

STATE OF MINNESOTA  
COUNTY OF NICOLLET

TAX COURT  
REGULAR DIVISION

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Carolyn L. Huffer,

Petitioner,

vs.

County of Nicollet,

Respondent.

**ORDER GRANTING IN PART  
AND DENYING IN PART  
RESPONDENT'S AMENDED  
MOTION TO DISMISS**

File No. 52-CV-18-713

Filed: March 26, 2020

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This matter came on for hearing before The Honorable Wendy S. Tien, Judge of the Minnesota Tax Court, on the motion of respondent Nicollet County to dismiss.

Petitioner Carolyn L. Huffer is self-represented.

Megan E. Gaudette Coryell, Assistant County Attorney, represents respondent Nicollet County.

The County moved to dismiss this property tax petition on the grounds Ms. Huffer did not timely and completely provide information pursuant to Minnesota Statutes, section 278.05, subdivision 6 (2018).

The court, having heard the arguments of counsel, and having considered all the files, records, and proceedings herein, now makes the following:

## ORDER

1. Respondent's amended motion to dismiss is granted as to parcel 04.323.0410 (the Earth Home Property).

2. Respondent's amended motion to dismiss is denied as to parcel 04.323.0600 (the Homesteaded Property).

IT IS SO ORDERED.

BY THE COURT:



A handwritten signature in blue ink, appearing to read "Wendy S. Tien", is written over a horizontal line.

Wendy S. Tien, Judge  
MINNESOTA TAX COURT

Dated: March 26, 2020

## MEMORANDUM

### I. BACKGROUND

On October 26, 2018, Carolyn L. Huffer filed a property tax petition alleging that the estimated market value of the subject property as of the 2018 assessment date, for taxes payable in 2019, exceeded its actual market value.<sup>1</sup> The petition refers to two properties: Parcel No. 04.323.0410 (the "Earth Home Property"), which the petition describes as income-producing,

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<sup>1</sup> Petition 1, box 7 (filed Oct. 26, 2018).

and Parcel No. 04.323.0600 (the “Homesteaded Property”), which the petition describes as not income-producing.<sup>2</sup>

On May 30, 2019, the Assistant Nicollet County Attorney sent Ms. Huffer a letter setting forth the County’s general approach to tax cases.<sup>3</sup> The letter states, in relevant part:

This Office will initially forego formal discovery to gather [ ] data, assuming you share our goal to efficiently settle this case without going to trial and you will cooperate with the Assessor’s Office’s requests. **Additionally, you may be required to timely provide to the Assessor’s Office certain specific data on income producing property pursuant to Minn. Stat. § 278.05, subd. 6.**<sup>4</sup>

Subsequently, on August 14, 2019, the County filed an initial motion to dismiss pursuant to Minnesota Statutes, section 278.05, subdivision 6 (2018).<sup>5</sup> The initial memorandum states the County did not receive information with respect to either the Earth Home or Homesteaded Property as of August 1, 2019.<sup>6</sup> It notes the petition describes the Earth Home Property as income-producing, and further characterizes the Homesteaded Property as income-producing as well, because Mrs. Huffer’s son applied for homestead status in September 2018 and occupies the property.<sup>7</sup>

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<sup>2</sup> Pet. box 4.b. Ms. Huffer also refers to the Homesteaded Property as the “4-bedroom property.” Pet’r’s Mem. Law Supp. Mot. Deny Cty.’s Mot. Dismiss 1 (filed Jan. 14, 2020) (describing parcel 04.323.0600 as “the 4-bedroom property”). This Memorandum will refer to parcel 04.323.0600 as the “Homesteaded Property.”

<sup>3</sup> Am. Aff. Megan E. Gaudette Coryell Supp. Resp’t’s Am. Mem. Supp. Mot. Dismiss (Dec. 24, 2019) ¶ 4, Ex. 1, at 1.

<sup>4</sup> Am. Gaudette Coryell Aff., Ex. 1, at 1. The County sent Ms. Huffer a second letter, identical in content to the May 30, 2019 letter except for its date, on May 31, 2019. Pet’r’s Aff. Supp. Mot. Opp. Nicollet Cty.’s Mot. Dismiss (Jan. 14, 2020) 6, Ex. I.

<sup>5</sup> Resp’t’s Mot. Dismiss & accompanying submissions (filed Aug. 14, 2019).

<sup>6</sup> Resp’t’s Mem. Supp. Mot. Dismiss 2 (filed Aug. 14, 2019); Aff. Lorna Sandvik Supp. Resp’t’s Mem. Supp. Mot. Dismiss (Aug. 13, 2019) ¶ 4.

<sup>7</sup> Resp’t’s Mem. 2; Sandvik Aff. ¶ 3, Ex. 2.

On September 6, 2019, Ms. Huffer responded to the County by letter.<sup>8</sup> Ms. Huffer states she was “not aware” she was required to provide data pursuant to section 278.05, subdivision 6, by August 1, 2019, and became aware of the requirement only through the County’s initial motion to dismiss.<sup>9</sup> Ms. Huffer’s letter supplies monthly income and expense information for 2018 with respect to the Earth Home Property.<sup>10</sup> As for the Homesteaded Property, the letter states that the parcel is “homesteaded by Terry,” her son, who lives on the property, and further states the parcel “is not income producing property.”<sup>11</sup>

On September 11, 2019, by letter to Ms. Huffer, the County inquired whether Ms. Huffer’s son pays the mortgage or any other expense related to the Homesteaded Property.<sup>12</sup> The County included with its letter a print copy of Minnesota Statutes, section 278.05, subdivision 6.<sup>13</sup> On September 25, 2019, Ms. Huffer responded by letter that Terry moved onto the Homesteaded Property in July 2018 and at that time began paying the mortgage, in the monthly amount of \$1,339.00, as well as electric bills.<sup>14</sup>

On December 24, 2019, the County amended its motion to dismiss to supplement its original motion with information obtained after August 14, 2019, and detailing the correspondence between the parties after that date.<sup>15</sup> In her response,<sup>16</sup> Ms. Huffer asserted:

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<sup>8</sup> Am. Gaudette Coryell Aff. ¶ 5, Ex. 3; Pet’r’s Aff. 8, Ex. N.

<sup>9</sup> Am. Gaudette Coryell Aff., Ex. 3, at 1; Pet’r’s Aff., Ex. N, at 1.

<sup>10</sup> Am. Gaudette Coryell Aff., Ex. 3, at 2; Pet’r’s Aff., Ex. N, at 2.

<sup>11</sup> Am. Gaudette Coryell Aff., Ex. 3, at 2-3; Pet’r’s Aff., Ex. N, at 2-3.

<sup>12</sup> Am. Gaudette Coryell Aff. ¶ 6, Ex. 4, at 2.

<sup>13</sup> Am. Gaudette Coryell Aff., Ex. 4, at 3-5 (unpaginated).

<sup>14</sup> Am. Gaudette Coryell Aff. ¶ 7, Ex. 5, at 2.

<sup>15</sup> Resp’t’s Am. Not. Mot. & Mot. Dismiss Pet. (filed Dec. 24, 2019); *see* Am. Mem. Supp. Mot. Dismiss (filed Dec. 24, 2019); Am. Gaudette Coryell Aff.; Am. Aff. Lorna Sandvik Supp. Resp’t’s Am. Mem. (Dec. 24, 2019)..

(1) that she was not aware of her obligation to provide information concerning income-producing property to the county assessor with respect to the Earth Home Property until the County filed its initial motion to dismiss on August 14 and that she responded timely on September 6, 2019;<sup>17</sup> (2) that she was first asked to provide information concerning the Homesteaded Property on September 11, 2019, and provided that information on September 25, 2019;<sup>18</sup> and (3) that the County should be equitably estopped from obtaining dismissal of the petition.<sup>19</sup> A telephonic hearing on the amended motion was held on January 24, 2020.

## **II. GOVERNING LAW**

### **A. Mandatory Disclosure Rule**

Minnesota Statutes, section 278.05, subdivision 6, sometimes called the “mandatory disclosure rule,” specifies that, in cases where the petitioner contests the valuation of income-producing property, certain information must be provided to the county assessor no later than August 1 of the taxes-payable year. Failure to submit the required documentation by the August 1 deadline results in automatic dismissal of the petition unless an exception applies. Minn. Stat. § 278.05, subd. 6(b); *Wal-Mart Real Estate Bus. Tr. v. Cty. of Anoka*, 931 N.W.2d 382, 386 (Minn. 2019).

The statute provides two exceptions to the August 1 deadline: (1) if the failure to provide the required information was due to its unavailability at the time the information was due; or (2)

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<sup>16</sup> Pet’r’s Mot. Opp. Nicollet County’s Mot. Dismiss (filed Jan. 14, 2020; Pet’r’s Aff.). This Court construes Ms. Huffer’s January 14, 2020 filing, though styled as a notice of motion and motion, as a response to the County’s amended motion to dismiss, pursuant to Minnesota Rule 8610.0070, subpart 5(B). The filing substantively responds to the County’s motion and the sole relief requested is the denial of the County’s motion to dismiss.

<sup>17</sup> Pet’r’s Mem. 1-3, 5-6.

<sup>18</sup> Pet’r’s Mem. 8.

<sup>19</sup> Pet’r’s Mem. 3-8.

the petitioner “was not aware of or informed of the requirement to provide the information.” Minn. Stat. § 278.05, subd. 6(b)(1)-(2). If the petitioner proves it was not aware of or informed of the requirement to provide the information, the petitioner has an additional 30 days to provide the information from the time the petitioner became aware of or was informed of the requirement. *Id.*, subd. 6(b). Failure to do so requires dismissal of the petition. *Id.*

Although the Minnesota Rules of Evidence and Civil Procedure shall govern procedures in this Court, “[e]xcept as provided in section 278.05, subdivision 6,” Minn. Stat. § 271.06, subd. 7 (2018), the mandatory disclosure rule provides “an extraordinary remedy unlike our traditional rules of discovery.” *Kmart Corp. v. Cty. of Becker*, 639 N.W.2d 856, 859 (Minn. 2002). Delay in providing information required by section 278.05, subdivision 6, need not cause actual prejudice to result in dismissal. *Id.* (citing *BFW Co. v. Cty. of Ramsey*, 566 N.W.2d 702, 704-05 (Minn. 1997)). The mandatory disclosure rule, however, applies only to income-producing property, *Wal-Mart*, 931 N.W.2d at 387; if property is not income-producing, the rule has no application, *Ford Motor Co. v. Cty. of Ramsey*, No. C5-07-4696 et al., 2013 WL 3463397, at \*7 (Minn. T.C. July 3, 2013).

The text of Minnesota Statutes, section 278.05, subdivision 6, does not define the term “income-producing property.” *Wal-Mart*, 931 N.W.2d at 386. “The term ‘income-producing property’ simply means that the mandatory-disclosure obligation is triggered whenever the property *itself* generates income, and not just ... when the property owner is the *recipient* of that income.” *Id.* at 387. “[T]he traditional notion of ‘income-producing’ property is property that generates rental income for its owner on the basis of an arms-length, market-based lease, but the term is not necessarily limited to rental property.” *Id.* at 386 (citing *Nw. Airlines, Inc. v. Cty. of Hennepin*, 632 N.W.2d 216, 219 (Minn. 2001)).

This Court long ago declined to adopt an all-encompassing definition of “income-producing property.” *Lyman Lumber Co. v. Cty. of Hennepin*, No. TC-11620 et al., 1993 WL 25399, at \*2 (Minn. T.C. Feb. 5, 1993) (observing that “We are not able to anticipate every potential fact situation, nor are we now prepared to set hard and fast rules which may not serve the ultimate goal—determining market value”). Rather, “whether a property is income-producing is a fact issue and must be determined on a case by case basis.” *KinderCare Learn. Ctrs. v. Cty. of Hennepin*, No. 30795, 2004 WL 895633, at \*3 (Minn. T.C. Apr. 6, 2004). Not all payments to a petitioner represent income to the subject property, rendering such property income-producing. *Ford Motor*, 2013 WL 3463397, at \*7-8, \*12-14 (finding that income received by petitioner on account of the operation of its business was not income to the real property, and the property was not income-producing property).

“[T]he purpose of the [mandatory disclosure rule] is to provide information that would be useful to the determination of value...” *Kmart*, 639 N.W.2d at 859; *see also 78th St. OwnerCo, LLC v. Cty. of Hennepin*, 813 N.W.2d 409, 413 (Minn. 2012). In other words, the mandatory disclosure rule ensures the taxing authority receives “all information a petitioner actually possesses relevant to application of the income approach to valuing real property.” *Sadat v. Cty. of Scott*, No. 70-CV-12-8404, 2015 WL 410434, at \*1 (Minn. T.C. Jan. 29, 2015) (citing *Irongate Enters., Inc. v. Cty. of St. Louis*, 736 N.W.2d 326, 330-31 (Minn. 2007)). “[T]he importance of the income-producing nature of property is in arriving at a reliable market value for tax purposes.” *Nw. Airlines*, 632 N.W.2d at 220.

## **B. Equitable Estoppel**

A party seeking to establish equitable estoppel against a governmental entity must establish four elements. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn. 2011). First, the party must establish “wrongful conduct” on the part of an authorized government agent. *Id.*

Second, the party must reasonably rely on the wrongful conduct. *Id.* Third, the party must incur “a unique expenditure” in reliance on the wrongful conduct. *Id.* Finally, the balance of equities must weigh in favor of estoppel. *Id.*

The party seeking to assert estoppel against the governmental entity bears a “heavy burden of proof.” *Id.* Moreover, the party must establish each of the four elements; failure to establish any element precludes estoppel. *Id.* at 27 (concluding that the wrongful conduct element was not satisfied and thus declining to consider the remaining elements); *see also Rose Cliff Landscape Nursery, Inc. v. City of Rosemount*, 467 N.W.2d 641, 644 (Minn. App. 1991) (declining to consider other elements of estoppel where appellant did not show it incurred expenses unique to the project).

### **III. ANALYSIS**

#### **A. Mandatory Disclosure Rule**

##### **1. Earth Home Property**

The petition states, and the parties do not dispute, that the Earth Home Property is income-producing.<sup>20</sup> Rather, the parties dispute whether Ms. Huffer timely and completely complied with the mandatory disclosure rule. The County contends Ms. Huffer was informed of the requirement to provide information to the county assessor by letter dated May 30, 2019, but failed to comply either timely or completely.<sup>21</sup> Ms. Huffer contends she was not informed of the mandatory disclosure rule until August 14, 2019, and complied on a timely basis by providing 2018 income and expense information on September 6, 2019.<sup>22</sup>

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<sup>20</sup> Pet., box 4.b.

<sup>21</sup> Resp’t’s Am. Mem. 4-5.

<sup>22</sup> Pet’r’s Mem. 6.



**a. Timeliness**

The mandatory disclosure rule is strict; “[f]ailure to provide the information required ... shall result in the dismissal of the petition.” Minn. Stat. § 278.05, subd. 6(b); *Wal-Mart*, 931 N.W.2d at 386. The County asserts the August 1, 2019 deadline to comply with the mandatory disclosure rule applies, because on May 30, 2019, the County provided Ms. Huffer with notice of the requirement to provide information concerning income-producing property to the county assessor.<sup>23</sup> Ms. Huffer does not deny receiving the May 30 letter, but disputes the May 30 letter constituted notice of the mandatory disclosure rule, because “[n]either the May 30<sup>th</sup> letter, nor the May 31st letter stated with specificity what the County was requesting.”<sup>24</sup> Rather, she states that she called the Assistant County Attorney to “clarify[] the purpose” of the May 30 and May 31 letters.<sup>25</sup> Ms. Huffer admits she did not review the language of Minnesota Statutes, section 278.05, subdivision 6, upon receiving the letter,<sup>26</sup> nor did she understand her obligations under section 278.05, subdivision 6, until after the County filed its original motion to dismiss on August 14.<sup>27</sup>

This Court agrees with the County that its letter dated May 30, 2019, sufficiently informed Ms. Huffer of the requirement to provide information to the county assessor concerning income-producing property, and the August 1, 2019 deadline applies. The May 30 letter refers to Minnesota Statutes, section 278.05, subdivision 6, and provides sufficient notice of the requirements of the mandatory disclosure rule. *See, e.g., Danmark Props., LLC v. Cty. of*

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<sup>23</sup> Resp’t’s Am. Mem. 4-5.

<sup>24</sup> Pet’r’s Mem. 2.

<sup>25</sup> Pet’r’s Mem. 2; Pet’r’s Aff.6 ¶ J& 11 ¶ 2.

<sup>26</sup> Tr. 31 (Jan. 24, 2020).

<sup>27</sup> Tr. 26-28.

*Hennepin*, No. 27-CV-16-06485, 2017 WL 5617598, at \*3 (Minn. T.C. Oct. 24, 2017) (stating that a courtesy letter from the county to petitioner’s counsel provided sufficient notice of the statutory requirements); *First Res. Bank v. Cty. of Washington*, No. 82-CV-13-1835, 2013 WL 5969886, at \*3 (Minn. T.C. Oct. 29, 2013) (holding the exception to the mandatory disclosure rule’s timeliness requirement, set forth in subdivision 6(b)(2), did not apply because the county’s letter to petitioner provided sufficient notice of the statutory requirements). Ms. Huffer need only have reviewed the statute upon receipt of the May 30 letter to be aware of the August 1, 2019 deadline. Accordingly, her September 6, 2019 response was untimely.

**b. Completeness of Disclosure**

This Court also agrees with the County that Ms. Huffer did not completely disclose the information required by the mandatory disclosure rule with respect to the Earth Home Property. Even if Ms. Huffer’s disclosure on September 6, 2019 were timely—which it was not—it was incomplete. Ms. Huffer provided only monthly income information for 2018 and expense information for 2018 with respect to the Earth Home Property.<sup>28</sup> The mandatory disclosure rule, however, requires the petitioner timely provide all the following information:

- (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;
- (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).

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<sup>28</sup> Am. Gaudette Coryell Aff., Ex. 3, at 2; Pet’r’s Aff., Ex. N, at 2.

Although Ms. Huffer contends her disclosures were complete,<sup>29</sup> they do not satisfy the requirements of the mandatory disclosure rule, as they pertain only to the second and third items, and only partially comply with those requirements. Minn. Stat. § 278.05, subd. 6(a)(2) (requiring a year-end financial statement for the year of the assessment date); *id.*, subd. 6(a)(3) (requiring a rent roll listing the tenant name, lease start and end dates, base rent, square footage leased, and vacant space). The disclosures do not address the first or fourth through sixth items. *See Wal-Mart*, 931 N.W.2d at 389 (concluding disclosures “far from adequate” when they provided only lease starting and ending dates, gross monthly rent, and the rentable area under each lease; noting that petitioner “is still obligated to provide the information that it does have if it is kept in a different format” than described in the statute (citing *78th St. OwnerCo*, 813 N.W.2d at 415-16)). The statute’s use of the term “rent roll” is not talismanic; to the extent the petitioner possesses the substantive information required by the third category, the petitioner is required to provide that information. *78th St. OwnerCo*, 813 N.W.2d at 415-16 (stating that information is not “unavailable” within the meaning of section 278.05, subdivision 6(b) merely because a petitioner does not maintain a specific document called a “rent roll”).

Ms. Huffer also claims the County was required to comply with the Minnesota Rules of Civil Procedure pertaining to discovery when requesting the information set forth in section

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<sup>29</sup> Pet’r’s Mem. 5-6. The County does not dispute it received all the information Ms. Huffer says she sent the County, which comprised the 2018 income and expenses for the Earth Home Property, and information relating to the mortgage and utilities paid with respect to the Homesteaded Property. *Am. Gaudette Coryell Aff.* ¶¶ 5, 7 & Exs. 3, 5. Nor does the County distinguish between receipt of the information by the Assistant County Attorney and the County Assessor. *See Aff. Megan E. Gaudette Coryell Supp. Reply Mem. Supp. Mot. Dismiss* (Jan. 21, 2020) ¶ 4. The County disputes only the completeness of the information provided. *Reply Mem. Supp. Mot. Dismiss 2-4* (filed Jan. 21, 2020); *Gaudette Coryell Reply Aff.* ¶ 5; *Am. Sandvik Aff.* ¶ 4.

278.05, subdivision 6(a), and contends the May 30 letter did not comply with discovery rules.<sup>30</sup> The Court disagrees. The Minnesota Rules of Evidence and Civil Procedure govern procedures in this Court where practicable, “[e]xcept as provided in section 278.05, subdivision 6.” Minn. Stat. § 271.06, subd. 7. Accordingly, the requirement to provide information pursuant to the mandatory disclosure rule is specifically excepted from discovery rules applicable to district court litigation. The May 30 letter sufficiently informed Ms. Huffer of the specific information she was required to disclose by August 1, 2019, by referring her to Minnesota Statutes, section 278.05, subdivision 6.

In informing a petitioner of the requirement to provide the information required by section 278.05, subdivision 6(a), a county need not reproduce the contents of subdivision 6(a)(1) through (6) verbatim in the text of the letter. *See, e.g., Danmark Props., LLC*, 2017 WL 5617598, at \*3 & n.21 (stating that a courtesy letter from the county to petitioner’s counsel provided sufficient notice of the statutory requirements, where the letter “remind[s] you of certain obligations for petitioners of income-producing property under Minnesota Statute [§] 278.06, subd. 6” (alteration in original)); *see also Citizens State Bank of Shakopee v. Cty. of Scott*, No. 2004-09057, 2005 WL 626611, at \*1-2 & n.2 (Minn. T.C. Mar. 1, 2005) (noting that “many counties have adopted the practice of sending all income-producing property tax petitioners a letter informing them of the [mandatory disclosure] requirement” and that such a practice was “prudent” “to obviate ambiguity” concerning the petitioner’s knowledge of the mandatory disclosure rule).

Moreover, with respect to obtaining the information required by the mandatory disclosure rule, a county is not required to conduct discovery pursuant to the Minnesota Rules of Civil

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<sup>30</sup> Pet’r’s Mem. 1-2; Pet’r’s Aff. 10.

Procedure, notwithstanding Ms. Huffer's erroneous belief to the contrary.<sup>31</sup> See, e.g., *Kmart*, 639 N.W.2d at 859 & n.2 (observing that "[w]ere we operating in the traditional realm of civil discovery," principles such as motions to compel discovery and dismissal for failure to comply with discovery obligations only under extraordinary circumstances would apply; and recognizing that the mandatory disclosure rule "provides an extraordinary remedy unlike our traditional rules of discovery"). Rather, the mandatory disclosure rule sets forth an affirmative statutory requirement that the petitioner furnish information to the county assessor concerning income-producing property. See *Wal-Mart*, 931 N.W.2d at 386-87.

A petitioner may not decline, for example, to provide information required by the mandatory disclosure rule on the subjective grounds it believes such information to be irrelevant or incomplete. *78th St. OwnerCo*, 813 N.W.2d at 414-15 (noting the withholding by petitioner of information required by the statute "would impermissibly shift the burden of proof" in a tax appeal to the county). Nor may a petitioner provide incomplete information and shift the burden of proof to the county to conduct further discovery concerning its accuracy or completeness. *Kmart*, 639 N.W.2d at 860 (explaining this burden-shifting "directly contradicts the allocation of the burden of proof to the petitioner in a chapter 278 proceeding").

The County's motion to dismiss is granted as to the Earth Home Property.

## **2. Homesteaded Property**

The petition states that the Homesteaded Property is not income-producing,<sup>32</sup> and the parties dispute whether this is an accurate characterization of the property for purposes of the

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<sup>31</sup> Pet'r's Mem. 1-2.

<sup>32</sup> Pet., box 4.b.

mandatory disclosure rule.<sup>33</sup> The material facts, however, are undisputed. The parties do not dispute Ms. Huffer owns the Homesteaded Property and her son Terry occupies it.<sup>34</sup> The parties also do not dispute Terry pays the mortgage and electric bills with respect to the Homesteaded Property.<sup>35</sup> Finally, the parties do not dispute Terry applied for homestead status in September 2018 with respect to the Homesteaded Property.<sup>36</sup> The Court agrees with Ms. Huffer that the Homesteaded Property is not income-producing property for 2018, and consequently, the mandatory disclosure rule does not apply to the Homesteaded Property.

Where a property owner and its occupant are close family members, arrangements to share or shift residential costs between such family members are not transactions by which “property *itself* generates income,” *see Wal-Mart*, 931 N.W.2d at 387, even if such costs relate to real property, including utilities or a mortgage payment, and even though the occupant of the property is not its owner. By merely redistributing such costs of living among close family members, a property owner does not use the property to generate income. Such arrangements differ materially from commercial rental or investment transactions. Accordingly, the existence of such arrangements does not implicate the mandatory disclosure rule, because the subject

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<sup>33</sup> The County considers the Homesteaded Property income-producing because the property is not owner-occupied and because the occupant pays the mortgage and electric bills. Resp’t’s Am. Mem. 2-3; Reply Mem. 4.

<sup>34</sup> Am. Sandvik Aff. ¶ 3 & Ex. 1; Pet’r’s Aff. 10 ¶ A & Ex. N, at 3.

<sup>35</sup> Am. Gaudette Coryell Aff., Ex. 5, at 2.

<sup>36</sup> Am. Sandvik Aff. ¶ 3, Ex. 2; Pet’r’s Mem. 2; Pet’r’s Aff. 11 ¶ A.

property is not income-producing by virtue of those arrangements.<sup>37</sup> *See id.* (emphasizing the “arms-length, market-based” nature of lease agreements relating to income-producing property); *Sadat v. Cty. of Scott*, No. 70-CV-13-8688, 2016 WL 2989151, at \*1 (Minn. T.C. May 18, 2016) (noting the mandatory disclosure rule “does not apply to property that is not income-producing”). Minnesota law recognizes, and makes provision for, certain residential cost redistributing arrangements in recognition of the special nature of the close family relationship. For example, Minnesota Statutes, section 273.124, subdivision 1(c) (2018), authorizes homestead classification with respect to residential real estate occupied and used for purposes of a homestead by certain relatives of a property owner.<sup>38</sup>

Recognizing that such cost redistributing arrangements among close family members do not produce income to the property is consistent with the purpose of the mandatory disclosure rule—namely, “to provide information that would be useful to the determination of value.” *Kmart*, 639 N.W.2d at 859; *see also 78th St. OwnerCo*, 813 N.W.2d at 413. Because such family cost redistributing arrangements are quintessentially not arm’s-length transactions, they do not assist the taxing authority “in arriving at a reliable market value for tax purposes.” *Nw. Airlines*, 632 N.W.2d at 220, 219-20 (explaining the value for property tax purposes of

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<sup>37</sup> This discussion concerns relationships between natural persons only, not relationships among business entities. This discussion also does not concern commercial agreements involving real estate to which family members are parties (such as rental properties), including those in which family members of the owner occupy some portion of the property. This Court has long considered commercial property to be income-producing if its owner and occupant are separate entities, even when related. *See, e.g., Wal-Mart Real Estate Bus. Tr. v. Cty. of Washington*, No. 82-CV-17-1781, 2019 WL 963774, at \*6 (Minn. T.C. Feb. 21, 2019); *T&L Invs. v. Cty. of Dakota*, No. C9-05-7347, 1995 WL 516557, at \*1 (Minn. T.C. Aug. 24, 1995) (concerning a lease between related business entities); *Larson Leasing, Inc. v. Cty. of Dakota*, C1-95-7231, 1995 WL 516553, at \*1 (Minn. T.C. Aug. 24, 1995) (concerning a lease from a parent company to its wholly-owned entity).

<sup>38</sup> Subdivision 1(c) defines “relative” as a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew, or niece, by blood or marriage.

information concerning rental income based on an arms-length, market-based lease); *see also* *TMG Life Ins. Co. v. Cty. of Goodhue*, 540 N.W.2d 848, 853 (Minn. 1995) (holding that the actual rent paid pursuant to a below-market lease should not be used to calculate the fair market value of income-producing property). Information relating to non-arm's-length cost redistribution between close family members is not useful to the determination of property value, as it does not provide information relevant to the application of the income approach to valuation. *See Walmart*, 931 N.W.2d at 387.<sup>39</sup>

Based on the undisputed record, Ms. Huffer purchased the Homesteaded Property, subject to a mortgage, and her son Terry subsequently occupied the property and paid the mortgage and utilities. Terry subsequently applied for relative homestead classification pursuant to Minnesota Statutes, section 273.124, subdivision 1(c). The intra-family cost redistribution arrangement between Ms. Huffer and Terry did not render the Homesteaded Property income-producing. Accordingly, the mandatory disclosure rule does not apply.<sup>40</sup>

The County's motion to dismiss is denied as to the Homesteaded Property.

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<sup>39</sup> Whether relative homestead property pursuant to Minnesota Statutes, section 273.124, subdivision 1(c) can be income-producing property for purposes of the mandatory disclosure rule must be determined on a case-by-case basis. In other words, this Court does not establish a *per se* rule that relative homestead property is not income-producing property for purposes of the mandatory disclosure rule.

<sup>40</sup> Minnesota Statutes, section 278.05, subdivision 6(a), does not specify which party has the burden of proving that a property is income-producing in the event of a dispute. *See Walmart*, 931 N.W.2d at 386-87 (observing the statute "is silent on whether any party has [the] burden" of proving the subject property is income-producing and rejecting the petitioner's argument that the burden of proof is on the county). Accordingly, a petitioner under chapter 278 assumes the risk of dismissal to the extent income information is not timely disclosed, if such property ultimately is determined to be income-producing.



## **B. Equitable Estoppel**

Ms. Huffer asserts the County should be equitably estopped from obtaining dismissal of the petition.<sup>41</sup> The Court disagrees.

The parties dispute the content of a conversation on June 3, 2019, between Ms. Huffer and the Assistant County Attorney, with Ms. Huffer claiming that the Assistant County Attorney directed her not to contact the county assessor, and the Assistant County Attorney recalling the opposite.<sup>42</sup> This Court need not resolve that factual dispute to determine that Ms. Huffer has not met her burden of proof concerning reasonable reliance on communications with the Assistant County Attorney, or the incurrence of a “unique expenditure” based on such reliance. *See Sarpal*, 797 N.W.2d at 25, 27 (concluding equitable estoppel did not apply when the plaintiff did not establish the first of four elements).

### **1. Reasonable Reliance**

The affidavits and supporting documents filed by the parties establish indisputably that the County sent two letters to Ms. Huffer, on May 30 and May 31, 2019, consenting to direct contact by Ms. Huffer and the Assessor’s Office “to exchange information and negotiate a resolution,” up until the point formal discovery is commenced.<sup>43</sup> As discussed above in detail, they also establish indisputably that those letters informed Ms. Huffer of the requirement to provide timely information to the county assessor concerning income-producing property pursuant to Minnesota Statutes, section 278.05, subdivision 6.<sup>44</sup> The record also establishes that

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<sup>41</sup> Pet’r’s Mem. 3-5.

<sup>42</sup> Pet’r’s Aff. 6 ¶ J & Ex. J; Gaudette Coryell Reply Aff. ¶¶ 1-2.

<sup>43</sup> Am. Gaudette Coryell Aff., Ex. 1, at 1-2; Pet’r’s Aff., Ex. H, at 1-2 (May 30) & Ex. I, at 1-2 (May 31).

<sup>44</sup> Am. Gaudette Coryell Aff., Ex. 1, at 1; Pet’r’s Aff., Ex. H, at 1 & Ex. I, at 1.

Ms. Huffer contacted the Assistant County Attorney on June 3, 2019.<sup>45</sup> Although the parties dispute the exact substance of their conversation on that date,<sup>46</sup> Ms. Huffer acknowledges she did not consult Minnesota Statutes, section 278.05, subdivision 6 at the time she received the County's letters,<sup>47</sup> but waited until August 14, 2019, when she received the County's initial motion to dismiss.<sup>48</sup>

To the extent Ms. Huffer refrained from ascertaining her obligations under the statute because she believed she was entitled to rely on the June 3, 2019 call with the Assistant County Attorney regarding her obligations pursuant to the mandatory disclosure rule, her actions were not reasonable.<sup>49</sup> For one thing, based on the undisputed record, the County informed Ms. Huffer in writing—twice—that she was required to provide timely information to the county assessor concerning income-producing property pursuant to Minnesota Statutes, section 278.05, subdivision 6.<sup>50</sup> The reasonableness of reliance can be determined as a matter of law when the facts lead only to one conclusion. *See In re Westling Mfg., Inc.*, 442 N.W.2d 328, 331 (Minn. App. 1989) (reviewing cases in which the facts “only allowed one reasonable inference” and equitable estoppel was a matter of law); *see also Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The record in this case compels the sole conclusion that

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<sup>45</sup> Gaudette Coryell Reply Aff. ¶ 1; Pet'r's Aff. 6 ¶ J & Ex. J.

<sup>46</sup> Pet'r's Aff. 6 ¶ J & Ex. J; Gaudette Coryell Reply Aff. ¶¶ 1-2.

<sup>47</sup> Tr. 31.

<sup>48</sup> Tr. 26-28.

<sup>49</sup> Similarly, to the extent Ms. Huffer refrained from ascertaining her obligations under the statute because she believed the County's letter did not comply with discovery rules, *see* Pet'r's Mem. 4-5, 9; Pet'r's Aff. 6-7 ¶¶ J & K, her actions were not reasonable. As explained, *see supra* § III.A.1.b., compliance with the mandatory disclosure rule is specifically excepted from the Minnesota Rules of Civil Procedure concerning discovery. Minn. Stat. § 271.06, subd. 7.

<sup>50</sup> Am. Gaudette Coryell Aff., Ex. 1, at 1; Pet'r's Aff., Ex. H, at 1 (May 30) & Ex. I, at 1 (May 31).

Ms. Huffer did not reasonably rely on her interpretation of her June 3, 2019 call with the Assistant County Attorney, but rather should have independently reviewed the statute to determine her disclosure responsibilities upon receipt of the letters from the County.

Furthermore, an attorney does not owe a duty of care to an adverse party. *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 379 (Minn. 1989) (declining to recognize such a duty on the grounds it would undermine the attorney's duty to zealously represent the client; observing that "[j]urisdictions addressing this issue have rejected the assertion that an attorney owes a duty of care to the adversary party"; and collecting cases). As "[a]n attorney's duty of care is owed to the client and the court, not to the client's opponent," *id.*, it was not reasonable for Ms. Huffer to rely solely on the Assistant County Attorney, who is adverse counsel, to establish her obligations under the mandatory disclosure rule.

## **2. Unique Expenditure**

Furthermore, Ms. Huffer has not demonstrated the incurrence of a "unique expenditure" in reliance on communications with the County.<sup>51</sup> Although Ms. Huffer states her "one definitive expenditure is the filing fee ... of \$295.00,"<sup>52</sup> payment of the filing fee shortly followed the filing of the petition on October 26, 2018.<sup>53</sup> Accordingly, payment of that fee cannot serve as the basis of a claim of detrimental reliance on communications with the County that took place seven months later, in May and June of 2019.

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<sup>51</sup> This Court has not found the Assistant County Attorney's communications with Ms. Huffer to constitute "wrongful conduct."

<sup>52</sup> Pet'r's Mem. 4.

<sup>53</sup> Pet'r's Aff.4 ¶ E; Transaction Assessment and Counter Payment, *Huffer v. Cty. of Nicollet*, No. 52-CV-18-713 (Oct. 29 and 30, 2018) (retrieved from District Court Register of Actions).

Because the second and third elements of equitable estoppel have not been satisfied, this Court need not consider the remaining elements. *See Rose Cliff Landscape Nursery*, 467 N.W.2d at 644.

W.S.T.