

STATE OF MINNESOTA

TAX COURT

COUNTY OF HENNEPIN

REGULAR DIVISION

Macy's Retail Holdings, Inc.  
(Downtown Minneapolis Parking Ramp),

Petitioner,

vs.

County of Hennepin,

Respondent,

InterPark Holdings, LLC,

Intervenor.

**ORDER GRANTING IN PART AND  
DENYING IN PART INTERVENOR'S  
MOTION TO REDACT OR SEAL  
DOCUMENTS**

File Nos: 27-CV-13-6683  
27-CV-14-6579

Filed: March 13, 2018

This matter came before the Honorable Tamar Gronvall, Judge of the Minnesota Tax Court, on intervenor InterPark Holdings, LLC's Motion to Seal or Redact Portions of the Parties' Appraisal Reports.

Thomas R. Wilhelmy and Judy S. Engel, Fredrikson & Byron, P.A., represent petitioner Macy's Retail Holdings, Inc.

Jane N.B. Holzer and Thomas F. Pursell, Assistant Hennepin County Attorneys, represent respondent Hennepin County.

Marc D. Simpson and Calvin P. Hoffman, Stinson Leonard Street, LLP, represent intervenor InterPark Holdings, LLC.

In these property tax cases, Macy's Retail Holdings, Inc. (Macy's), challenges the assessed value of its downtown Minneapolis parking ramp (Macy's Ramp) for tax-payable years 2013 and 2014. Intervenor InterPark Holdings, LLC (InterPark), seeks an order sealing or redacting portions of Hennepin County's (County) appraisal report and Macy's appraisal report, asserting that both

reports contain nonpublic and proprietary data relating to four parking ramps that InterPark operates in Minneapolis (InterPark Ramps).<sup>1</sup> Based upon the files, records, and proceedings herein, the court now makes the following:

### **ORDER**

1. InterPark's motion to redact is granted, but its motion to seal is denied.
2. The temporary seal of the parties' expert appraisal reports imposed by the July 28, 2017 Order at ¶ 2a and ¶ 2c is lifted.
3. The temporary seal of the parties' motion papers pursuant to our July 28, 2017 Order at ¶ 6 is lifted.
4. The County shall redact only the following information in the County's appraisal report regarding the InterPark Ramps:
  - Pages 40-41, the dollar amounts listed in the table columns labeled "Revenue" and "Rev per Stall" (revenue information, expressed as revenue (total) and revenue per stall on a monthly basis, from 2010-2015).
  - Page 101 (contract parking revenue information for 2013).
  - Page 104, the dollar amounts listed in the table column labeled "Parking Turnover 2013" (parking turn-over ratio information for 2013) and the parking-turnover ratio listed for Midtown Auto Park listed in the text of the last paragraph.
  - Page 106, the dollar amounts listed in the table column labeled "Avg. Transient

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<sup>1</sup> Intervenor's Mem. Law Supp. Mot. Seal or Redact 2 (filed Aug. 11, 2017). InterPark's Ramps relevant to this matter are: (1) the Mar-Ten Ramp; (2) the Midtown Auto Park; (3) the 517 Marquette Ramp; and (4) the 4th Avenue Ramp.

Rate 2013” (transient rate information for 2013).

- Page 128, the dollar amounts listed in the table columns labeled “Expenses” for 2010-2011 and 2013-2015 (operating expense information for 2010-2015).
- Page 130-131, the dollar amounts listed in the table columns labeled “Expense Per Stall” for 2010-2011 and 2013-2015 (operating expense information outlined in terms of expenses per stall and as percentage of revenue for 2010-2015).

5. Macy’s shall redact only the following information in its appraisal report regarding the four InterPark Ramps:

- Page 126, the dollar amounts listed in the table columns labeled “Expense per stall” for 2012-2014 (operating expense information expressed in terms of expenses per stall for 2012-2014).

6. The Court will hold a pretrial conference to discuss how to handle at trial the redacted and unredacted appraisals already filed with the court.

IT IS SO ORDERED.

BY THE COURT,



DATED: March 13, 2018

A handwritten signature in blue ink, reading "Tamar Gronvall", followed by a horizontal line.

Tamar Gronvall, Judge  
MINNESOTA TAX COURT

## MEMORANDUM

### I. BACKGROUND

On May 1, 2017, the parties and InterPark stipulated that InterPark, owner and manager of several downtown Minneapolis parking ramps, could intervene in this action pursuant to Minn. R. Civ. P. 24.03 regarding InterPark's nonpublic data contained in the parties' expert appraisal reports.<sup>2</sup> InterPark represented that in compliance with Minn. Stat. § 278.05, subd. 6 (2016) ("August 1 Rule"),<sup>3</sup> it annually provides to the Minneapolis City Assessor's Office detailed income and expense data regarding its parking ramp operations in downtown Minneapolis.<sup>4</sup> Such information is defined as nonpublic data under Minnesota law. Minn. Stat. § 13.51, subd. 2 (Supp. 2017); *see also* Minn. Stat. § 13.37, subd. 1(b) (2016) (defining "trade secret information").

At a May 2, 2017 hearing in relation to Macy's motion in limine to exclude evidence, InterPark objected to the County's disclosure of nonpublic income and expense data required by

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<sup>2</sup> Stipulation & Order Regarding Intervention (filed May 1, 2017).

<sup>3</sup> Minnesota Statutes § 278.05, subd. 6, states:

**Subd. 6. Dismissal of petition; exclusion of certain evidence.** (a) In cases where the petitioner contests the valuation of income-producing property, the following information must be provided to the county assessor no later than August 1 of the taxes payable year:

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

<sup>4</sup> Stipulation & Order Regarding Intervention.

the August 1 Rule in unredacted form in the County's appraisal report and work file, both of which were turned over to Macy's in accordance with the January 2016 Scheduling Order.<sup>5</sup> In response to a disagreement among the parties regarding the language of a proposed protective order to protect InterPark's nonpublic data,<sup>6</sup> in July 2017, the court ordered, among other things, the parties' appraisal reports temporarily sealed while the court adjudicated the status of InterPark's data.<sup>7</sup>

In August 2017, InterPark brought this motion to permanently seal or redact nonpublic income and expense information (located on nine pages of the County's written appraisal report and on one page of Macy's appraisal report) regarding its parking ramps that InterPark had provided to the County under the August 1 Rule.<sup>8</sup> InterPark offered to call its Senior Vice President of Acquisitions/Asset Management to provide additional evidence of the trade secret nature of its data.<sup>9</sup> In response, the County did not oppose protecting the data if the court determined that InterPark's data in the two appraisal reports qualified as trade secret.<sup>10</sup>

In November 2017, the court requested additional information from InterPark regarding its claim that the data qualified as trade secret. The court also gave Macy's and the County the opportunity to respond to InterPark's submission. In December 2017, InterPark submitted under

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<sup>5</sup> Tr. 77 (May 2, 2017).

<sup>6</sup> See E-mail from Judy Engel to Tax Court Submissions (May 16, 2017) (on file with Minnesota Tax Court); E-mail from Jane Holzer to Tax Court Submissions (May 16, 2017) (on file with Minnesota Tax Court); E-mail from Calvin Hoffman to Tax Court Submissions (May 18, 2017) (on file with Minnesota Tax Court).

<sup>7</sup> Order Den. Macy's Mot. Lim. & Temporarily Sealing Docs. (filed July 28, 2017); see also Order Allowing Cty.'s Obj. & Submission Proposed Order (filed June 2, 2017).

<sup>8</sup> Intervenor's Mot. Seal or Redact (filed Aug. 11, 2017).

<sup>9</sup> Intervenor's Mem. 5.

<sup>10</sup> Cty.'s Resp. InterPark's Req. Protective Order 6-7 (filed Aug. 18, 2017).

seal the Declaration of Andrew Runge, InterPark's Chief Financial Officer. Mr. Runge stated that the protected data in the appraisal reports is proprietary trade secret data that InterPark disclosed to the County pursuant to the statutory mandate of the August 1 Rule, and that the data should be protected from disclosure because InterPark's competitors can obtain economic value from its disclosure.<sup>11</sup> The County responded that InterPark's parking ramp data from 2010 to 2015 is old information, and thus does not meet the definition of trade secret under Minn. Stat. § 325C.01, subd. 5 (2016).<sup>12</sup> Specifically, the County asserts that InterPark failed to show how a competitor would use parking ramp information from at least five years ago to "obtain economic value" in the 2018 marketplace.<sup>13</sup>

## II. ANALYSIS

InterPark has intervened in this matter to protect from disclosure its nonpublic data that appears in both of the parties' unredacted appraisal reports.<sup>14</sup> Specifically, InterPark claims that data on these total of ten pages (out of over 400 pages spanning both reports),<sup>15</sup> regarding income and expense information,<sup>16</sup> should be protected from disclosure because the data constitutes trade

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<sup>11</sup> Decl. of Andrew Runge in Support of Intervenor's Motion to Seal or Redact Portions of the Parties' Appraisal Reports ¶¶ 7-8, 11 ("Runge Decl.") (filed Dec. 1, 2017).

<sup>12</sup> Cty.'s Resp. to Mr. Runge's Decl. 3 (filed Dec. 15, 2017).

<sup>13</sup> Cty.'s Resp. to Mr. Runge's Decl. 3.

<sup>14</sup> Stipulation & Order Regarding Intervention.

<sup>15</sup> Intervenor's Mem. 4.

<sup>16</sup> In the County's appraisal report:

- Pages 40-41 (revenue information, expressed as revenue (total) and revenue per stall on a monthly basis, from 2010-2015).
- Page 101 (contract parking revenue information for 2013).
- Page 104 (parking turn-over ratio information for 2013).
- Page 106 (transient parking rate information for 2013).



secret information that InterPark ordinarily keeps secret from competitors that could otherwise obtain economic value from the data's disclosure.<sup>17</sup> In fact, InterPark states it "did not voluntarily disclose its income and expense information" to the County, but expected the assessor's office to "keep its data confidential," treating the data as nonpublic pursuant to Minn. Stat. § 13.51.<sup>18</sup>

There is "a presumption in favor of access" to court records under the common law. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 205 (Minn. 1986). In the case of proceedings before this court, however, access is more than presumed, it is required. See Minn. Stat. § 271.06, subd. 6 (2016) (requiring the court to "hold a public hearing in every case"); see also Minn. R. 8610.0120 (2018) (stating that "[h]earings before the tax court are open to the public"). The Minnesota Supreme Court has recognized, however, that access is not absolute and the tax court may seal or otherwise restrict access to court records to protect confidential information submitted as evidence. See *In re Rahr Malting Co.*, 632 N.W.2d 572, 575-77 (Minn. 2001). To overcome the presumption of access, "a party must show strong countervailing reasons why access should be restricted." *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 205-06. Moreover, "simply because a party requests that access be restricted does not mean that the court may automatically do so. The court must make its own legal determination in each case." *Id.* at 206.

As relevant here, public access to tax court records or proceedings may be limited to

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- Page 128 (operating expense information for 2010-2015).
  - Page 130-131 (operating expense information outlined in terms of expenses per stall and as percentage of revenue for 2010-2015).

In the Petitioner's appraisal report:

- Page 126 (operating expense information expressed in terms of expenses per stall for 2012-2014).

<sup>17</sup> Intervenor's Mem. 4-5.

<sup>18</sup> Intervenor's Mem. 4.

protect “information [that] meets the definition of a trade secret or otherwise merits protection.”

*In re Rahr Malting Co.*, at 577. Minnesota law defines, “trade secret” under the Uniform Trade Secrets Act as,

information, including a formula, pattern, compilation, program, device, method, technique or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Minn. Stat. § 325C.01, subd. 5; *see also* Minn. Stat. § 13.37, subd. 1(b) (defining “trade secret information” under the Minnesota Government Data Practices Act (MGDPA)). Thus, to be considered a “trade secret,” the information must meet both factors under the above two-pronged test.

Through the submission of Mr. Runge’s declaration, InterPark has demonstrated that some of the income and expense information it provided to the Minneapolis City Assessor’s Office, pursuant to the August 1 Rule, is trade secret. InterPark asserts that if this data becomes public its competitors will gain a competitive advantage by allowing them to refine their own rates and ratios “to undercut InterPark and take away InterPark’s customers.”<sup>19</sup> Mr. Runge explains that parking facilities in central business districts, like the four InterPark Ramps in downtown Minneapolis, operate in a highly competitive environment “where even small differences in hourly, daily, and monthly rates can affect occupancy and profitability.”<sup>20</sup> Mr. Runge also states that sellers of competing parking facilities “could use the [nonpublic] information to determine asking prices,”

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<sup>19</sup> Runge Decl. ¶ 11.

<sup>20</sup> Runge Decl. ¶ 11.



and that “[p]rospective buyers of InterPark’s parking facilities could use the information to determine amounts to offer.”<sup>21</sup>

Under the first prong in determining the information’s trade secret status, the entity must show that the information “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.” Minn. Stat. § 325C.01, subd. 5. InterPark is a privately held company and does not report information to the Securities and Exchange Commission “or otherwise publically disclose its financial information.”<sup>22</sup> Therefore, this information is not generally known or readily ascertainable as “InterPark has not disclosed that information to any persons that are not affiliated with InterPark,” thus showing that this information derives independent economic value from not being generally known or readily ascertainable by persons who can obtain economic value from its disclosure under Minn. Stat. § 325C.01, subd. 5.<sup>23</sup>

Under the second prong of the trade secret test, the entity must show that the information “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Minn. Stat. § 325C.01, subd. 5. InterPark demonstrates that it takes reasonable efforts to maintain the secrecy of its income and expense information related to all of its operations because it “maintain[s] confidentiality agreements with its lenders, accountants, auditors, and prospective buyers of parking facilities.”<sup>24</sup> InterPark asserts that it takes such efforts specifically because its competitors can obtain economic value from the disclosure or use of such income and expense

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<sup>21</sup> Runge Decl. ¶ 10.

<sup>22</sup> Runge Decl. ¶ 11.

<sup>23</sup> Runge Decl. ¶ 9.

<sup>24</sup> Runge Decl. ¶ 9.

information, including the information “contained in the parties’ appraisal reports and the documents produced in connection with the appraisal work file exchange to refine their operations in rate setting and turn-over ratios.”<sup>25</sup>

The County argues that InterPark’s nonpublic income and expense information from 2010-2015 is too old to warrant trade secret protection.<sup>26</sup> We disagree. In *EOP-Nicollet Mall, L.L.C. v. County of Hennepin*, this court found that an intervenor’s four-year-old, nonpublic, financial, lease, and vacancy data provided to the County constituted trade secret data and thus warranted protection. No. 28793 et al., 2004 WL 1161412, at \*3-4 (Minn. T. C. May 3, 2004). In this case, InterPark data is up to three years older than the assessment years at issue, making it timely enough to be protected as trade secret data. We find under these facts that InterPark made a showing of “strong countervailing reasons” for restricting access to specific dollar amounts/figures on ten total pages. See *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 205-06.

Where a document contains both public and nonpublic information, it is appropriate to redact the protected information and release the public information. *Prairie Island Indian Cmty. v. Minn. Dep’t. of Pub. Safety*, 658 N.W.2d 876, 888-9 (Minn. App. 2003). On the ten pages of the parties’ appraisal reports that contain InterPark’s trade secret income and expense information, only a limited redaction of specific monthly dollar amounts of InterPark’s protected information is appropriate. The remaining data on these pages relates to other third-party parking ramps or specific averages or ranges that are not specifically attributed to the InterPark ramps. Because InterPark’s data is sufficiently protected by redaction, completely sealing the appraisal reports is not necessary. Consequently, beyond the modest redaction outlined in paragraphs 4 and 5 of the

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<sup>25</sup> Runge Decl. ¶ 10.

<sup>26</sup> Cty.’s Resp. InterPark’s Req. Protective Order 2.

attached Order, InterPark's motion to seal is denied.

Relatedly, the court removes the temporary seal of the appraisals<sup>27</sup> and of the parties' motion documents.<sup>28</sup> The motion documents do not contain the protected trade secret income and expense information that is redacted in the appraisals. Thus, InterPark's motion to seal or redact is granted in part (as to a partial redaction of the nonpublic income and expense information outlined above), but denied in part as to the request to seal those documents.

T.G.

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<sup>27</sup> Order Den. Macy's Mot. Lim. & Temporarily Sealing Docs. ¶¶ 2a, 2c.

<sup>28</sup> Order Den. Macy's Mot. Lim. & Temporarily Sealing Docs. ¶¶ 5-6.