

STATE OF MINNESOTA

IN SUPREME COURT

NO. C1-98-2035

OFFICE OF
APPELLATE COURTS

NOV 23 1998

FILED

In re Minnesota Property Tax
Litigation Involving The
Application of Minn. Stat.
§ 273.13, subd. 24 to Class 3 (a)
Commercial, Industrial or
Utility Property

Defendants' Reply to Plaintiffs'
Memorandum

INTRODUCTION

This memorandum is submitted in reply to Plaintiffs' response to Defendants' Motion to Assign all cases involving the application of Minn. Stat. § 273.13, subd. 24 to the Minnesota Tax Court for determination.

ARGUMENT

- 1. Plaintiffs previously stipulated to the transfer of most cases from district court to the Minnesota Tax Court, and have waived their claim to a jury trial.**

Plaintiffs' memorandum focuses on a single case involving a single party in Dakota County, Christian v. Dakota County, Court File No. 19-C4-97-9320. Plaintiffs argue that the Christian case must be decided by Judge McCarthy since he retained jurisdiction over the case by denying Dakota County's motion to transfer the matter to Minnesota Tax Court on September 15, 1998. However, Judge McCarthy has suspended briefing activities in the case

pending the decision of this Court on assignment of these matters to a single court or a judge. See Exhibit A, letter of the Honorable Thomas G. McCarthy dated November 10, 1998. In his correspondence Judge McCarthy states, "It seems to me that a consolidation would likely serve the interest of judicial economy and an expeditious determination of the issues raised." The court also ruled that the County's responsive brief will not be due if the Dakota County case is consolidated with other county actions.

Plaintiffs argue that Dakota County is somehow failing to honor a stipulation it had regarding the assignment of the Christian matter to Judge McCarthy. However, the decision to retain jurisdiction over the case was made by Judge McCarthy, in denying Dakota County's motion to transfer the case. See Plaintiffs' memorandum, page 3, n.2 . In fact, it is Plaintiffs who violate their stipulated agreements to transfer the County cases to the Minnesota Tax Court for adjudication. At least¹ nine of the 14 cases outlined in Defendant's motion at pages 2-3 were transferred to the Tax Court by stipulation of the parties. In LGSRG (Burkholder), Case No. DC-97-567, Plaintiff's counsel appeared at a hearing before the Honorable Cara Lee Neville, Judge of District Court, on February 19, 1997, and stipulated on the record to a transfer of the matter to the Minnesota Tax Court. Plaintiff's counsel stated:

(Mr. Hill): For today's purposes, your Honor, if you noticed, we haven't filed anything opposing transferring this entire matter over to the Tax Court. I did that at some consternation because the one thing we are waiving, if this court does choose to send this to Tax Court, is our right

¹ At the time of the briefing of this matter, Defendants were unable to confirm the circumstances of the assignment of the Washington County (Zimmerman) case to the Minnesota Tax Court. We are unable to represent whether those cases were assigned by stipulation or as the result of a contested motion before the District Courts of those counties. The Carver County case (Taco Bell) was transferred to tax court on Defendants' motion. Programmed Land II and Schuler are actions involving the Plaintiffs in Programmed Land I, which was transferred to the tax court by stipulation.

to a jury trial. Tax Court does not have the ability to give us a jury trial; however, I believe that this case will be decided on summary judgment, and ultimately this case is going to go to the Supreme Court. There's no question that it's going to go to the Supreme Court. I have no objection to transferring this case over to the Tax Court.

Transcript of hearing dated November 19, 1997, page 10; attached hereto as Exhibit B. Thus, Plaintiff's counsel not only agreed to the transfer to the Minnesota Tax Court, but specifically waived any "right" to a jury trial of the matter.

Programmed Land I, File No. DC-97-2321 was transferred to the Minnesota Tax Court by Judge Harvey Ginsberg on March 20, 1997, pursuant to the stipulation of the parties.

Exhibit C, stipulation for transfer to Tax Court and Order for transfer to Tax Court.

Klickstedt v. Itasca County, File No. C-9-97-1465, was transferred to Tax Court by stipulation of the parties. See Exhibit D, stipulation dated October - December, 1997.

In Anoka County, Burkholder v. Treska, et. al., was transferred to the Minnesota Tax Court by Order of Judge Hoffman dated October 13, 1998, attached as Exhibit E. In that Order, Judge Hoffman found that Plaintiffs stipulated to a transfer of the case by written stipulation dated March 19, 1998, which was accompanied by an Order by the Honorable Gabriel Giancola, Judge of District Court. Judge Hoffman found the stipulation to be an enforceable agreement. Finding of Fact No. 8.

In the Ramsey County action, Multi-Tech Systems, File No. C4-97-3732, Plaintiffs stipulated to transfer of the matter from District Court to Tax Court by stipulation and order dated June 10, 1997, attached hereto as Exhibit F.

In the other Ramsey County case, Murray v. Ramsey County, File No. C1-97-5261, the parties agreed to a stipulation transferring the matter to the Minnesota Tax Court for all

further proceedings. See Exhibit G, correspondence dated March 6, 1998 from Plaintiff's attorney Alan Kildow to the Honorable Roland Faricy, Judge of Ramsey County District Court.

In Fehn v. Wright Co. et.al., File No. C3-97-3160, the case was transferred to the Minnesota Tax Court by stipulation of the parties in March 1998. Exhibit H, attached. Finally, Lange v. Scott County, File No. 1997-16032, was transferred to the Minnesota Tax Court by stipulation of the parties dated November 1997. Exhibit I, attached.

Plaintiffs argue that the Christian case in Dakota County, being the subject of stipulated facts, should not be transferred to the Minnesota Tax Court. Of course, nothing would prevent that matter from being considered on stipulated facts before the Minnesota Tax Court. Judge McCarthy has indicated his belief that the Christian case should follow the other cases if this Court assigns all cases to one court. Since the Christian case was to be tried on stipulated facts **to the court**--and not to a jury--assignment of this and the other cases to the Minnesota Tax Court is appropriate.

As importantly, the stipulations of Plaintiff's attorneys in most other actions to the transfer of the cases to the Minnesota Tax Court should be honored and enforced. Judge Hoffman has already so ruled in the Anoka County matter. The cases cited by Plaintiffs at page 22 of their Memorandum make clear that written and oral stipulations between parties, governing the treatment of cases, should be enforced, when the agreements are made freely and with full understanding. Minnesota Vikings Football Club, Inc. v. Metropolitan Council, 289 N.W.2d 426, 431 (Minn. 1979) (oral representations made by an attorney in the course of litigation are solemn obligations that must be enforced). There can be no argument that

Plaintiff's attorneys were unaware of their "right" to a jury trial, as that "right" was specifically waived on the record by Mr. Hill at a hearing in February of 1997. Exhibit B, page 10. And, as the Christian case illustrates, the Plaintiffs have no intention of availing themselves of a jury trial, instead having chosen to submit the matter for determination by the court.

Plaintiffs' stipulation and agreement for hearing of these matters in the Minnesota Tax Court should be enforced.

2. **The Supreme Court has the authority to assign these cases directly to the Minnesota Tax Court. In the alternative, this Court can issue an order to the Chief Judges of the Minnesota Judicial Districts, directing transfer of these matters to the tax court.**

Minn. Stat. § 2.724, subd. 1 provides that the Chief Justice of the Supreme Court may assign any judge of any court to serve and discharge the duties of judge of any court in any judicial district. This means that, if this Court deems it appropriate, it may assign all subject cases to the Minnesota Tax Court for disposition. The statute does not provide, as Plaintiffs seem to argue, that the Supreme Court may only assign cases to district court judges. It would be incongruous to argue that, for cases filed in district court (the court of original jurisdiction for all civil matters²), that the Supreme Court is unable to assign tax cases to the Minnesota Tax Court, while the district court may. While Minn. Stat. § 271.01, subd. 5, provides for transfer of tax cases from the district court to the tax court, it has no bearing on the authority of this Court to assign cases to any court under Minn. Stat. § 2.724, subd. 1.

Alternatively, this Court may wish to enter an Order to the Chief Judges of the ten

² Minnesota Constitution, Article VI, § 3.

Judicial Districts in Minnesota, directing the transfer of any cases filed concerning this cause of action to the Minnesota Tax Court. Since the tax court is the sole, exclusive and final authority for hearing and determination of all questions of law and fact arising under the tax laws of this state³ and plaintiffs have stipulated to hearing most claims in the Minnesota Tax Court, assignment of these cases to the tax court reasonably conserves scarce judicial resources.

The tax court is a court of record. Minn. Stat. § 271.01, subd. 1. Judges of the tax court are subject to the provisions of the Minnesota Constitution, Article VI, § 6; the jurisdiction of the Commission on Judicial Standards; and the Code of Judicial Conduct. Minn. Stat. § 271.01, subd. 1. Judges are appointed on the basis of their experience with and knowledge of taxation and tax laws. Minn. Stat. § 271.01, subd. 1. The Minnesota Tax Court is an appropriate forum for the determination of Plaintiff's claims.

Plaintiffs also assert that they seek a declaratory judgment and writ of mandamus, and that tax court is without jurisdiction to consider this type of relief. This argument ignores the previous holdings of this court that indicate that the tax court acquires the district court's jurisdiction to decide all issues in a particular case upon transfer of the matter from district court. In Re Petition of McCannel, 301 N.W.2d 910, 920 (Minn. 1980). This Court has noted that the statutory language designating the tax court as the "sole, exclusive, and final authority" for all issues means that the tax court must have the power to decide each case completely. McCannel, 301 N.W.2d at 920. In fact, the tax court has the authority to consider mandamus and other like actions upon transfer of those claims by the district court.

³ Minn. Stat. § 271.01, subd. 5.

Winnetka Partners, Ltd. v. County of Hennepin, 538 N.W.2d 912 (Minn. 1995) (transfer of mandamus action to Minnesota Tax Court by district court; Tax Court Order quashing alternative writ of mandamus affirmed.)

Plaintiffs, through counsel, have expressed their disagreement with the long-established procedure to transfer constitutional issues to tax court established by McCannel and related cases. In a hearing in LGSRG, dated August 4, 1998, Alan Kildow, counsel for Plaintiffs stated:

(Mr. Kildow): I want to make one additional point, in that it may surprise some people to hear me say this, but I also believe that McCannel and Erie were wrongly decided as to the ability of the district court to transfer a constitutional claim back to the tax court. I think that the footnote that is found in Nagaraja⁴ is instructive. Quite frankly, I don't know whether this issue was raised in Erie and in McCannel, but a constitutional claim, it seems to me, must be decided by a judicial branch of the government, not the administrative branch of the government, and I want that preserved in the record.

Transcript, p. 24, Exhibit J, attached. Of course, the jurisdiction of the tax court to hear these claims after filing in district court, and transfer, was approved in all three cases cited by counsel.

Plaintiffs may object to the tax court's denial of class certification⁵ and other substantive rulings on motions that have occurred. However, to permit transfer of these cases from tax court at this late stage would promote delay and forum shopping, which should not be condoned.

Plaintiffs argue that the Minnesota Tax Court is an inappropriate forum for these

⁴ 332 N.W.2d 373 (Minn. 1984).

⁵ LGSRG, order dated 9/30/98, Honorable George Perez (Exhibit K).

actions since it could act to deny them their right to a jury trial. Defendants rest on their briefing of this issue at pages 8-10 of the motion to this court. However, it is noted that Plaintiffs admit that their right to a jury trial as set forth by Minn. Const. art. I, § 4, and Minn. R. Civ. P. 38.01 “neither enlarges nor diminishes the historical right to a jury trial.” Plaintiff’s Memorandum, page 25. Disputes regarding the amount of tax payable or the validity of an assessment have never carried with them the right to a jury trial. Commissioners of Mille Lacs County v. Morrisson, 22 Minn. 178, 183-184 (1875).

Second, the issue of a jury trial in tax court on transfer from district court has not arisen yet, and has never been ruled upon by any court.

Finally, as indicated above, Plaintiffs, by stipulating to transfer of most cases to the Minnesota Tax Court, have waived any “right” to a jury trial in those actions. Even with the sole matter retained by a district court judge in Dakota County, Plaintiffs waived the “right” to a jury trial instead deciding to submit the matter to the Court on stipulated facts. Transfer of these matters to the Minnesota Tax Court is therefore appropriate.

3. PLAINTIFFS’ ARGUMENT THAT THEY ARE SOMEHOW PREJUDICED BY AN ALLEGED CONFLICT OF INTEREST OF DOROTHY McCLUNG IS WITHOUT MERIT AND IS MADE IN BAD FAITH.

Plaintiffs’ claim that Dorothy McClung’s status as a former tax court judge and current Director of Ramsey County Department of Property Records and Revenue creates a conflict of interest under Minnesota Statute 217.18. This statute states in pertinent part that:

“No judge, referee or employee shall at any time after termination of the office or employment, act as counsel, attorney, or agent in connection with any claim or proceeding of which the person terminated has knowledge which was acquired in the course of the term of office or employment in the Tax Court.

Any violation of the provisions of this section shall be a gross misdemeanor.”

Plaintiffs incorrectly conclude that Dorothy McClung is an agent under the statute. The above quoted statute prohibits a former tax court judge from acting as an attorney or agent in claims or proceedings if the person acquired knowledge of that case while with the tax court. Ramsey County and all named Defendants in the Ramsey County action are being represented by Susan Gaertner, Ramsey County Attorney. Ms. McClung is not a party to the action nor is she acting as an attorney or agent in connection with this proceeding. Furthermore, it should be noted that this conflict of interest statute is indeed a criminal statute, the violation of which constitutes a gross misdemeanor, punishable of up to one year of incarceration. As a criminal statute, it should not be given a broad reading beyond its express language, since citizens, including former judges, should not be required to guess at what conduct is prohibited.

Plaintiffs do not state any rationale for how they conclude that Ms. McClung is an agent under the statute because she obviously is not an agent or acting in any capacity other than as a client of the Ramsey County Attorney in this matter. Plaintiffs also allege that Assistant Ramsey County Attorney Stepan's status as a former tax court judge creates a conflict of interest. This allegation is also completely without merit and is disingenuous. Ms. Stepan left the tax court in 1991, which was more than five years before Plaintiffs first filed any of these related actions. Accordingly, under Minn. Stat. 271.18, Ms. Stepan could not have had any knowledge relating to this case since it was not filed until several years after she left the bench.

Not only is the statute inapplicable because Ms. McClung is neither an agent nor counsel for Ramsey County, but there is also no conflict of interest of any sort in this matter. Ms. McClung began her employment with Ramsey County in November of 1997, almost two years after this litigation was started by Plaintiffs' counsel. Accordingly, Ms. McClung had no involvement in any of the facts relating to Plaintiffs' claims concerning Ramsey County, since she was not employed during the timeframe alleged in Plaintiffs' Complaints.

Assuming, for the sake of argument, that Plaintiffs were correct and that Ms. McClung was an agent under Minn. Stat. 271.18, and as such was precluded from acting as an agent in this matter on behalf of Ramsey County, this preclusion would also prevent her from acting as an agent in district court. Accordingly, Plaintiffs' flawed argument would even fail to accomplish their goal of a transfer to district court.

As set forth in Exhibit G, Mr. Kildow, counsel for Plaintiffs, wrote to Ramsey County District Court Judge Roland Faricy on March 6, 1998 requesting that the Ramsey County litigation be transferred for resolution to the Minnesota Tax Court. This transfer was made over four months after Ms. McClung took her position as Director of Ramsey County Property Records and Revenue and also after Plaintiffs' counsel had actual knowledge of that fact. Accordingly, Plaintiffs' own action in requesting the transfer to tax court belies any good faith argument that their clients are now prejudiced by such a transfer. Indeed, their assertion is made in bad faith. See also, In Re Collection of Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995) (tax court judge properly declined recusal in case where memo on church exemption signed by judge while Commissioner of Revenue).

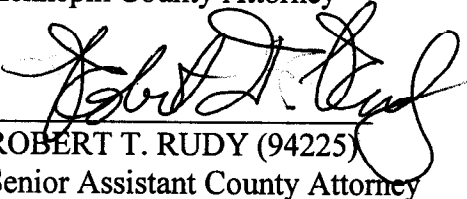
CONCLUSION

Defendants respectfully request that this Court enter an Order:

1. Assigning all current and future cases involving the application of Minn. Stat. § 273.13, subd. 24 to Class 3(a) commercial, industrial or utility property to the Minnesota Tax Court; or alternatively,
2. An Order to the Chief Judge of the Minnesota Judicial Districts directing that all current and future cases filed under this statute be transferred by district court to the Minnesota Tax Court for handling.

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney



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Dated November 20, 1998

Dated: 11/19/98



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Carver County joins in Defendants' Reply to Plaintiffs' Memorandum.

MELCHERT HUBERT SJODIN P.L.L.P.

Dated: November 20, 1998.

By: 

R. Lawrence Harris

Co-Counsel for Defendants, Donald F. Dahlke, in his capacity as Treasurer; Mark Lundgren as Auditor for Carver County; Carver County Board of Commissioners; and Carver County, Minnesota
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Dated: _____

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By _____

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Dated: 20 Nov 1998



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Dated 11/19/98

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By: 

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Telephone: (612) 266-3213

INDEX OF EXHIBITS

- Exhibit A. Letter from the Honorable
Thomas G. McCarthy, dated
November 10, 1998
- Exhibit B Transcript, Burkholder, et al. v.
Hennepin County, February 19, 1997
- Exhibit C Stipulation and Order for Transfer to
Tax Court
Programmed Land I, March 1997
- Exhibit D Stipulation and Order for Transfer to
Tax Court
Klegstad v. Zuehlke, December 1997
- Exhibit E Order for Transfer to Tax Court,
Burkholder v. Anoka County,
October 13, 1998
- Exhibit F Stipulation and Order for Transfer to
Tax Court, Multi-Tech v. Ramsey County,
June 1997
- Exhibit G Letter from Alan L. Kildow, Esq. in
Murray v. Ramsey County, March 6, 1998
- Exhibit H Stipulation and Order to Transfer to Tax Court
Fehn v. Wright County, April, 1998
- Exhibit I Stipulation to Transfer to Tax Court
Lange v. Scott County, November, 1997
- Exhibit J Transcript, LGSRG v. Hennepin County,
August 4, 1998
- Exhibit K Order of Honorable George W. Perez,
LGSRG v. Hennepin County, June 30, 1998

A

THOMAS G. MCCARTHY
JUDGE
SIBLEY COUNTY COURTHOUSE
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GAYLORD, MINNESOTA 56334
TELEPHONE (807) 837-4061
FAX (807) 237-4062
Email: tom.mccarthy@courts.state.mn.us.



SIBLEY, MCLEOD, CESUELA
SCOTT, CARVER, DAKOTA AND
GOODHUE COUNTIES

99 NOV 13 10:26

STATE OF MINNESOTA
FIRST JUDICIAL DISTRICT

November 10, 1998

Mr. Alan L. Kildow
Attorney at Law
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7900 Xerxes Av S
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Mr. Jay R. Stassen
Assistant Dakota County Attorney
Dakota County Judicial Center
1560 West Highway 55
Hastings MN 55033-2392

Re: Christian v. Novak, et al
File No. C4-97-9320

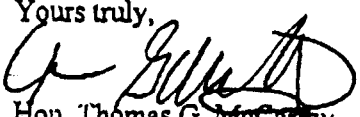
Gentlemen:

I have received correspondence from each of you regarding the pending motions to consolidate these tax cases.

It seems to me that a consolidation would likely serve the interests of judicial economy and an expeditious determination of the issues raised. It would further seem that the Dakota County matter ought to be included in any such consolidation.

I understand that the Chief Justice is recovering from surgery. I do not know how long it will take to have a decision on the motions. It seems to me that we ought to await that decision before spending more time and effort on this matter. Therefore, the brief of the County will be due three weeks after the decision on the consolidation motions. Obviously, it will be due only if this matter is NOT consolidated with the other counties' actions.

Thank you for your consideration.

Yours truly,

Hon. Thomas G. McCarthy
Judge of District Court

cc: First District Assignment Office

B

1 STATE OF MINNESOTA
2 COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

3

4 Dayton Burkholder,
5 et al.,

File No. 97-567

6

Plaintiffs,

7

vs.

TRANSCRIPT OF
PROCEEDINGS

8

Patrick O'Connor, Hennepin
County, et al.,

9

Defendants.

10

11 The above-entitled matter came duly on for
12 hearing before The Honorable Cara Lee Neville, one of
13 the judges of the above-named Court, at 1859-C
14 Hennepin County Government Center, Minneapolis,
15 Minnesota, on the 19th day of February, 1997.

16

APPEARANCES:

17

ROBERT A. HILL, ESQ., and KEITH E. SIMONS,

18

ESQ., Attorneys at Law firm, appeared for and on

19

behalf of Plaintiffs.

20

MARILYN MALONEY, ESQ., Assistant Hennepin

21

County Attorney, appeared for and on behalf of the

22

Hennepin County Defendants.

23

ANTHONY C. PALUMBO, ESQ., Assistant Anoka

24

County Attorney, appeared for and on behalf of the

25

Anoka County Defendants.

1 the proceedings pending the outcome of the Court of
2 Appeals proceedings. And if the Court finds it
3 appropriate to transfer to tax court, we also would be
4 glad to bring that request for a stay to the tax
5 court, but I'm just at somewhat of a loss as to what
6 the proper process to follow would be.

7 THE COURT: Thank you.

8 MR. HILL: If I may, Your Honor, we too want
9 it in one forum, that's why we brought it in federal
10 district court. I spent a lot of time researching the
11 law, not enough time looking at the fact that there is
12 actually a matter of (inaudible), as the U.S. Supreme
13 Court said, even though the U.S. District Court does
14 have jurisdiction over tax matters, we don't want the
15 federal district courts interfering with the
16 administration of state taxes so therefore we won't
17 let you exercise your jurisdiction.

18 This case is a real simple case, Your Honor.
19 They are throwing star dust in your eyes by calling it
20 a classification case. They want to call it that
21 because they need to call it that. This case is not
22 about classification, it's about imposing an excess
23 tax because the information that the auditor receives
24 from the assessor doesn't accurately portray the
25 situation and the auditor then, after they have a

1 statutory duty to correct the error, they failed to do
2 so, they then impose and have imposed for probably 20
3 years, a tax in excess of that allowed by law.

4 This case is about an improper tax, and by that I
5 mean an excess levy, and there are equitable means
6 under 275.26 in which taxpayers can bring an action to
7 rectify that and ask the county board and the county
8 auditor, which is what we are doing in this case
9 primarily, to recompute the tax and, indeed, refund
10 it. The only issue this case comes down to is what is
11 the role of the auditor in imposing the tax. They
12 want you to believe that the assessor -- that this is
13 just a classification case.

14 For today's purposes, Your Honor, if you noticed,
15 we haven't filed anything opposing transferring this
16 entire matter over to the tax court. I did that at
17 some consternation because the one thing we are
18 waiving, if this Court does choose to send this to tax
19 court, is our right to a jury trial. Tax court does
20 not have the ability to give us a jury trial; however,
21 I believe that this case will be decided on summary
22 judgment, and ultimately this case is going to go to
23 the Supreme Court. There's no question that it's
24 going to go to the Supreme Court. I have no objection
25 to transferring this case over to the tax court

1 THE COURT: Okay. Thank you very much for
2 stopping by.

3 (Whereupon, the proceedings
4 concluded.)

5 * * *

6 STATE OF MINNESOTA)
7) ss.
8 COUNTY OF HENNEPIN)

REPORTER'S CERTIFICATE

9 I, Jolyn R. Lund, Official Court Reporter, do
10 hereby certify that the above and foregoing is a true and
11 accurate transcription of my original stenographic notes in
12 said matter.

13 Dated: 8-5-98

14 /s/

15 Jolyn R. Lund
16 Official Court Reporter
17 1859-C Government Center
18 Minneapolis, Minnesota 55487
19 (612) 348-2044
20
21
22
23
24
25

C

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Programmed Land, Inc., N.A. Ternes
& Associates, M.D. Norman & K.V. Norman,
Randall Washington, Leslie J. Butman, PPG
Partnership, My Bui Le, Paul Williams, R.J.
Herman & L.A. Herman, Patricia R. Sims,
P.M. Dean, P.C. Taykalo, Ashworth
Properties, Microfacs, Brad Imes, Robert H.
Engelhart, Apollo Piping Supply, inc., Car R.
Lindstrom, Taaffe Investments, Inc., Timothy R.
Murphy, R.L. Lewin & N.E. Lewing, Savoie
Supply Company, Inc., Alan E. Segal et. Al,
C&C Investments LLP, Roger W. Wothe,
P. Dan Gilbert, D & M Properties, C & V
Anderson, Hennen Enterprises, First Community
Credit Union, L & C Koehnen, C.E. Bondhus et al.,
H & F Lamo, Henry B. Hayden, Hayne-Hyung J.
Cho, E & C McDonald, Daniel E. Shebuski,
Joseph & Rella Bevier, Fuel Oil Service Co. Inc.,
Twelve Properties, Inc., Susan M. Schuler,
Gethsemane Evangelical Lutheran Church,
H.J.H. Investment Co., James I. Davis,
Gerald R. Baskfield, Joseph Garber, Gerald E.
Holman, Amsden Ridge Associates. II, G.J.
Smith & J.B. Smith, Paul M. Model, Heritage
Plaza Associates, R.A. Gassen & C.K. Gassen,
John Doe and Mary Roe, Zimmerschied, Inc.,
Single Ply Systems, Inc., Wallace R. Pettit, BCV
Properties and Glenn Karlen, Peter Houser,
William D. Townsend and Loren P. Tichy.

Petitioners/Plaintiffs,

vs.

Assessor for Hennepin County, and
Hennepin County Board of Commissioners.

Respondents/Defendants.

**STIPULATION FOR
TRANSFER TO TAX COURT**

District Court No. 97-2321

321

- 1) The above-encaptioned case seeks issuance of a writ for mandamus and declaratory judgment.
- 2) Petitioners/Plaintiffs challenge the refusal of the Hennepin County Assessor and the Hennepin County Board to review their tax abatement applications for pay 1994 and 1995 (assessment dates January 2, 1993 and 1994).
- 3) They allege that their property located in Hennepin County was improperly classified pursuant to Minn. Stat. §273.13, subd. 24(a) for those assessment dates.
- 4) The questions of law and fact posed by this action arise under the tax laws of the State of Minnesota.
- 5) Pursuant to Minn. Stat. §271.01, subd. 5, the parties agree that this matter be transferred with the District Court's full legal and equitable powers to the Minnesota Tax Court, thereby placing sole, exclusive and final authority over this action with the Tax Court.

KEITH E. SIMONS, P.A.

Dated: 3-14-97

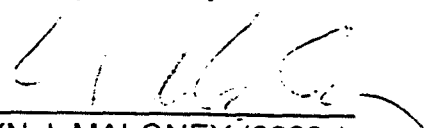
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MICHAEL O. FREEMAN
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Dated: 3/13/97

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Attorneys for Respondents/Defendants

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Programmed Land, Inc., N.A. Ternes
& Associates, M.D. Norman & K.V. Norman,
Randall Washington, Leslie J. Butman, PPG
Partnership, My Bui Le, Paul Williams, R.J.
Herman & L.A. Herman, Patricia R. Sims,
P.M. Dean, P.C. Taykalo, Ashworth
Properties, Microfacs, Brad Imes, Robert H.
Engelhart, Apollo Piping Supply, Inc., Car R.
Lindstrom, Taaffe Investments, Inc., Timothy R.
Murphy, R.L. Lewin & N.E. Lewing, Savoie
Supply Company, Inc., Alan E. Segal et. Al,
C&C Investments LLP, Roger W. Wothe,
P. Dan Gilbert, D & M Properties, C & V
Anderson, Hennen Enterprises, First Community
Credit Union, L & C Koehnen, C.E. Bondhus et al.,
H & F Lamo, Henry B. Hayden, Hayne-Hyung J.
Cho, E & C McDonald, Daniel E. Shebuski,
Joseph & Rella Bevier, Fuel Oil Service Co. Inc.,
Twelve Properties, Inc., Susan M. Schuler,
Gethsemane Evangelical Lutheran Church,
H.J.H. Investment Co., James I. Davis,
Gerald R. Baskfield, Joseph Garber, Gerald E.
Holman, Amsden Ridge Associates, II, G.J.
Smith & J.B. Smith, Paul M. Model, Heritage
Plaza Associates, R.A. Gassen & C.K. Gassen,
John Doe and Mary Roe, Zimmerschied, Inc.,
Single Piy Systems, Inc., Wallace R. Pettit, BCV
Properties and Glenn Karlen, Peter Houser,
William D. Townsend and Loren P. Tichy.

**ORDER FOR TRANSFER
TO TAX COURT**

District Court No. 97-2321

Petitioners/Plaintiffs,

vs.

Assessor for Hennepin County, and
Hennepin County Board of Commissioners,

Respondents/Defendants.

- 1) The above-encaptioned case seeks issuance of a writ for mandamus and declaratory judgment.
- 2) Petitioners/Plaintiffs challenge the refusal of the Hennepin County Assessor and the Hennepin County Board to review their tax abatement applications for pay 1994 and 1995 (assessment dates January 2, 1993 and 1994).
- 3) They allege that their property located in Hennepin County was improperly classified pursuant to Minn. Stat. §273.13, subd. 24(a) for those assessment dates.
- 4) The questions of law and fact posed by this action arise under the tax laws of the State of Minnesota.
- 5) Pursuant to Minn. Stat. §271.01, subd. 5, the parties agree that this matter be transferred with the District Court's full legal and equitable powers to the Minnesota Tax Court, thereby placing sole, exclusive and final authority over this action with the Tax Court.

BY THE COURT:



Judge of District Court

Harvey C. Ginsberg

Dated:

3/20/97

D

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

CASE TYPE: STATUTORY/EQUITABLE

Guy Klegstad, et al.,

File No.

Plaintiffs.

v.

**STIPULATION TO TRANSFER TO
MINNESOTA TAX COURT**

Robert O. Zuehlke, et al.,

Defendants.

WHEREAS. there is a motion pending before this Court to Dismiss:

WHEREAS. the Itasca County Defendants and the Plaintiffs agree that this matter falls with in the jurisdiction of the Minnesota Tax Court under the provisions of Minn. Stat. § 271.01, subd. 5;

WHEREAS, the parties to this action are in agreement that the action against Itasca County Defendants should be transferred to the Minnesota Tax Court for all further proceedings;

WHEREAS. the parties to this action are in agreement that all claims and defenses the Defendants now have will be reserved to them upon transfer to the Tax Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and the Itasca County Defendants, by and through their respective attorneys of record, that an Order shall be issued from this court transferring this matter to the Minnesota Tax Court, reserving to the Defendants all claims and defenses they now have in this court.

ATTORNEYS FOR PLAINTIFFS

ATTORNEYS FOR DEFENDANTS

By: *Alan L. Kildow*
 Alan L. Kildow (143133)
 John J. Steffenhagen (195947)
 Karin M. Nelsen (269724)
 LARKIN, HOFFMAN, DALY &
 LINDGREN, Ltd.
 1500 Norwest Financial Center
 7900 Xerxes Avenue South
 Bloomington, Minnesota 55431-1194
 (612) 835-3800

By: *Michael J. Haig*
 Michael J. Haig
 Assistant County Attorney
 Itasca County Courthouse
 123 Fourth Street N.E.
 Grand Rapids, Minnesota 55744

Dated: *December 1*, 1997.

Robert A. Hill (217165)
 ROBERT HILL & ASSOCIATES. LTD.
 Suite 2485
 Centre Village Offices
 431 South Seventh Street
 Minneapolis, Minnesota 55415-9788

Keith E. Simons (101278)
 KEITH E. SIMONS, P.A.
 Suite 310
 1011 First Street South
 Hopkins, Minnesota 55343
 (612) 935-1697

Attorneys for Plaintiffs

Date: *October 30*, 1997.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

GUY KLEGSTAD, ET AL.,
PLAINTIFFS,

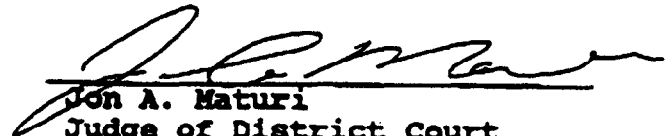
-VS-

ORDER TRANSFERRING VENUE
31-C9-97-1465

ROBERT O. ZUEHLKE, ET AL.,
DEFENDANTS.

IT IS HEREBY ORDERED, based upon stipulation between Plaintiffs and the Itasca County Defendants, that this matter is transferred to the Minnesota Tax Court, reserving to the Defendants all claims and defenses they now have in this Court.

Dated: 12-19-97


Jon A. Maturi
Judge of District Court

FILED
DEC 19 1997

DIANE E. GROSS
COURT ADMINISTRATOR
ITASCA COUNTY, MINN.

BY _____

E

OCT 15 1998

STATE OF MINNESOTA
COUNTY OF ANOKA

RECEIVED
ANOKA COUNTY ATTORNEY

TENTH JUDICIAL DISTRICT
ANOKA, MINNESOTA 55303

In Re: DAYTON BURKHOLDER et al.
vs. EDWARD TRESKA et al.
Case Number: 02-C5-97-006090

THOMAS G HALUSKA
ANOKA COUNTY GOVERNMENT CENTER
ANOKA MN 55303

NOTICE OF FILING OF ORDER

You are hereby notified on October 13, 1998

AN ORDER (COPY ENCLOSED)

was filed in the above entitled matter.

A true and correct copy of this notice has been served by mail upon the parties named herein at the last known address of each, pursuant to the Minnesota Rules of Civil Procedure.

Jane F. Morrow, Court Administrator

By BB
Dated: October 13, 1998

Deputy

FILED

STATE OF MINNESOTA

OCT 13 1998

DISTRICT COURT

COUNTY OF ANOKA

JANE P. MORROW
COURT ADMINISTRATOR
ANOKA COUNTY, MN

TENTH JUDICIAL DISTRICT

SEVERLY COVER

Dayton and Barbara Burkholder,
individually, and on behalf of all other
persons similarly situated,

Plaintiffs,

ORDER

v.

File No. C5-97-6090

Edward Treska, in his capacity as Director Of
Property Records and Taxation for Anoka County;
Anoka County Board of Commissioners; Anoka County,
Minnesota,

Defendants.

The above-entitled matter came on before the undersigned Judge of District Court, on the 28th day of September, 1998, on The County of Anoka's Motion to Transfer Jurisdiction. The County of Anoka now seeks to transfer this case to the Minnesota Tax Court pursuant to Minn. Stat. §271.01, subd. 5 claiming that this matter concerns questions of law and fact arising under the tax laws of the state.

Alan L. Kildow, Esq., Keith E. Simons, Esq. and Robert A. Hill, Esq., appeared for Plaintiffs. Thomas G. Haluska, Assistant Anoka County Attorney, appeared for the Defendants.

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

FINDINGS OF FACT

1. Plaintiffs allege that Defendants wrongfully retain Plaintiffs' property tax overpayments.
2. Plaintiffs seek recovery of the overpayments under a variety of legal theories, including: breach of contract, unjust enrichment and certain statutory remedies. Plaintiffs also allege that Defendants' collection and retention of property taxes in

excess of the amount authorized by statute violate Plaintiffs' constitutional rights of due process and equal protection. Additionally, at various time during the pendency of this and related proceedings, Plaintiffs have alleged but not formally plead violations of 42 U.S.C. Section 1983.

3. By written Stipulation dated March 19, 1998 and executed by the Honorable Gabriel Giancola, the parties agreed that this matter be heard in the Minnesota Tax Court. The parties also orally agreed during a hearing on May 22, 1998 before the Honorable Judge George W. Perez on May 22, 1998 that this matter be transferred to the Minnesota Tax Court.
4. On June 10, 1998 the Minnesota Tax Court transferred this matter to the Anoka County District Court to allow Plaintiffs to amend their Complaint so that all claims could be asserted in the District Court of Anoka County for ultimate determination by the Minnesota Tax Court.
5. Subsequent to the transfer to the Anoka County District Court Plaintiffs claim they have discovered that they may lose their right to a jury trial if the matter is now transferred back to the Minnesota Tax Court. Plaintiffs have not formally amended their Complaint as set forth in the Tax Court Order dated June 10, 1998.
6. Defendants now seek to have this action transferred back to the Minnesota Tax Court pursuant to Minn. Stat. § 271.01, subd. 5.
7. Plaintiffs resist a transfer of this matter to the Tax Court alleging that the Tax Court does not have jurisdiction over many of their common law claims and their constitutional challenges and violation of Plaintiffs' right to a jury trial.
8. The right to a jury trial was an issue known to the Plaintiffs at the time of the original Stipulation dated March 19, 1998. Plaintiffs have always claimed that the Defendants' acts, among other things, constitute a breach of an implied contract¹ which would implicate the right to a jury trial. Notwithstanding this knowledge Plaintiffs voluntarily stipulated to transfer this matter to the Minnesota Tax Court. Stipulations by parties in litigation are enforceable agreements. [See *Beach v.*

¹Count IV of Plaintiff's Complaint dated May 15, 1997, and Count IV of Second Amended Complaint dated August 27, 1997

Anderson, 417 N.W.2d 709 (Minn. Ct. App. 1988) wherein the court enforced a settlement agreement when the stipulation was the product of careful negotiations and where each party had opportunity to weigh their interests.]

9. The parties informed the Court that in several metropolitan area counties similar actions are pending in both the Tax Court and the District Courts.
10. The Tax Court has statewide jurisdiction and has original jurisdiction over questions of "law and fact arising under the tax laws of the state", Minn. Stat. § 271.01 subd 5.

CONCLUSIONS OF LAW

1. Defendants have not waived their right to seek a transfer of this action to the Minnesota Tax Court.
2. In the present case a court must determine whether Defendants failed to apply appropriate tax rates to property owned by Plaintiffs, and whether Plaintiffs overpaid property taxes. These issues are appropriately determined by the Minnesota Tax Court.
3. The Tax Court has the authority to address and decide constitutional issues in matters transferred to the Tax Court by the District Court, *Matter of McCannel*, 301 N.W.2d 910 (Minn. 1980).

ORDER

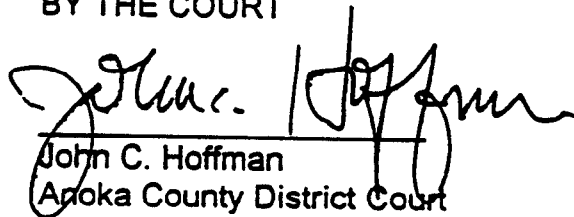
1. The County of Anoka's Motion for Transfer of Jurisdiction to the Minnesota Tax Court by is hereby **GRANTED** placing with the Tax Court the District Court's full legal and equitable powers for determination of all matters that might come before it and placing sole, exclusive and final authority over this action with the Tax Court.
2. This Order is stayed for a total of 45 days to allow the following:
 - A. Plaintiff's shall serve upon Defendants and file with the Anoka County Court Administrator all final amendments to Plaintiff's Complaint within 30 days of the date of this Order. No further amendments to the Complaint will be allowed in District Court.
 - B. Defendants shall have 15 days from the service of any amended complaint by the Plaintiffs to serve upon Plaintiffs and file with the Anoka County Court

Administrator any Answer or other responsive pleading.

- C. After the 45 day period for the filing of all pleadings is completed the above matter shall be transferred to the Minnesota Tax Court and there shall be no other amendments to the pleadings in the Anoka County District Court.
3. Any other motions by the parties, including an award of attorneys fees and costs are **Denied**.
4. Let judgment be entered accordingly.

Dated: October 13th, 1998

BY THE COURT


John C. Hoffman
Anoka County District Court

F

FILED
Court Administrator

JUN 10 1997

STATE OF MINNESOTA
COUNTY OF RAMSEY

J. E. ROCHONSKI
By MM Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

A
Multi-Tech Systems, Inc., Gerard L. Hawkins and Carol A. Hawkins, Dennis J. and Sandra L. Grabowski, Robert J. Murray, Best Auto & Tire Center, Inc., Keith & Judith Johnstone, Ordean A. Haug, Masterpiece Homes, Inc., Robert D. Debace and M. Gordie Howe, Hans Hagen Homes, Inc. Gary D. Lunstad & Walter Parsons, Jr., Filister Properties, Joseph W. Nelson, MWM, Thomas C. Frazer and Patricia J. Frazer, Paul W. Anderson, Minikahda Ministorage III, and Thermo King Sales and Service, John Doe and Mary Roe,

File No. C4-97-3732

STIPULATION AND
ORDER FOR TRANSFER
TO TAX COURT

Petitioners/Plaintiffs.

vs.

Director, Department of Property Records and Revenue of Ramsey County, Assessor for Ramsey County and Ramsey County Board of Commissioners,


Respondents/Defendants.

- 1) The above-encaptioned case seeks issuance of a writ for mandamus and declaratory judgment.
- 2) Petitioners/Plaintiffs challenge the refusal of the Ramsey County Assessor and the Ramsey County Board to review their tax abatement applications for pay 1994, 1995 and 1996 (assessment dates January 2, 1993, 1994 and 1995).
- 3) They allege that their property located in Ramsey County was improperly classified pursuant to Minn. Stat. §273.13, subd. 24(a) for those assessment dates.
- 4) The questions of law and fact posed by this action arise under the tax laws of the State of Minnesota.

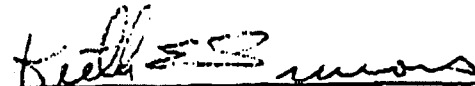
5) Pursuant to Minn. Stat. §271.01, subd. 5, the parties agree that this matter be transferred with the District Court's full legal and equitable powers to the Minnesota Tax Court, thereby placing sole, exclusive and final authority over this action with the Tax Court.

SUSAN GAERTNER
Ramsey County Attorney

Dated: 4/24/97

By: 
STEPHEN P. MCLAUGHLIN
Assistant Ramsey County Attorney
Attorney Registration No. 255002
Suite 560, 50 W. Kellogg Blvd.
St. Paul, MN 55102
Telephone: (612) 266-3213
Attorney for Respondents/Defendants

5-19-87

By: 
KEITH E. SIMONS
10111 First Street South
Suite 310 Norwest Bank Bldg.
Hopkins, MN 55343
Telephone: (612) 9351697
Attorney for Petitioners/Plaintiffs

ORDERED BY THE COURT

Dated: June 10, 1987


Judge of District Court

G

ROBERT J. HARRIS
GERARD H. FRIEDEL
THOMAS J. DRISCOLL
GEN. N. FULLER
JOHN D. FULLER
FRANK I. HARVEY
CHARLES S. MOORE
CHRISTOPHER J. DIETZ
LINDA H. FISHER
THOMAS P. STOLTMAN
MICHAEL C. JACOMAN
JOHN E. DIEHL
JOHN S. SWERZEDSKI
THOMAS J. FLYNN
JAMES P. QUINN
TODD I. FREEMAN
GERALD L. SECK
JOHN B. LUNDQUIST
DAYLE NOLAN
JOHN A. COTTER
PAUL B. PLUNKETT
ALAN L. KILDOW
KATHLEEN M. PICOTTE NEWMAN
MICHAEL B. LEBARON
GREGORY E. KORSTAD
GARY A. VAN CLEVE
DANIEL L. BOWLES
TIMOTHY J. KEANE
ALAN M. ANDERSON
DONNA L. ROBACK
MICHAEL W. SCHLEY
RONN B. KREPS
TERRENCE E. BISHOP
LISA A. GRAY
GARY A. RENNEKE
CHRISTOPHER J. HARRISTHAL
KENDEL J. OHLROGGE
BRUCE J. DOUGLAS

ATTORNEYS AT LAW
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TELEPHONE (612) 835-3800
FAX (612) 896-3333

ALAN L. KILDOW, JR.
JOHN R. HILL
PETER J. COYLE
LARRY D. MARTIN
JANE E. BREMER
JOHN J. STEFFENHAGEN
MICHAEL J. SMITH
ANDREW F. PERRIN
FREDERICK W. NEUBER
WILLIAM G. THORNTON
DANIEL W. MOSS
VILIS R. ROSE
ANN M. MEYER
CHRISTOPHER D. JOHNSON
RENEE L. JACKSON
CHRISTOPHER K. LARUS
MARCY R. FROST
DOUGLAS M. RAMLER
STEPHEN J. HAMMERS
THOMAS F. ALEXANDER
DANIEL T. MADLEC
SHARNA A. WANGREN
JOHN F. KILCS
C. ERIN HAWES
LYNNE MICHELLE MOORE
C. BRENT ROBBINS
JOHN E. YONKER
KRISTIN S. WESTGARD
JOLE S. FREDERICKSON
JAMES M. SUSAG
ANDREW D. RYAN
LISA S. ROBINSON

OF COUNSEL
JACK F. DALY
D. KENNETH LINDGREN
ALLAN E. MULLIGAN
WENDELL R. ANDERSON
JOSEPH GITIS

* ALSO ADMITTED IN WISCONSIN
** ONLY ADMITTED IN MASSACHUSETTS

March 6, 1998

Honorable Roland Faricy
Ramsey County District Court
1270 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, Minnesota 55102

Re: Robert J. Murray, et al., v. Ramsey County, Minnesota et al.
Court File No. C1-97-5261

Dear Judge Faricy

Enclosed for your review and signature is an Order in the above-referenced matter. On November 12 and 17 1997, the parties agreed to a Stipulation transferring this matter to the Minnesota Tax Court for all further proceedings. However, the Order affecting the transfer was not enclosed with the Stipulation. I have checked with the clerk's office and am told that the Stipulation is on file with the Ramsey County clerk's office. However, because there was not an order, the clerk has not transferred the case to the Minnesota Tax Court as the parties desire. Therefore, I would respectfully request that the Court sign the enclosed order so that the matter may be sent to Minnesota Tax Court for resolution.

Very truly yours,

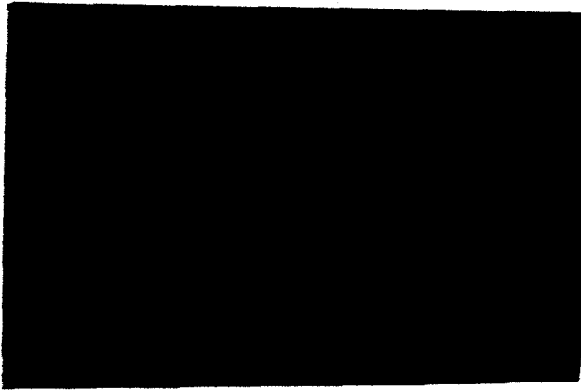


Alan L. Kildow, for
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.

Enclosure

c: Stephen P. McLaughlin, Esq.

0379145.01



H

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT

CASE TYPE: STATUTORY/EQUITABLE

Dennis M. and Bertha L. Fehn,

File No. C3-97-3160

Plaintiffs,

v.

STIPULATION TO TRANSFER TO
MINNESOTA TAX COURT

Darla M. Groshens in her capacity
as Treasurer and Auditor for
Wright County; Wright County
Board of Commissioners; and
Wright County, Minnesota,

Defendants.

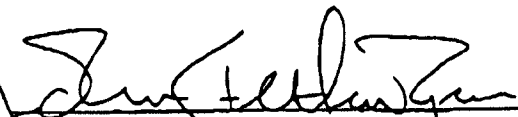
WHEREAS, the Wright County Defendants and the Plaintiffs agree that this matter falls within the jurisdiction of the Minnesota Tax Court under the provisions of Minn. Stat. § 271.01, subd. 5;

WHEREAS, the parties to this action are in agreement that the action against Wright County Defendants should be transferred to the Minnesota Tax Court for all further proceedings;

WHEREAS, the parties to this action are in agreement that all claims and defenses the Defendants now have will be reserved to them upon transfer to the Tax Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and the Wright County Defendants, by and through their respective attorneys of record, that an Order shall be issued from this court transferring this matter to the Minnesota Tax Court, reserving to the Defendants all claims and defenses they now have in this court.

ATTORNEYS FOR PLAINTIFFS

By: 

Alan L. Kildow (143133)
John J. Steffenhagen (195947)
Karin M. Nelsen (269724)
LARKIN, HOFFMAN, DALY &
LINDGREN, Ltd.
1500 Norwest Financial Center
7900 Xerxes Avenue South
Bloomington, Minnesota 55431-1194
(612) 835-3800

Robert A. Hill (217165)
ROBERT HILL & ASSOCIATES, LTD.
Suite 2485
Centre Village Offices
431 South Seventh Street
Minneapolis, Minnesota 55415-9788

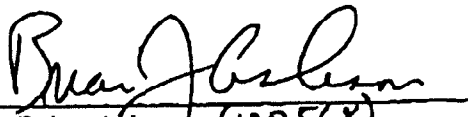
Keith E. Simons (101278)
KEITH E. SIMONS, P.A.
Suite 310
1011 First Street South
Hopkins, Minnesota 55343
(612) 935-1697

Attorneys for Plaintiffs

Date: 3/24, 1998.

0382959.01

ATTORNEYS FOR DEFENDANTS

By: 

Mr. Brian Aleson (12056X)
Assistant Wright County Attorney
Wright County Government Center
Ten Second Street NW
Buffalo, Minnesota 55313-1193
(612) 682-7340

Attorneys for Defendants

Dated: 3/27/98, 1998.

STATE OF MINNESOTA

COUNTY OF WRIGHT

DISTRICT COURT

TENTH JUDICIAL DISTRICT

CASE TYPE: STATUTORY/EQUITABLE

Dennis M. and Bertha L. Fehn,

File No. C3-97-3160

Plaintiffs,

v.

ORDER

Darla M. Groshens in her capacity
as Treasurer and Auditor for
Wright County; Wright County
Board of Commissioners; and
Wright County, Minnesota,

Defendants.

The Court, having heard the arguments of counsel and having considered the submitted memoranda and affidavits, and based on all of the files and records herein, makes the following

ORDER:

1. That in accordance with Minn. Stat. § 271.01, Subd. 5 this matter will immediately be transferred to the Minnesota Tax Court for all further proceedings in this case.
2. The court administrator shall take all steps necessary to effectuate the transfer.

IT IS SO ORDERED BY THE COURT.

Dated: 4-3, 1998.

Judge of Wright County District Court

0382965.01

[4-3-98]

I

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

CASE TYPE: STATUTORY/EQUITABLE

James J. Lange, Turning
Technology, Inc., and Skluzacek
Brothers, Individually, and on
behalf of all other persons similarly
situated,

File No. 1997-16032

**STIPULATION TO TRANSFER TO
MINNESOTA TAX COURT**

Plaintiffs,

v.

Thomas Hennen, in his capacity as
Auditor and Thomas Muelken as
Treasurer for Scott County; County
Board of Commissioners; and
Scott County, Minnesota,

Defendants.

WHEREAS, there is a motion pending before this Court to Dismiss;

WHEREAS, the Scott County Defendants and the Plaintiffs agree that this matter falls
with in the jurisdiction of the Minnesota Tax Court under the provisions of Minn. Stat. § 271.01,
subd. 5;

WHEREAS, the parties to this action are in agreement that the action against Scott
County Defendants should be transferred to the Minnesota Tax Court for all further proceedings;

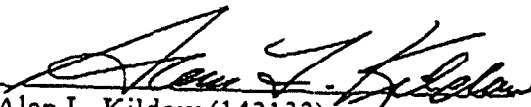
WHEREAS, the parties to this action are in agreement that all claims and defenses the
Defendants now have will be reserved to them upon transfer to the Tax Court;


NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between
Plaintiffs and the Scott County Defendants, by and through their respective attorneys of record,

that an Order shall be issued from this court transferring this matter to the Minnesota Tax Court, reserving to the Defendants all claims and defenses they now have in this court.

ATTORNEYS FOR PLAINTIFFS

ATTORNEYS FOR DEFENDANTS

By: 
Alan L. Kildow (143133)
John J. Steffenhagen (195947)
Karin M. Nelsen (269724)
LARKIN, HOFFMAN, DALY &
LINDGREN, Ltd.
1500 Norwest Financial Center
7900 Xerxes Avenue South
Bloomington, Minnesota 55431-1194
(612) 835-3800

By: 
Scott County Attorney
Susan K. McNellis (165542)
Assistant Scott County Attorney
Scott County Courthouse 206
428 Holmes Street
Shakopee, Minnesota 55379
(612) 496-8241

Attorneys for Defendants

Dated: Nov. 7, 1997.

Robert A. Hill (217165)
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Minneapolis, Minnesota 55415-9788

Keith E. Simons (101278)
KEITH E. SIMONS, P.A.
Suite 310
1011 First Street South
Hopkins, Minnesota 55343
(612) 935-1697

Attorneys for Plaintiffs

Date: October 30, 1997.

J

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

MINNESOTA TAX COURT
FOURTH JUDICIAL DISTRICT

Dayton and Barbara Burkholder,
L.G.S.R.G. Partnership, Michael
and Karen Norman, Amsden Ridge
Associates, II, Robert J. Murray,
Best Auto & Tire Center, Inc.,
Justus Lumber Co., individually,
and on behalf of all other persons
similarly situated,

Plaintiffs,

vs.

D.C. File Number 97-567

Patrick O'Connor, in his capacity
as Treasurer and Auditor for Hennepin
County; Hennepin County Board of
Commissioners; Hennepin County, Minnesota;
Michelle Timmons, in her capacity as Acting
Director of Property Records and Revenue
for Ramsey County; Ramsey County Board of
Commissioners; Ramsey County, Minnesota;
Edward Treska, in his capacity as Director
of Property Records and Taxation for Anoka
County; Anoka County Board of Commissioners;
Anoka County, Minnesota and John Does 1-87,
Defendants.

COPY

The above-captioned Hearing, held before
the Honorable Judge George William Perez, taken before
Ann Marie Holland, a Notary Public in and for the County
of Washington, State of Minnesota, taken on the 4th day
of August, 1998, at the Government Center, 300 South Sixth
Street, Minneapolis, Minnesota, commencing at approximately
8:30 a.m.

1 22nd. I, quite frankly, didn't realize that little nuance
2 between the jurisdiction Article 3 Court versus the Tax
3 Court. We do understand it now, and we did raise it in a
4 timely fashion. In fact, I am told this is an eerie
5 shuffle. I have never heard of that before, but this is a
6 term of art. It happens all of the time. I am just asking
7 the court to do what Hennepin County I guess has done
8 numerous times in the past.

9 MR. KILDOW: I want to make one additional
10 point, in that it may surprise some people to hear me say
11 this, but I also believe that McCannel and Erie were wrongly
12 decided as to the ability of the District Court to transfer
13 a constitutional claim back to the Tax Court. I think that
14 the footnote that is found in Nagaraja is instructive.
15 Quite frankly, I don't know whether this was raised in Erie
16 and in McCannel, but a constitutional claim, it seems to me,
17 must be decided by the judicial branch of the government,
18 not the administrative branch of the government, and I want
19 that preserved in the record.

20 Thank you.

21 THE COURT: Thank you, Counsel.

22 MR. MAHER: Very briefly, Your Honor.

23 Maybe that explains the problem I have had understanding
24 this motion. Because if counsel does believe that both
25 McCannel and Erie cases have been overruled, then that may

K

STATE OF MINNESOTA

COUNTY OF HENNEPIN

TAX COURT
FOURTH JUDICIAL DISTRICT
REGULAR DIVISION

L.G.S.R.G. Partnership,
Michael and Karen Norman,
Amsden Ridge Associates, II,
Morris and Barbara Wolf, VML
Real Estate Holdings, LLC,
Como Petroleum Marketing,
Inc., Max M. Wexler, Mid-
Continent Engineering, Inc.,
Individually, and on behalf of
all other persons similarly
situated

ORDER

File No. 97-567

Dated: June 30, 1998

Plaintiffs,

vs.

Patrick O'Connor, in his
capacity as Treasurer and
Auditor for Hennepin County;
Hennepin County Board of
Commissioners; and Hennepin
County, Minnesota,

Defendants.

This matter was heard by the Honorable George W. Perez,
Judge of the Minnesota Tax Court, on April 1, 1998, at the
Hennepin County Government Center, Minneapolis, Minnesota.

Robert A. Hill, Alan L. Kildow, and Keith E. Simons,
Attorneys at Law represented the Plaintiffs.

Marilyn Maloney, Assistant Hennepin County Attorney,
appeared for the Defendants.

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

ORDER

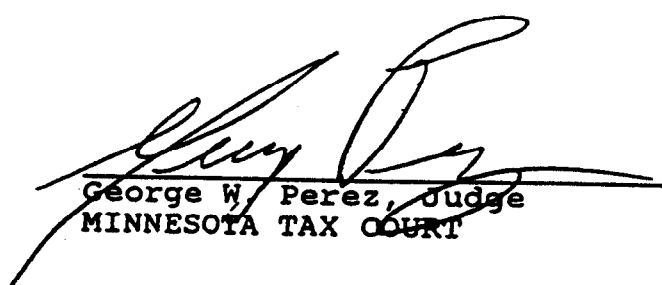
1. The Plaintiff's Motion for Class Certification is denied.

IT IS SO ORDERED.



BY THE COURT,

The Office of the Minnesota Tax Court
hereby certifies that the attached Instru-
ment is a true and correct copy of the origi-
nal as filed with the Office of the
Court Secretary 97-567
County of Hennepin
BY Ausa M. Schmidt
Deputy Court Administrator


George W. Perez, Judge
MINNESOTA TAX COURT

DATED: June 30, 1998

MEMORANDUM

Plaintiffs own property in Hennepin County. They claim recovery for tax overpayments from May 1987 to August 1997 based on Hennepin County's ("Defendants") failure to classify Plaintiffs' property at the preferred (lower) tax rate classification instead of the regular (higher) tax rate classification.

According to Minn. Stat. § 273.13, the first \$100,000 in market value for every commercial, industrial, and utility property in a county is to be taxed at:

[A] class rate of 3.3 percent of the first \$100,000 of market value for taxes payable in 1990, 3.2 percent for taxes payable in 1991, 3.1 percent for taxes payable in 1992, and 3 percent for taxes payable in 1993 and thereafter, and 5.06 percent of the market value over \$100,000. In the cases of state-assessed commercial, industrial, and utility

property owned by one person or entity, only one parcel has a reduced class rate on the first \$100,000 of market value. In the case of other commercial, industrial, and utility property owned by one person or entity, only one parcel in each county has a reduced class rate on the first \$100,000 of market value.

Minn. Stat. § 273.13, subd. 24 (1990).

The Plaintiffs claim the Hennepin County Auditor committed a mathematical error calculating the tax rate on the first \$100,000 of assessed value resulting in a tax overpayment by approximately \$2,000 per year per Plaintiff. The named Plaintiffs¹ have been selected to represent a putative class of Plaintiffs and move for class certification pursuant to Minn. R. Civ. P. 23.

Defendants contend the validity of each putative class member's claim rests upon individualized questions of fact and law regarding the qualification of their property for the preferred classification, including whether other property under the same ownership in Hennepin County already receives the tax break and whether the class member paid the tax for which it seeks a refund.² Moreover, due to the individualized nature of

¹ The four named Plaintiffs are L.G.S.R.G. Partnership, Amsden Ridge Associates, II, Como Petroleum Marketing, Inc., and Max M. Wexler.

² L.G.S.R.G. is the listed taxpayer for 1996 and 1997 and The Crossings is the listed owner.

Amsden Ridge Associates, II is the listed owner and taxpayer for 1996 and 1997.

Como Petroleum Marketing Inc. is the listed owner and taxpayer for the property in 1996. However, DMR, Inc. is the listed owner and taxpayer for 1997. In 1993 and 1994, tenant Holiday Companies paid the taxes.

Max M. Wexler is the listed taxpayer and M & M Wexler is the listed owner.

each Plaintiffs' circumstances, they cannot adequately represent the putative Plaintiff class. We agree.

Before determining whether Plaintiffs satisfy the requirements for class certification, we note two prior rulings. First, we held that the present case is an in rem proceeding.³ Second, we held that the "determination of whether a property owned by each Plaintiff is entitled to the lower class rate allowed by Minn. Stat. § 273.13, subd. 24 is an assessment function." L.G.S.R.G. et al. v. O'Connor et al., D.C. File No. 97-567 (Minn. Tax Ct. Order dated Nov. 19, 1997).

With this in mind, we now examine whether Plaintiffs satisfy the requirements for class certification. Trial courts have considerable discretionary power in determining whether a class action may be maintained. Keating v. Phillip Morris, Inc., 417 N.W.2d 132, 137 (Minn. App. 1987). The party moving for class certification bears the burden of establishing that all of the class action requirements are satisfied. Jensen v. Eveleth Taconite Co., 139 F.R.D. 657, 659 (D. Minn. 1991). We may only certify a class action if, "after a rigorous analysis," all of the prerequisites have been satisfied. Id.

Before considering the explicit requirements under Minn. R. Civ. P. 23, the Court must find that two implicit requirements

³ We ruled "the rate of real estate tax due and collected is the issue here. Real estate taxes are a perpetual lien against real property . . . and an action to enforce them (or to receive a refund for excess tax paid) is an in rem action." Burkholder, et al. v. O'Connor, et al., D.C. File No. 97-567 (Minn. Tax Ct. Order dated June 26, 1997).

have been satisfied. First, the Court must find the existence of a precisely defined class and second, that the Plaintiffs are members of the proposed class. This determination is a question of fact that must be determined on the basis of the circumstances of each case. Irvin E. Schermer Trust v. Sun Equities Corp., 116 F.R.D. 332 (D. Minn. 1987).

In the present case, Plaintiffs rely solely on Defendants' property lists⁴ to precisely define the putative class. However, as Defendants assert, the Hennepin County Assessor consulted the property list as a tool in attempting to identify qualifying properties, but found the property lists inconclusive. We agree.

First, not all property transfers are recorded with the County and thus, not all owners are added to the property list. Second, the County must examine other unrecorded ownership documents provided to the assessor, such as articles of incorporation, corporate ownership documents including transfers of assets, partnerships, multiple ownership documents, and unrecorded contracts for deed. Third, the County must examine any other information submitted by the owner. Plaintiffs cannot precisely define the putative class based on Defendants' property lists, because there are many other sources to review and factors to consider in determining property ownership. Therefore, Plaintiffs do not satisfy the implicit criteria.

⁴ The Defendant's property lists refer to the ownership lists generated annually by the Hennepin County Assessor in anticipation of each upcoming assessment for the PINS (Property Information System) tax record system.

We now examine whether Plaintiffs satisfy all four requirements under Minn. R. Civ. P. 23.01. The four explicit requirements of Rule 23.01 merit one or more members of a class to sue or be sued as representative parties only if:

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (d) the representative parties will fairly and adequately protect the interests of the class.

Minn. R. Civ. P. 23.01.

The above requirements are also referred to as the tests of numerosity, commonality, typicality and adequacy. We first consider the numerosity requirement.

Numerosity

Plaintiffs estimate that there are potentially over 1,000 class members. However, Plaintiffs' attorneys received only between 150 and 200 inquiries after they conducted a mass mailing to commercial owners in Hennepin County notifying them of the preferred class rate issue. Although Plaintiffs need not show the exact number in the putative class, mere speculation as to the size of the class is insufficient to satisfy the numerosity requirement. Schermer, 116 F.R.D at 336.

Even more telling are the results after we ordered Plaintiffs to disclose the names of the 95 properties they

claimed were entitled to the preferred classification for the January 2, 1996 assessment. L.G.S.R.G., et al. v. O'Connor, et al., D.C. File No. 97-567 (Minn. Tax Ct. Order Dec. 12, 1997). The Hennepin County Assessor investigated all 95 properties for the purpose of granting abatement relief where appropriate. Only 15 of the 95 properties disclosed may qualify for an abatement based upon the preferred classification. Based on actual numbers presented to this Court, not mere speculation, we conclude the numerosity requirement is not satisfied.

Commonality

Plaintiffs claim that all putative class members share the same issue in that Plaintiffs' properties were incorrectly classified at the regular tax rate instead of the preferred tax rate classification. Plaintiffs' argument is that a mere mathematical error occurred. This argument ignores our prior ruling that this case involves an assessment function in determining the correct tax rate classification for each Plaintiff.

Moreover, the Minnesota Supreme Court in Barron v. Hennepin County, 488 N.W.2d 290, 293 (Minn. 1992) (citing Summit House Apartment Co. v. County of Hennepin, 312 Minn. 358, 362-63, 253 N.W.2d 127, 129 (1977)) held that:

"since the assessor has primary responsibility for ascertaining taxable value, it logically follows that the task of classifying property is an integral part of this function. . . . The task of classification also involves a factfinding responsibility and is not . . . simply an administrative calculation of the appropriate

tax that may be performed by the auditor."

Determining which Plaintiffs or putative class member qualifies for the preferred tax rate classification clearly depends on a wide range of factual judgments pursuant to Minn. Stat. § 273.13, subd. 24.

In the present case each putative class member along with the Plaintiffs, would require an individual property assessment to determine whether the property qualifies for the preferred tax rate classification and, if so, how much refund or adjustment is due.

We are convinced that the Plaintiffs lack a common issue based on the individualized questions involved in determining whether a particular property qualifies for the preferred tax rate. These questions include:

- 1) What properties did the Plaintiff own in Hennepin County in each claimed year and were any of them receiving the preferred rate already up to the \$100,000 limit?
- 2) Is there another party which claims ownership of the property on the assessment date that already receives the rate on other property in the county?
- 3) Did Plaintiff pay the tax, or did a third party pay the tax for each or some of the ten years challenged?

These are all individualized inquiries unique to specific properties, owners and taxpayers. Therefore, Plaintiffs fail to satisfy the commonality requirement.

Typicality

The Plaintiffs claim that they are typical of the putative

class. However, several of the Plaintiffs have participated in prior lawsuits⁵ in which they could have challenged classification, but did not. These prior proceedings present legal defenses unique to the Plaintiffs based upon the doctrine of prior action pending, res judicata and collateral estoppel. These doctrines affect their standing, and their ability to represent class members who do not have these issues. Also, each Plaintiff suffers from the defense of mootness, because they received the preferred classification for 1996 based on abatement, and for 1997 based upon an administrative change.⁶ Thus, the Plaintiffs' circumstances are not representative of those class members who have never been identified, never filed abatements, never received an administrative change, nor filed ch. 278 tax petitions. Plaintiffs are, therefore, not appropriate class representatives.

Adequacy

As discussed under typicality, the Plaintiffs are not similarly situated and do not share common features and therefore, are inadequate representatives of the putative class.

Because Plaintiffs failed to satisfy the requirements under Minn. R. Civ. P. 23.01, it is not necessary to examine whether

⁵ The Named Plaintiffs' properties have been the subject of past Minn. Stat. ch. 278 petitions: Amsden Ridge for pay years 1989 and 1990; Como Petroleum for pay years 1993, 1994, 1995 and 1997; and Wexler for taxes payable in 1996.

⁶ The L.G.S.R.G. and Amsden Ridge properties received the preferred commercial tax rate for taxes payable in 1996 and 1997. The Wexler property received the preferred commercial tax rate for pay year 1997.

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Plaintiffs satisfy the requirements under Minn. R. Civ. P. 23.02.
For the reasons set forth above, Plaintiffs' motion to certify
this matter as a class action is denied.

G.W.P.