

STATE OF MINNESOTA

TAX COURT

COUNTY OF WASHINGTON

REGULAR DIVISION

Menard, Inc. (Cottage Grove),  
Petitioner,

**ORDER GRANTING IN PART  
MENARD'S MOTION FOR  
COSTS AND DISBURSEMENTS**

v.

File Nos: 82-CV-14-1681  
82-CV-15-1045  
82-CV-15-3560

County of Washington,

Respondent.

Dated: January 26, 2018

This matter came before the Honorable Bradford S. Delapena, Chief Judge of the Minnesota Tax Court, on petitioner Menard, Inc.'s motion for costs and disbursements.

Robert A. Hill, Attorney at Law, represents petitioner Menard, Inc.

James Zuleger, Assistant County Attorney, represents respondent Washington County.

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


**ORDER**

Petitioner Menard Inc.'s motion for costs and disbursements is granted in the amount of \$5,333.90.

IT IS SO ORDERED.

BY THE COURT,



  
Bradford S. Delapena, Chief Judge  
MINNESOTA TAX COURT

DATED: January 26, 2018

## MEMORANDUM

### I. BACKGROUND

These cases involve the market value of the Menard home improvement store located in Cottage Grove, Minnesota, as of January 2, 2013, 2014, and 2015. On September 11, 2017, we filed an order finding that “the assessed value of the subject property overstates its market value as of each [assessment] date.” *Menard, Inc. v. Cty. of Washington*, No. 82-CV-14-1681 et al., 2017 WL 5617456, at \*1 (Minn. T.C. Sept. 11, 2017). On October 18, 2017, Menard filed and served a motion for costs and disbursements<sup>1</sup> requesting the following:

Minn. Stat. § 549.02 Statutory Costs	\$600.00
Court Filing Fees	\$981.00
Service Fees	\$255.00
Court Reporter Fees	\$3,470.59
Expert Witness Testimony Fees	\$4,000.00
<b>Total</b>	<b>\$9,306.59</b>

Washington County timely opposed the award in part,<sup>2</sup> agreeing to only the following:

Minn. Stat. § 549.02 Statutory Costs	\$600.00
Court Filing Fees	\$966.00
Court Reporter Fees	\$1,080.40
Expert Witness Testimony Fees	\$750.00
<b>Total</b>	<b>\$3,396.40</b>

We grant in part and deny in part Menard’s motion.

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<sup>1</sup> Pet’r’s Notice Mot. & Mot. Costs (filed Oct. 29, 2017); Pet’r’s Mem. Supp. Mot. Costs 2 (filed Oct. 18, 2017).

<sup>2</sup> Resp’t’s Mem. Supp. Obj. 1 (filed Oct. 27, 2017).

## II. GOVERNING LAW

The Legislature has provided for the taxation of costs and disbursements in tax court appeals: “Upon the determination of any appeal ... before the Tax Court, ... the costs and disbursements shall be taxed and allowed in favor of the prevailing party and against the losing party as in civil actions ....” Minn. Stat. § 271.19 (2016). The procedural requirements for a costs and disbursements motion are specified by court rule. *See* Minn. R. 8610.0150 (2017).

Property tax appeals are subject to additional standards. “[W]hen an appeal is taken to the Tax Court in any case dealing with property valuation, assessment, or taxation for property tax purposes, the provisions of ... chapter 278 shall apply ....” Minn. Stat. § 271.06, subd. 1 (2016). Section 278.07 addresses the award of costs and disbursements in property tax appeals specifically, and provides in part as follows:

Judgment shall be for the amount of the taxes for the year as the court shall determine the same, less the amount paid thereon, if any.... *If the tax so determined is decreased from the amount originally levied, the court may, in its discretion, award disbursements to the petitioner, which shall be taxed and allowed and be deducted from the amount of the taxes as determined ....*

Minn. Stat. § 278.07 (2016) (emphasis added). Generally, then, an award of costs and disbursements to a petitioner who obtains a property tax reduction is discretionary. *See, e.g., Cambridge Apartments v. Cty. of Hennepin*, No. TC-19156, 1995 WL 225477, at \*1 (Minn. T.C. Apr. 13, 1995) (so holding). “Reimbursement to the prevailing party is allowed for statutory costs, filing fees, court reporter fees, and fees related to time an expert witness spends testifying at trial.” *Nolan v. Cty. of Scott*, Nos. 70-CV-10-4233 & 70-CV-10-4240, 2012 WL 2513673, at \*1 (Minn. T.C. June 27, 2012). We also have discretion to award miscellaneous costs and disbursements, such as costs of courier services. *Beck v. Cty. of Todd*, No. 77-CV-10-465, 2014 WL 108572, at \*1 (Minn. T.C. Jan. 10, 2014).

### III. ANALYSIS

Because we reduced the market value of the subject property for each assessment date, we have discretion to award Menard costs and disbursements. We grant Menard's request in the following amounts:

Minn. Stat. § 549.02 Statutory Costs	\$600.00
Court Filing Fees	\$966.00
Court Reporter Fees	\$3,017.90
Expert Witness Testimony Fees	\$750.00
<b>Total</b>	<b>\$5,333.90</b>

Statutory costs are undisputed. The County presented evidence that Menard's recoverable filing fees totaled \$966 rather than \$981.<sup>3</sup> Whereas Menard requested expert witness fees for "time an expert spends at trial,"<sup>4</sup> the County correctly notes that recovery is limited to "fees related to time an expert witness spends *testifying* at trial."<sup>5</sup> *Nolan*, 2012 WL 2513673, at \*1. We agree with the County that, taken together, Menard's expert witnesses spent only three hours testifying at trial, thus warranting an award of \$750.<sup>6</sup>

The County argues that the cost of the trial transcript is not recoverable.<sup>7</sup> We disagree:

Except in the Small Claims Division, the Tax Court shall provide for a *verbatim stenographic report* of all proceedings had before it upon appeals, as required by the laws relating to proceedings in district court. *The cost of the stenographic record shall be paid by the party taking the appeal. The cost is a taxable cost under section 271.19.*

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<sup>3</sup> Zuleger Aff. (Oct. 27, 2017), Exs. 6-8.

<sup>4</sup> Pet'r's Mem. Supp. Mot. Costs 1.

<sup>5</sup> Resp't's Mem. Supp. Obj. 2-3.

<sup>6</sup> Zuleger Aff., Ex. 1; Hill Aff. (Oct. 18, 2017), Ex. C (\$250 per hour).

<sup>7</sup> Resp't's Mem. Supp. Obj.2 (citing *Nolan*, 2012 WL 2513673, at \*1).

Minn. Stat. § 271.07 (2016) (emphasis added); *see also Dahmes Stainless, Inc. v. Comm’r of Revenue*, No. 8228-R, 2015 WL 5793705, at \*6 (Minn. T.C. Oct. 1, 2015) (relying in part on Minn. Stat. § 271.07 to award the prevailing taxpayer “its disbursements for transcript costs”), *aff’d*, 884 N.W.2d 648 (Minn. 2016). Under the plain meaning of section 271.07, the cost of the trial transcript and the court reporter’s appearance fees are both recoverable. We thus award Menard \$3,017.90 for court reporter fees.<sup>8</sup>

Finally, we agree with the County that the subpoena Menard served upon Deputy Washington County Assessor Rollie Huber was entirely unnecessary.<sup>9</sup> We therefore deny Menard’s request for \$255 in service fees.

B.S.D.

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<sup>8</sup> This amount excludes \$452.69 in late-payment fees Menard apparently incurred for not paying the court reporter’s invoices within 30 days. *See Hill Aff.*, Exs. A-B.

<sup>9</sup> Resp’t’s Mem. Supp. Obj. 4-6.