored here and not put into the record.... [U]nless the income stream can survive a transfer of the real estate from the seller to the buyer, the buyer has no expectation of receiving it, therefore has nothing to value, therefore the information is useless in performing the assessment.³⁸

We agreed to consider the documents attached to the County's memorandum if they were refiled accompanied by an affidavit properly identifying them.³⁹ Given the Trust's insistence that the County's motion was not properly supported, we allowed the Trust until January 4, 2019, to file a sur-reply, which offer Mr. Hill accepted.⁴⁰

On December 21, 2018, Mr. Herzing filed an affidavit identifying the four documents attached to the County's memorandum.⁴¹ In addition, Mr. Herzing caused the County to forward directly to the court Ms. Alstad's July 30, 2018 e-mail and its attachments, including the July 14, 2005 Master Lease Agreement between Wal-Mart and Regis Corporation and the Attachment to the Master Lease Agreement specific to the Princeton store.⁴² The Master Lease Agreement granted Regis Corporation "possession" of each leased premises in return for payment of both minimum rent per month and "percentage rent" based on the location's annual gross sales.⁴³

³⁸ Tr. 14-15 (emphasis added).

³⁹ Tr. 37-38.

⁴⁰ Tr. 39-40.

⁴¹ Herzing Aff. ¶¶ 8-11.

⁴² Herzing Aff. ¶¶ 12, 13.

⁴³ Wal-Mart Master Lease Agreement, at 6; *compare id.*, with Pet'r's Opp'n Br. Resp't's Mot. Dismiss 10 ("Mille Lacs County has not demonstrated that any vestibule licensee pays to use the real estate."). Under Attachment A to the Master Lease, the leased space in the Princeton store is described as "approximately 863 square feet located at the front of the Store in a location agreed upon by Lessor and Lessee." The minimum rent is \$2,561 per month; percentage rent begins at 7% of gross sales in excess of \$250,000 per calendar year.

In addition, Article 21.4 required Regis Corporation to “attorn to and be bound to any of [Walmart’s] successors under all the terms, covenants, and conditions of this Lease for the balance of any remaining Lease Term.”⁴⁴ Finally, the Master Lease Agreement disavowed any relationship between Walmart and Regis Corporation except lessor and lessee.⁴⁵

We received no sur-reply from the Trust. On February 21, 2019, we filed and served (both electronically and by mail) an order dismissing the two petitions, concluding that the subject property was income-producing within the meaning of Minn. Stat. § 278.05, subd. 6(a), on each valuation date and that the Trust had not complied with the disclosure requirements of subdivision 6(a). *Wal-Mart Real Estate Business Trust v. Cty. of Mille Lacs*, File Nos. 48-CV-17-886 & 48-CV-18-854, 2019 WL 962174 (Minn. T.C. Feb. 21, 2019).

Shortly thereafter, the court received an e-mail from Mr. Hill, the Trust’s counsel, asserting that the parties had reached a settlement and that the settlement had been “confirmed by the Mille Lacs County Assessor in writing on January 3, 2019.”⁴⁶ Mr. Hill did not, however provide the court with a copy of said writing. An e-mail from Joe Walsh, the Mille Lacs County Attorney,

⁴⁴ Wal-Mart Master Lease Agreement, at 24; *compare id.*, with Tr. 25 (Mr. Hill denying that the Master Lease Agreement between Walmart and Regis Corporation is transferable to a successor).

⁴⁵ Wal-Mart Master Lease Agreement, at 25 (“Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.”). *Compare id.*, with Pet’r’s Opp’n Br. Resp’t’s Mot. Dismiss 10 (“To the extent that business-generated profits are shared with Petitioner, this is a business arrangement generating income for Walmart *as a business*, rather than for Petitioner as the Subject Property’s owner—it is not income attributable to the Subject Property.”).

⁴⁶ E-mail from Robert Hill to Mary Labore (Feb. 21, 2019) (on file with the Minnesota Tax Court).

followed eight minutes later, also asserting that “[t]he parties did reach an agreement by settlement.”⁴⁷ But Mr. Walsh did not provide the court with a copy of the parties’ settlement agreement.

Counsel’s failure to provide the court with a copy of their purported settlement was soon explained. Later the same afternoon, the court was copied on an e-mail from Mr. Hill’s office to Mr. Walsh, attaching an earlier e-mail exchange among Mr. Hill’s office, Mr. Herzing, and the Mille Lacs County Assessor’s Office. In the exchange, Mr. Hill’s office transmitted a draft stipulation for “comment/questions” on January 3, 2019.⁴⁸ There was no written response to the draft stipulation. About a week later, on January 11, 2019, Mr. Hill’s office transmitted a revised stipulation that “cover[ed] pay 2017 and pay 2018 only,” and invited “comments or questions” or signatures.⁴⁹ In the February 21 e-mail on which the court was copied, Mr. Hill’s office indicated it never received an executed copy of the stipulation from then-Assistant County Attorney Herzing, and requested that Mr. Walsh execute the stipulation.⁵⁰

More than two months later, on April 23, 2019, the parties filed a document captioned “Stipulation to Vacate Order and Judgment Dated February 21, 2019, Order for Judgment and Judgment.” In it, the parties recite the filing of the petitions by the Trust and the filing of the County’s motion to dismiss.⁵¹ The parties assert that “subsequent to the hearing on the County’s

⁴⁷ E-mail from Joe Walsh to Mary Labore (Feb. 21, 2019) (on file with the Minnesota Tax Court).

⁴⁸ E-mail from Kari Alstad to Al Heim (Jan. 3, 2019) (on file with the Minnesota Tax Court).

⁴⁹ E-mail from Kari Alstad to Al Heim (Jan. 11, 2019) (on file with the Minnesota Tax Court).

⁵⁰ E-mail from Kari Alstad to Joe Walsh (Feb. 21, 2019) (on file with the Minnesota Tax Court).

⁵¹ Stip. Vacate Order J. Dated Feb. 21, 2019, Order J. & J.

motion but prior to the issuance of the Court’s decision, the Trust and the County reached a settlement agreement resolving this action in its entirety.”⁵² The parties further assert that they “prepared a Stipulation, Order for Judgment and Judgment to be filed with the Court,” but this court issued its order granting the County’s motion to dismiss “before the Trust and the County had an opportunity to file the Stipulation.”⁵³ “[T]o honor the terms of their settlement agreement and avoid the expenses associated with an appeal of the Court’s dismissal order,” the parties “stipulate[d] and agree[d]” that this court should vacate its February 21 order and enter judgment reducing the assessed value of the property as of January 2, 2017.⁵⁴ The parties so agreed, they recite, even though the time to appeal from the February 21, 2019 order had already expired. *See* Minn. Stat. § 271.10 (2018).

Although the parties’ settlement agreement was purportedly attached to the stipulation,⁵⁵ it was not. As a result, the record before the court does not include a settlement agreement, signed or unsigned, indicating whether or how the 2016 and 2017 assessed values should be changed. We have only a reference to the amounts in the stipulation.

Construing the parties’ stipulation as a joint motion, we deny it. The parties cite no administrative or procedural rule authorizing us to vacate the judgment of dismissal. The only procedural vehicle for vacating the judgment of which we are aware is a motion under Minn. R. Civ. P. 60, and the parties’ stipulation meets none of the requirements of that rule. Rule 60.01,

⁵² Stip. Vacate Order 1.

⁵³ Stip. Vacate Order 2.

⁵⁴ Stip. Vacate Order 2.

⁵⁵ Stip. Vacate Order 2 (“a true and correct copy of the stipulation prepared by the parties and signed by the County on March 1, 2019, is attached hereto as Exhibit A”).

Minn. R. Civ. P., authorizes us to correct “clerical mistakes . . . arising from oversight or omission,” but our dismissal of the Trust’s petitions for failure to comply with Minn. Stat. § 278.05, subd. 6, was no clerical mistake. Rule 60.02, Minn. R. Civ. P., allows us to relieve a party from a final judgment for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to [Minn. R. Civ. P.] 59.03;
- (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) Any other reason justifying relief from the operation of the judgment.

But the parties make no claim that any of these circumstances apply, either. For example, neither asserts newly discovered evidence, or fraud or misconduct on the part of the other, or that our judgment of dismissal has been satisfied.⁵⁶

In particular, the parties’ stipulation alone is not a “reason justifying relief from the operation of the judgment.” Minn. R. Civ. P. 60.02(f). The very basis for the County’s motion was the Trust’s failure to comply with the disclosure requirements of Minn. Stat. § 278.05, subd. 6.

⁵⁶ Nor does the factual record—to the extent it exists—entirely support the parties’ version of events. For example, the parties claim they reached a settlement agreement before this court’s February 21 decision, but no such settlement has been provided to the court. Moreover, as of Ms. Alstad’s January 11, 2019 e-mail, it appears the parties were still negotiating—contrary to Mr. Hill’s assertion that the matter was settled as of January 3. As a second example, the parties contend that this court issued its February 21 order “before the Trust and County had an opportunity to file the Stipulation.” Stip. Vacate Order 2. But the parties also claim that the County did not sign the stipulation until March 1—more than a week *after* the February 21 order. Stip. Vacate Order 2.

As our February 21 decision made clear, the County provided ample evidence of the Trust's failure, warranting dismissal of both petitions. By asking this court to vacate the dismissal of the Trust's petitions, the County seeks to waive the Trust's failure to comply with those statutory requirements—something the Minnesota Supreme Court has said the government cannot do. *See Nw. Airlines, Inc. v. Cty. of Hennepin*, 632 N.W.2d 216, 222 (Minn. 2001) (“As to relator’s laches argument, section 278.05, subd. 6(a) confers no discretion on respondent to rely upon or waive [the requirements of Minn. Stat. § 278.05, subd. 6] unless there is evidence that failure to comply was due to the unavailability of necessary information. The petitioner must provide income and expense information within 60 days after the petition is filed or the petition must be dismissed.”) (citation omitted). Were we to do as the parties request, we would excuse the Trust's failure to comply with section 278.05, subdivision 6. That we cannot do.

For all these reasons, we deny the parties' stipulated request.

J.H.T.