

MNMAAO – Tax Court - Q&A

Below is a list of questions submitted to the MN MAAO Tax Court Committee. The answers provided were obtained by utilizing Minnesota Statutes, Session Laws, and Rules published by the Office of the Revisor of Statutes: <https://www.revisor.mn.gov/pubs/>

This website is broken down into 5 sections. Minnesota Statutes, Minnesota Session Laws, Minnesota Rules, Minnesota Court Rules and Minnesota Constitution.

The two primary source sections utilized for the below questions include: Minnesota Statutes and Minnesota Court Rules.

This instructor is not an attorney. I am not providing legal advice. This is a resource document for you to utilize. Consult your County Attorney. Verify your source prior to implementing. Typically when you see M.S. that is referencing a Minnesota Statute. Minnesota Statute can = Assessor or Attorney/Legal. When a Rule is identified, that is Minnesota Court Rule being referenced. Minnesota Court Rules = Attorney/Legal. Minnesota Court Rules – Civil Procedures includes 86 Rules, Appendices and Appendix of Forms.

1. When I get a petition what should be filled out?
 - The Petitioner or their Attorney are responsible for completing items 1-8 on Minnesota Tax Court Form 7.
 - a) *M.S. 278.02* Petition may include several items or parcels.
 - b) They *must* identify the property involved. (by ATTACHING to this petition and to each copy of this petition one of the following: (a.) the contested notice of valuation, (b) the notice of proposed tax (Truth-in-Taxation), (c) the property tax statement, or (d) a legal description of the property (including the Property I.D. Number).
 - c) Only 1 Assessment Date can be included.
 - d) They identify their allegations against You-The County.
2. Should I require them to give me 3 copies of the petition? Why?
 - The Minnesota Tax Court provides a “Property Tax Petitions Information” document which details the filing requirements.
 - *Serve copies of the petition upon county officials.*
Taxpayers must serve copies of the petition, including any attachments, on the appropriate county officials. Serve is a legal term that means to formally deliver copies of the petition and provide proof of service to the Court. A Proof of Service form is supplied on the back of the petition form; and you must complete the form on the original petition that is filed with the district court of the county where the property is located.

Service copies of the petition and attachments as follows:

- Three (3) copies to the County Assessor
- One (1) copy **each** to the County Auditor, County Treasurer, and the County Attorney.

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- File the **original petition** with any attachments, proof of service, and the filing fee with the Court Administrator of the District Court in the county where your property is located before the deadline.

In counties where the Offices of County Treasurer and County Auditor are combined, the county may specify the number of copies and the county officials who must be served. Contact the District Court Administrator of the county where the property is located for instructions. (etc.)

- If the Petitioner fails to properly serve the Petition – See M.S. 278.01 subd. 1. Determination of validity.
3. Should I call the Petitioner the same day or wait some amount of time to discuss the case?
 - 278.05 Trial of Issues
 - Income producing property – Review both M.S. 278.05 subd. 5 **Offer to reduce valuation.** and subd. 6 **Dismissal of petition; exclusive of certain evidence.**
 4. With whom should I discuss the case?
 - Depending on the organizational workflow, tax court petitions are a discussion that takes place with your Supervisor or County Assessor.
 - If you receive inquiries regarding the file, its best practice to consult with your Supervisor before responding.
 - Always be aware that there is certain information that you cannot disclose. See “nonpublic” data *M.S. 13.51* e.g. Confidential Income and Expense data that you collected from other properties or Net Rentable Area of other properties. You can discuss Market Derived Vacancy, Market Expenses, Market Overall Capitalization Rates and Gross Building Areas.
 - Inquiries from fellow Assessors – Most discussions should take place via telephonic conference. If data exchange is deemed necessary, include your County Attorney with the exchange of data. Remember, you are your County Attorney’s client. The inclusion of your legal counsel with the exchange of data converts the data source to “attorney client privilege”.
 5. When should I discuss the case with the County Attorney? Should the County Attorney call or the Assessor?
 - It depends. Each County should have their own Tax Petition Workflow procedures. This is basically a timeline of the entire process from start to finish. The County where I am employed has identified a timeline that includes 24 Steps over about a 2 year period of time. (subject to change based on Scheduling Order)
 - We begin discussions with our County Attorney early on in the process to provide them with various lists of potential **Dismissal’s** that we would like them to pursue.
 - We also contact the County Attorney to provide them a brief overview of a particular filing that may be a carry-over from a prior year settlement. The County Attorney verifies that the claim has properly been filed and we typically inform them that we will be contacting the Petitioners Attorney to discuss settlement.

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- There are times when the file has gone beyond the discussion point with the Petitioners Attorney and you have reached an *Impasse*. This is when I typically rely more heavily on the County Attorney for help.

6. What information should I be asking for soon and what should I ask for later?

E.g. Informal Discovery vs. Formal Discovery

M.S. 278.05 subd. 6. Dismissal of petition; exclusive 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 Aug 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 proposed budget for the year subsequent to the year of the assessment date.

Assuming that they have met the initial statutory disclosure requirement, and you see that a recent mortgage was filed on the subject property – there must be an appraisal to support the mortgage. We begin with Informal Discovery for production of documents. An Informal Discovery letter is sent from the Assessor to the Attorney. (see example)

If the Petitioners Attorney does not comply with the informal discovery request, **we** contact our County Attorney and inform them that we have attempted to obtain the information informally with no success and we request that Formal Discovery be mailed.

7. When should I schedule an inspection of the property?

- Once you have followed the verification process e.g.
 1. Filing deadline
 2. Created a **working file**
 3. Verified that Petitioner has paid the first half tax
 4. If **Income Producing** - that Petitioner has shared with the Assessor's Office **income and expense information** per M.S. 278.05 Subd. 6
- After the above has been completed and verified, then the Assessor should contact the Petitioner to request **an inspection** of the property.

8. What type of information should I be looking for on my inspection?

- Print out a Commercial Field Inspection Worksheet for each building that you will be inspecting.
- Measure each tenant space and document all characteristics within each space. Measure the exterior, each space that differs from the other such as mezzanine, garage, office, warehouse, showroom, retail sales area and so on.
- Take a lot of pictures. Remember... a picture is worth a thousand words!

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- Consider the Highest and Best Use while out on your inspection. Is the current use still the highest and best use? Or has something changed since your last field review?
 - Does your subject include multiple parcels with multiple buildings? Can any of these be considered as a “stand alone” and sold off individually? This ties into your Highest and Best Use analysis.
 - Are there condition issues that you see today that you were not aware of previously?
9. When should I prepare a “tax court ready” appraisal and is that different than a regular appraisal?
- An Appraisal Report is an Appraisal Report. How long will it take you to produce a credible report before the appraisal exchange date established in the Scheduling Order?
 1. Uniform Standards of Professional Appraisal Practice (USPAP) defines APPRAISAL: (Noun) the act or process of developing an opinion of value; an opinion of value. (Adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.
Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).
 2. M.S. 82B.021 Subd. 6 *Appraisal or real estate appraisal. “Appraisal” or “real estate appraisal” means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of named interests in, or aspects of identified real estate for purposes of preparing an appraisal report. An appraisal may be classified by subject matter into either a valuation or an analysis.*
10. Who can do those types of appraisals and what would they typically cost?
- ESTABLISHMENT OF OFFICE FOR EACH COUNTY**
- M.S. 273.061 Subd. 7 (16) ***To perform appraisals of property, review the original assessment and determine the accuracy of the original assessment, prepare an appraisal or appraisal report, and testify before any court or other body as an expert or otherwise on behalf of the assessor’s jurisdiction with respect to properties in this jurisdiction.***
 - Your County may contract out this service to a qualified fee appraisal firm.
11. What is an interrogatory?
- See **Minnesota Court Rules – Civil Procedure, Rule 33. Interrogatories to Parties**
12. What Cap Rate should I use when I don’t have sales here?
- My best advice is to thoroughly review **Chapter’s 13-14 of Property Assessment Valuation** published by the *International Association of Assessing Officers*. Chapter 13 *The Income Approach: Capitalization Formulas and Rates* and Chapter 14 *The Income Approach: Capitalization Procedures*. Direct Capitalization is the method used to convert net income from the property into an indication of property value by using an overall capitalization rate developed from the market.
 - Band of Investment Technique with Mortgage and Equity Components – This technique uses the band-of-investment calculation to determine the weighted average of the mortgage (debt) and equity rates to obtain the overall capitalization rate (Ro).

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13. What is a stipulation?
 - See **Minnesota Court Rules – Civil Procedure, Rule 29. Stipulations Regarding Discovery Procedure**
14. What is discovery?
 - See **Minnesota Court Rules – Civil Procedure, Rule 26. Duty to Disclose; General Provisions Governing Discovery**
15. How long after filing will it take to get to court?
 - The entire workflow is at least 12 to 24 months depending on the Scheduling Order provided by MN Tax Court.
16. What if they file each year on the same property? Do they go to court at the same time and heard at the same time?
 - See **Minnesota Court Rules – Civil Procedure 42. Separate Trials. 42.01 Consolidation and 42.02 Separate Trials**
 - It depends if they file to consolidate the years. Do you dispute?
17. What resources are out there to help me build a case or if I should build a case?
 - M.S. 273.061 Subd. 7 (12) – *To regularly confer* with county assessors in all adjacent counties about the assessment of property in order to uniformly assess and equalize the value of similar properties and classes of property located in adjacent counties. (etc.)
 - M.S. 273.061 Subd. 8a. **Additional powers and duties of the commissioner of revenue, county assessors and local assessors.** Notwithstanding any provision of law to the contrary, in order to promote a uniform assessment and review of assessments, the commissioner of revenue, county assessors and local assessors may exchange data on property which are classified under chapter 13 as public, nonpublic and private. The data for any property may include but is not limited to its sales, income, expenses, vacancies, rentable and usable areas, anticipated income and expenses, projected vacancies, lease information, and private multiple listing service data. Data exchanged under this provision that is classified as nonpublic or private data shall retain its classification.
 - Assessors utilize market data to derive at the overall assessed valuation of the parcels within their jurisdiction. Assessors aren't building a case. They are reviewing the original assessment to determine the accuracy of the original assessment. This may include the preparation of an appraisal report and include testifying before any court or other body as an expert or otherwise on behalf of the assessor's jurisdiction with respect to properties in that jurisdiction.
 - Based on this market data, the County Assessor makes that determination.
 - It is the duties of the County Attorney to build a case on behalf of **their client** the County Assessor.
 - Did you know that the Minnesota Department of Revenue eCRV program has a search engine that can pull up all of that information for you? You can search your property type by going to the Minnesota Department of Revenue – Electronic Certificate of Real Estate Value (eCRV) Search Options – Custom Search. There is a drop down menu with search options. Fast Food is one of the options. You can put your sale date range in, and the file pulls up all of the eCRV's within the State system. After you've completed your search, you would need to verify each sale you choose to include in your petition file.

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- Another option for your County is to contact Hennepin County to inquire about subscribing to: Assessors Commercial Exchange (otherwise known as ACE). Joshua Hoogland with Hennepin County is your current contact for that option.
- Become a member of MNCCC – Minnesota Counties Computer Cooperative – Tax Court User Group.

18. Did Other Counties settle?

- You will need to determine the locations of the common property under appeal. Then you will need to contact each jurisdiction to discuss the case.

19. Did other similar properties sell?

- Again, M.S. 273.061 has established that county assessors and local assessors may exchange data. The data for any property may include but is not limited to its sales, income expenses, vacancies, rentable and usable areas, anticipated income and expenses, projected vacancies, lease information, and private multiple listing service data. You will have to do your research. You will have to complete a sale review and document the results of that review.
- I begin by logging onto the Minnesota Department of Revenue eCRV program. There is a search engine that can pull up all of the sales for various property types. To search by property type, simply go the MN DOR eCRV Home page and click on Public Search. There you will find various drop down options available. With this list of sales, you can begin the selection and review process of the sales that you would like to consider reviewing further.
- If your subject is more unique, such as a very large industrial property or special purpose property, contact a metro county assessing office. You can open up dialog to find out if they are aware of any sales of this property type, similar to your subject. Be prepared to discuss some pertinent information about your subject, so have your file ready.
- Become a member of **MnCCC** – Minnesota Counties Computer Cooperative has a Tax Court User Group. The MnCCC Tax Court User Group is part of the MnCCC Joint Powers cooperative allowing county assessing staff to collaborate and share tax court dealings and also allow us to realize financial savings while addressing tax court petitions statewide. The MnCCC Tax Court User Group also offers MNTaxLink which is a web-based court case management system that can be used by County Attorney staff, County Assessor staff, Municipal Assessor staff and Tax Court staff to collaborate, share data, and manage Property Tax Petitions. Contact one of the Officers for more information.

Chair: Tammy Anderson, Wright County

Vice Chair: Nancy Gunderson, Clay County

Recording Officer: Mike Sheplee, Martin County

- Other **great resource** include subscribing to either free or purchased publications such as:
 - a. Finance & Commerce
 - b. Twin Cities Business Journal
 - c. Greater Mankato Growth
 - d. MN Valley Business Journal
 - e. Business North – Duluth Iron Range News
 - f. Lake Country Journal – Brainerd Lakes area
 - g. Prairie Business magazine – Fargo Grand Forks region

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- h. Post Bulletin – Rochester region
20. What should I keep confidential or redact if sharing?
- See M.S. 273.061 Subd. 8a **Additional powers and duties of the commissioner of revenue, county assessors and local assessors.**
 - See M.S. 13.51 **ASSESSOR'S DATA**
21. Are Market Rents, Net Rentable or Income Information Private?
- See M.S. 13.51 **ASSESSOR'S DATA**
 - If you are in receipt of or have compiled a spreadsheet containing pertinent data, owner's actual income and expense figures, net rentable area, you have to maintain the file not only for your records but have a **separate copy that contains redacted non-public data.** *Always refer to M.S. 13.51 before exchanging any data including data submitted within discovery responses and interrogatories and make sure your County Attorney is familiar with these requirements as they review your responses to the discovery questions and interrogatories.*
22. If I stipulate a low value so I avoid going to Tax Court does that really affect anyone else?
- County Assessors are the Experts in their area of responsibility. The overall opinions of value that they agree to are based on their market data, the strengths and weaknesses of their case, weighing that data and considering the overall costs of trial.
 - Property values are not established by looking at what the neighbor's value is. Assessors follow the Appraisal Process and make a determination.

The Appraisal Process

Step 1: Definition of the problem

- Identify client and intended users
- Identify the intended use
- Identify the purpose of the assignment (type of value)
- Identify the effective date of the opinion of value
- Identify the relevant characteristics of the property
- Assignment Conditions: Extraordinary Assumptions, Hypothetical Conditions

Step 2: Scope of Work

Step 3: Applicable Data Collection and Analysis

- Market Area Data
- Subject Data
- Comparable Property Data
- Market Analysis
- Highest and Best Use Analysis

Step 4: Application of the Three Approaches

- Cost
- Sales Comparison
- Income Capitalization

Step 5: Reconciliation of Value Indications and Final Value Estimate

Step 6: Report of Defined Value

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23. How long should I keep the Court File?

General Records Retention Schedule:

- A record retention schedule is a policy document that defines an organizations legal and compliance recordkeeping requirements. It is the cornerstone of an effective records management program. Many counties use the General Records Retention Schedule developed by the Minnesota Historical Society for decisions related to the appropriate retention for homestead, exemption, and special program applications. County Assessors receive periodic updates from the Minnesota Department of Revenue to the General Records Retention Schedule.
- Your County may have adopted their own Record Retention Schedule. In this case, the MN DOR strongly recommends that you have documentation for all exemptions, special programs, and homesteads you have applied to properties.
- In my County, we have adopted our own Record Retention Schedule and our schedule has identified Court Case retention of **10 years after settlement of the case.**

24. How does my Commercial Ratio affect me if that isn't in compliance?

- For Tax Court purposes, if your Sales Ratio is not in compliance, whether Apartment, Commercial, Industrial or Residential, it may have an effect on your Tax Court Petition(s).
- Settlements with Ratio Issues – If you are making an offer to settle a case where you have ratio or discrimination issues, Never just agree to the posted AEMV, because it is statistically low, that is why you have a ratio issue. Always appraise the property to come up with the Appraised Value or EMV, than apply the ratio. **Ratio relief is the difference between 95.0% and the published 9 month Tax Court Ratio, if it is less than 90.0%. No ratio relief if the ratio is above 90.0%.**

25. Does the Tax Court use the city-wide ratio or the county-wide ratio or can they choose if less than 6 sales?

- Tax Court uses a nine-month study of sales occurring from January 1 to September 30 of a given year compared to the assessors market value for that year. For example, the 2017 Tax Court ratios used sales occurring January 1, 2017 – September 30, 2017 which are compared to the January 2, 2017 assessors EMV's.

When there are at least six qualifying sales within a city that is considered a standalone. If a city lacks at least six qualifying sales, then Tax Court utilizes the countywide.

<http://www.revenue.state.mn.us/propertytax/Pages/srstudy.aspx>

26. Refunds of Mistakenly Billed Taxes 278.14 – Have any of you ever received a “verified claim” pursuant to M.S. 278.14? Our subject is a Clinic – They are claiming that this is a Hospital. So instead of filing a Tax Petition for the years they are seeking relief, they have filed a “Verified Claim” with the County.

278.14 REFUNDS OF MISTAKENLY BILLED TAXES.

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Subdivision 1.Applicability.

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A county must pay a refund of a mistakenly billed tax as provided in this section. As used in this section, "mistakenly billed tax" means an amount of property tax that was billed, to the extent the amount billed exceeds the accurate tax amount due to a misclassification of the owner's property under section 273.13 or a mathematical error in the calculation of the tax on the owner's property, together with any penalty or interest paid on that amount. This section applies only to taxes payable in the current year and the two prior years. As used in this section, "mathematical error" is limited to an error in:

- (1) converting the market value of a property to tax capacity or to a referendum market value;
- (2) application of the tax rate as computed by the auditor under sections 275.08, subdivisions 1b, 1c, and 1d; 276A.06, subdivisions 4 and 5; and 473F.07, subdivisions 4 and 5, to the property's tax capacity or referendum market value; or
- (3) calculation of or eligibility for a credit.

The remedy provided under this section does not apply to a misclassification under section 273.13 that is due to the failure of the property owner to apply for the correct classification as required by law.

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Subd. 2.Procedure.

A refund of mistakenly billed tax must be paid upon verification of a claim made in a written application by the owner of the property or upon discovery of the mistakenly billed tax by the county. Refunds of overpayments will be made as provided in section 278.12.

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Subd. 3.Appeals.

If the county rejects a claim by a property owner under subdivision 2, it must notify the property owner of that decision within 90 days of receipt of the claim. The property owner may appeal that decision to the Tax Court within 60 days after receipt of a notice from the county of the decision. Relief granted by the Tax Court is limited to current year taxes, and taxes in the two prior years.

In *my* particular inquiry, *my* response included the following: I know that I had referenced a tax court decision in my response. There are several decisions relating to Hospital vs. Clinic. This decision was very helpful to me when responding to a very similar situation. While conducting my research, I discovered that the MN Department of Health has a license lookup. In my situation my clinics were not identified as a Hospital. There are separate licensing requirements. How the Minnesota Department of Health defines a hospital (Minnesota Administrative Rules 4640.0100 Definitions Subp. 5 Hospital) further satisfied my opinion that my clinics (aka auxiliary facilities) did not qualify as a hospital. The MN Department of Revenue has several opinions relating to Hospitals vs. Clinics and their requirements. The court has not allowed the auxiliary-property doctrine to exempt from taxation hospital run clinics operated for private benefit even when operated by a public hospital.

Unfortunately I am not a legal expert which is why I am copying the County Attorney's in my response. Between the MN Department of Revenue, MN Tax Court decisions and your legal counsel, I do feel that you should have the resources you will need to respond to their claim.

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I understand that you felt that this was a classification issue which is why I had asked if they submitted an exempt application. In my situation, I have been working through the exempt application process.

27. Electronic Correspondence – Discoverable? Or Not Discoverable?

- Electronic Correspondence is discoverable. When exchanging data (including - fellow Assessor's) it's best to include your County Attorney in all correspondence. Remember, whether active or a future filing petition/lawsuit, if you are not including your County Attorney you may be putting yourself and your fellow Assessor's at risk.

Include a Disclaimer with your electronic signature: *Disclaimer: information in this message or an attachment may be government data and thereby subject to Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, may be subject to attorney-client or work product privilege, may be confidential, privileged, proprietary, or otherwise protected, and the unauthorized review, copying, retransmission, or other use or disclosure of the information is strictly prohibited. If you are not the intended recipient of this message, please immediately notify the sender of the transmission error and then promptly delete this message from your computer system. CONFIDENTIAL - correspondence made in compromise negotiations; inadmissible under Minn. R. Evid. 408 except to determine costs and disbursements pursuant to Minn. R. Civ. P. 68.03*

28. De Novo – meaning “from the new”.

*CANPAC Owner LLC and AX CPP L.P., vs. County of Hennepin – ORDER DENYING PETITIONER CANPAC'S MOTIONS TO COMPEL File No: 27-CV-15-07909, 27-CV-16-05679, 27-CV-17-03481 Pg. 5: **Disposition of the County's Witness** - ... Petitioners required that Ms. Browne produce documents at her deposition, including: All market information, income and rental comparables, capitalization rate comparables, vacancy and operating expense and sales comparison approach comparables considered (,) analyzed and/or relied upon in the assessment of the Subject Property as of January 2, 2014, January 2, 2015 or January 2, 2016. This request shall expressly include any materials relied upon in the preparation of the 2013, 2014, 2015 and 2016 income capitalization spreadsheets and “Tax Petition Notes”...
At the June 19, 2017 deposition, Ms. Browne did not bring the requested market information. The County objected to the production request, in part, because it was “not standing by the assessed value,” (i.e., it did not intend to assert the prima facie validity of the assessment) and was instead preparing “a de novo appraisal.” Etc.*

29. What is an order for Consolidation? Are we required to consolidate our cases? Is there a benefit? Or is this a bad idea and we should object?

- See Minnesota Court Rules Rule 42. Separate Trials
- 42.01 Consolidation
- 42.02 Separate Trials
- Is it a bad idea to consolidate? It depends on the strength of your case, your appraisal weighed against the costs of separate trials. If you end up with a decision from the courts that are not favorable to the county, have you considered your worst case scenario costs and refunds?

30. What is a Stay of Further Proceedings?

- See Minnesota Court Rules Rule 62. Stay of Proceedings to Enforce a Judgement

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TAX PETITION WORKFLOW

Dates listed reflect a petition filed for **pay 2018**.

In an effort to maintain the highest possible level of customer service throughout the litigation process, petitions will be processed using the first in first out (FIFO) processing method. This is subject to change with a petition that is part of a previous settlement.

Step 1 - April 30, 2018

Filing deadline is on or before April 30 of the taxes payable year.

- County Assessor - A list of current payable year petitions is entered on the petition tracker. Each appraiser will be responsible for creating a tax file for each of their petitions.

Start putting together a **working file** on each petition.

Meet with County Attorney's Office to discuss current payable year workflow changes based on past experiences and tax court practices.

Step 2 - May 15, 2018

Petitioner must pay first half tax.

- Tax Division – Staff generates the list of non-payment of first half taxes and distributes to the Deputy County Assessor.
- County Assessor - The Deputy County Assessor compares the Staff's list to the list of current year petitioners in order to identify the petitioners that have not paid their first half taxes.
- County Assessor/County Attorney - Process for dismissal is in place for non-payment of first half taxes. These documents are not filed with the Court until the following year. A petitioner can legally pay the first half taxes up to a year after they are due and have the petition reinstated.

Step 3 - August 1, 2018

Petitioner is required to share with the Assessor's Office *income/expense information* for all income producing property under petition.

- M.S. 278.05 Subd. 6
 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

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6. Anticipated income and expenses in the form of a proposed budget for the year subsequent to the year of the assessment date.
 - County Assessor – Process for dismissal is in place if petitioner does not share this information.

The appraiser assigned the petition should compare what has been provided to this point with what information will be needed to review the value or classification under appeal. Please see informal discovery discussion below (8).

Step 4 - August 1, 2018

A list of petitions that were *improperly filed* will be compiled by the Assessor's Office and shared with the County Attorney's.

Step 5 - August, 2018

In cases that involve a tax rep, obtain a signed "INFORMED CONSENT FOR THE RELEASE OF NOT PUBLIC /PRIVATE DATA & AUTHORIZATION FOR DATA RELEASE & EXCHANGE" form. There is no need to wait until this date if you are notified sooner from a tax rep.

Step 6 - August-September 2018

Create *working file* for each petition. Include the following:

- Determination of highest & best use
- Pull possible City, County, Metro sales comparables
- Pull possible City, County, Metro income comparables
- Generate a preliminary pro-forma. Compare results to value under appeal
- If results warrant an adjustment review those results with Supervisor.
- All electronic negotiations/offers must include Minn. R. Evid. 408 statement:
CONFIDENTIAL - correspondence made in compromise negotiations; inadmissible under Minn. R. Evid. 408 except to determine costs and disbursements pursuant to Minn. R. Civ. P. 68.03

Step 7- August 2018

Assessor shall contact the petitioner to request an *inspection* of the property.

The assigned appraiser must let the County Attorney know when the inspection request is scheduled and when the inspection has been completed.

Step 8 – August 2018

Deadline for sending an *informal discovery* request if desired. There is no need to wait until this date to notify the Attorney's Office of the documents that you need.

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- County Assessor - The appraiser will determine the documents needed to review the valuation and classification that is under petition. The appraiser assigned the appeal will send an email to the assigned Attorney specifying the information needed. The subject line of the email must be in the following format – **CITY/PETITIONER/CASE NUMBER/PAYABLE YEAR.**
- County Attorney – The County Attorney’s Office will send out a letter to the petitioner requesting **only the documentation determined by the appraiser.** Informal discovery should have a deadline for response – 60 days.

The **emphasis** at this step in the process is that the appraiser determines if this step is necessary and what specific documents are to be requested.

It will be discussed after the 60 days whether or not to file formal discovery if the information requested is not shared.

Step 9 - September-October 2018

Deputy Assessor to review with appraiser their work file and determine if a case can be expedited. Appraisal assignments can be made at this time.

Step 10 – October 2018

The Assessor’s Office would like to emphasize that **formal discovery** requests should be used for a **formal request for an inspection and specific document(s) only.** The information that the appraiser determines to be part of informal or formal discovery should assist in preparing an appraisal. This point of emphasis must be consistent regardless of which Attorney has been assigned the appeal.

Discovery request that go unanswered by petitioner –

The County Attorney’s Office has agreed to be more aggressive in pursuing the requested documents when our request goes unanswered. This should be a discussion item during the strategy meeting #1.

Discovery requests served by the petitioner –

Some of discovery requests received can be answered by the Attorney’s Office with no involvement from the Assessor’s Office.

When a discovery request includes specific questions related to the property under petition that cannot be answered by the Attorney’s Office or a reasonable request for a relevant report the Assessor’s Office will work closely with the Attorney’s Office to answer the request in a timely manner. It should be noted that the request for documents can be satisfied by providing a property record card and any other items in the file to this point. This can be attached in lieu of more narrative responses in many cases.

All discovery responses will originate in the Attorney’s Office. If there is specific information needed from the Assessor’s Office the request should be emailed to the Deputy County Assessor.

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The document should highlight the areas that need to be completed. All correspondence should include a reasonable deadline for completion. If the Assessor needs any additional time that should be shared with the Attorney's Office as early in the process as possible. All final responses shall be served by the County Attorney's Office.

Step 11 - October 15, 2018

Petitioner must **pay 80%** of second half tax bill.

- County Assessor receives a list from the Taxation Division that lists all petitioners that have not pay at least 80% of the second half tax bill. A list is compiled and shared via email with the County Attorney's.

Process for dismissal is in place for non-payment of 80% of second half tax. We wait to file the affidavit until a year after the **October second half due date**. This is an automatic dismissal.

If the petitioner has paid the taxes within the one year window they are responsible for having the petition reinstated.

Step 12 - January 2019

The County Attorney will provide the petitioners attorney with the ***identity of the County appraiser/expert***.

Each party shall notify all other parties and the court in writing **within 10 days** of retention of an appraiser or other expert and shall disclose the identity of the appraiser/expert retained, the subject(s) on which the appraiser/expert will opine, and the date on which the expert was retained. Failure to comply with this requirement may result in exclusion of the appraisal or expert report and the appraiser's or expert's testimony.

If the appraisal assignment is a joint effort please let that fact be known. The Attorneys Office has indicated they will also include the Deputy County Assessor on our expert list for each appeal.

Step 13 – March 2019

***** For pay 2017 the scheduling order seems to be the trigger date for the steps that occur up to trial.**

The Tax Court has indicated that they will start distributing the ***scheduling orders*** to the County's ~~4 months after the filing deadline has passed~~. This isn't happening in 4 months. For example pay16 the scheduling order arrived 12 months after the filing deadline. Move this step to reflect that.

- County Attorney - Distributes the scheduling orders to the Assessor.
- County Assessor – Upon receipt the scheduling order is recorded, assigned an appraiser and distributed to staff. The County Attorney should be notified via email the list of assignments.

MNMAAO – TAX COURT 101 – Q&A

Step 14 – March 2019

This is a **strategy meeting #1** involves staff from both offices. This meeting will be beneficial to both offices. Depending on the complexity of the property/property type under appeal this meeting may be best dealt with in individual meetings rather than a group meeting regarding multiple appeals.

Discussion items may include:

- Appraisal direction
- Discuss mass appraisal assessment versus individual valuation differences
- Quality of the information available in each approach – local, metro area, state
- Has all the information requested been received? If not how do
- Has the appraiser gained access to property or is the appraisal a windshield appraisal to date
- What needs to be overcome/hurdles learned from other cases and jurisdictions
- Discuss extensions and consolidation of payable years
- Legal advice and Assessor advice related to case – develop a clear strategy
- Discuss need for further discovery requests. What is needed from appraisal side? Attorney side? When should that request be made (after appraisal exchange?)

Step 15 – November 2019 – **Scheduling orders received+ 8 months**

Joint statements

The Tax Court in their scheduling orders has described this step in the process as follows:

- a. The issues to be resolved by the court at trial;
 - b. The identity of all experts retained;
 - c. The name, address, and telephone number of each lay or fact witness, separately identifying those the party expects to present and those it may call only if need arises;
 - d. The estimated duration of trial;
 - e. Any other information relevant to the scheduling of this matter.
- County Attorney – Joint statements are primarily standardized legal documents and are completed by the County Attorney's Office.

New 10/2013 - For all pretrial, trial and post-trial documents on each case, the court is requiring the parties to file the original, plus two hardcopies (so 3 hard copies for each doc), and a cd or flash drive containing an electronic searchable version of the document (which could easily add up to 5 or more cds or flash drives that would need to file per case).

- County Assessor – The Assessor's Office will work closely with the Attorney's Office to answer any questions on the joint statement that are not boiler plate or legal related. Any requests that involve appraiser contribution should be sent via email through the Deputy County Assessor.

MNMAAO – TAX COURT 101 – Q&A

The areas of the joint statement in question should be highlighted and a reasonable turnaround time included in the email. The subject line of the email must be in the following format – ***CITY/PETITIONER/CASE NUMBER/PAYABLE YEAR.***

Step 16 January 2020

The Attorneys Office has requested that the final appraisal be delivered to them 1 week prior to the appraisal exchange date (see next step).

- County Assessor – After our internal review has been completed the assigned appraiser will make 4 copies of their report, have it bound by either the County’s print shop or FedEx/Kinkos. The copies are to be personally delivered to the Attorney’s Office.

The appraiser is responsible for scanning the appraisal and saving it in the shared folder for the County Assessor and County Attorney to access.

Although the tax court no longer requires a copy of the work file a copy for the opposing counsel is still needed. Our Attorneys have suggested you make two copies of your file and deliver with copies of the appraisal.

- County Attorney – With this new deadline the Attorney’s office will no longer need to courier the report. Their plan is to file the appraisal, serve the Court and opposing Attorney with an electronic version of the appraisal and mail a hard copy so the report will arrive on the court ordered appraisal exchange date.

Step 17 – January 2020 - **Scheduling orders received+ 10 months**

This is the court ordered ***Appraisal exchange*** date. This date is listed in each scheduling order and the most recent orders state this date is 10 months after receiving that order. Also around this date both parties will report to the court any experts that they have retained as expert witnesses – referred to as the expert report.

Steps 18-21 occur prior to the trial ready date (step 21)

Step 18 – January - March 2020

Strategy meeting 2. Trial preparation discussion may include but not limited to the following:

- Discuss what needs to be overcome/hurdles learned from other cases and jurisdictions
- Assessor should provide Attorney written documentation relating to petitioners appraisal review
- Discuss need for further discovery requests. What is needed from appraisal side? Attorney side? When should that request be made (after appraisal exchange?)

Step 19 – January - March 2020

Any objection to the competency of an appraiser or expert or to the admissibility of any portion of an appraisal or expert report shall be made in writing, served upon the proponent of the appraisal or report, and filed with the court no later than two weeks prior to the trial ready date.

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This is a function of the Attorney's Office based on the discussion coming out of the trial preparation meeting.

Step 20 – January - March 2020

The proponent may file and serve a response no later than one week after the objection is filed with the court or week prior to the trial ready date.

Step 21 – January - March 2020

See scheduling order for other requirements relating to motions, stipulations, pre-trial briefs, filing of documents and pre-trial conferences.

Step 22 – March 2020 - **Scheduling orders received+ 12 months**

If the case is not settled or dismissed it shall be considered *trial ready*. The parties should expect that the case will be tried within 60 days of the trial ready date and should plan their availability and the availability of their experts and other witnesses accordingly.

Step 23 – April 2020 – – **Trial ready date plus 30 days.**

Strategy meeting 3 - Final preparation meeting.

- Attorney - Cross examination assistance
- Assessor – Appraisal concept assistance
- Discuss petitioners appraisal what needs to be addressed/overcome

Step 24 – May 2020 – **Trial. Trial ready date plus 60 days.**

***** The Tax Court may make further changes to the process outlined above based on their experiences.**

MNMAAO – TAX COURT 101 – Q&A

Tax Petition Tracking Form

Payable Year: _____ Appraiser: _____
 Petitioner: _____ Order Date: _____
 Property Owner or Tenant: _____
 Property Address: _____
 Parcel ID's: _____
 Case Number 82-CV-_____ (Enter "Pending" until assigned)

- Does the Petitioner have the right to file a petition on this property? E.g. tenant, owner, lienholder.
 Comments: _____
- Does the Petition contain parcels located in multiple jurisdictions?
 Comments: _____
- Are there duplicate filings for any parcels included in *this* Petition?
 Comments: _____
- Is this Petition filed in the correct division of Tax Court? Regular vs. Small Claims.
 Comments: _____
- Are there any other issues with this Petition that may require involvement of the County Attorney's Office?
 Comments: _____
- Petitioner alleges the following error(s)
 Comments: _____

Petitioner's Appraiser/Expert(s): _____

- 1st Half Taxes Paid.....Date Paid: _____
- 90-Day Documents Received*Date Received: _____
- 80% 2nd Half Taxes PaidDate Paid: _____
- Informal Discovery Requested**Date Sent: _____
- Informal Discovery ReceivedDate Received _____
- Property Inspection ScheduledDate Inspected: _____
- County's Position StatementDate Sent: _____

*(Due by August 1st of the Petition Year)

** (Informal Discovery response should be returned within 60 days of request.)

To be completed by the County Attorney's Office:

- Joint Position Statements Provided to Tax Court
- Formal Discovery Request

MNMAAO – TAX COURT 101 – Q&A

- o Appraisal Exchange (date set by Tax Court, provided 24 hours prior)

Sample

STATE OF MINNESOTA

TAX COURT

COUNTY OF [REDACTED]

REGULAR DIVISION

[REDACTED]

Petitioner,

**SCHEDULING ORDER
(TRIAL READY April 22, 2019)**

v.

File No: 82-CV-17-[REDACTED]

County of [REDACTED]

Filed: April 23, 2018

Respondent.

This matter came before the court for scheduling purposes.

[REDACTED], Attorney at Law, represents petitioner.

[REDACTED], Assistant County Attorney, represents respondent [REDACTED] County.

To facilitate the orderly and efficient disposition of this matter, the court now makes the following:

ORDER

1. All discovery must be served so that compliance can occur in accordance with the time limitation specified in the pertinent discovery rule no later than **January 22, 2019**.

2. If the case is not settled or dismissed, it shall be trial-ready as of **April 22, 2019**. Extensions or continuances of the dates specified in this order—including the trial-ready date—will not be granted except by written motion, supported by an affidavit showing good cause, which shall not include belated settlement negotiations, failure to retain an appraiser, or any other failure to diligently prepare for trial.

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the event the motion is granted, the party will nevertheless be required to comply, by the date for service of written appraisals or expert reports, with Minn. R. Civ. P. 26.01(b)(3), (4), and (5).

6. Any objection to the competency of an appraiser or expert or to the admissibility of any portion of an appraisal or expert report shall be made in writing, served upon the proponent of the appraisal or report, and filed with the court no later than **April 8, 2019**. The proponent may file and serve a response no later than **April 15, 2019**.

7. Each written appraisal or expert report will serve as the authoring appraiser's or expert's direct testimony at trial. Consequently, in accordance with Minn. R. Evid. 705 and Minn. R. Civ. P. 26.01(b)(2), the written appraisal or expert report shall include: (1) a complete statement of all opinions the witness will express and the basis and reasons for them; (2) the facts or data considered by the witness in forming the opinions; (3) any exhibits that will be used to summarize or support the witness' opinions; and (4) the witness's qualifications. The sponsoring party may file a written motion for leave to conduct limited direct testimony of the appraiser or expert, indicating the amount of time requested and providing a brief justification for the request. Any motion for limited direct examination must be filed and served no later than the date for serving appraisals and expert reports. Each appraiser or expert will be subject to cross-examination by the opposing party and to redirect examination by the offering party.

8. The parties shall jointly file, no later than **April 8, 2019**, a stipulation of material facts as to which there is no dispute. All facts shall be stipulated to the maximum extent possible; objections may be preserved in the stipulation. It is expected that the parties will stipulate to the objectively verifiable characteristics of the subject property, such as its size.

9. The parties shall file and serve witness and exhibit lists no later than **April 8, 2019**. Witness and exhibit lists must specify all witnesses and exhibits a party reasonably foresees calling

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or introducing in its case-in-chief, during cross-examination, or during rebuttal or surrebuttal (if permitted). The parties shall confer before **April 8, 2019**, and shall stipulate to the extent possible to the authenticity of each proposed exhibit. Exhibits shall be marked before trial, and shall be separately and consecutively paginated. Stipulated exhibits shall be numbered with the prefix “J” (e.g., J1, J2, etc.). Petitioner’s separate exhibits shall be numbered starting with “1.” Respondent’s separate exhibits shall be designated by letter, starting with “A.” All objections to the authenticity of any separate exhibit, or any part thereof, shall be filed and served upon the proponent of the exhibit no later than **April 8, 2019**. The proponent of the exhibit may file a response and serve the objecting party no later than **April 15, 2019**. Courtesy copies of the exhibits themselves, including the previously exchanged appraisals and expert reports, shall be furnished to the court with the exhibit list(s) unless the court orders otherwise.

10. No later than **April 15, 2019**, each party shall file and serve proposed findings of fact, conclusions of law, and a pretrial brief.

11. Either party may contact the court administrator to schedule a final pretrial conference call with the court.

12. Filing Generally: Parties shall file a paper original and two paper copies of all pretrial, trial, and post-trial submissions, except the trial exhibits furnished pursuant to paragraph 9 (including the previously exchanged appraisals and expert reports); as to these, parties shall furnish two paper courtesy copies only, in accordance with the time limitations specified above, and shall proffer paper originals at the commencement of trial (to function as trial exhibits should they be admitted into evidence). In addition, parties who are represented by counsel shall file electronic versions of all pretrial, trial, and post-trial submissions, and shall transmit electronic versions of the courtesy copies of all appraisals, expert reports, and trial exhibits. Electronic versions shall be

Sample Opening Letter

COUNTY ATTORNEY'S OFFICE DEPARTMENT LETTERHEAD

DATE

FILING ATTORNEY

ADDRESS

ADDRESS

VIA EMAIL ONLY: IF YOU HAVE THE LAW FIRM OR PRO SE FILING OFFICE'S E-MAIL ADDRESS

RE: PETITION NAME, COUNTY ATTORNEY FILE NO., COURT FILE NO.

Dear Mr. XYZ:

In response to the property tax petition recently served on XYZ County this letter sets forth the County's general approach in tax cases and the role of our Office and the Assessor's Office in a manner that is consistent with the Lawyers Rules of Professional Responsibility.

The Attorney's Office represents XYZ County in all Tax Court litigation. XYZ County desires an efficient and amicable resolution to your claim. To facilitate such resolution our Office consents to you, your office or a representative for which you assume responsibility under the Rules of Professional Conduct to contact the Assessor's Office directly to exchange information and negotiate a resolution. This consent does not include third parties such as third-party tax representatives. However, all correspondence with the Court or correspondence required by court order, such as a written position statement or a joint statement of the case, must be made directly to the Attorney's Office. The undersigned attorney is the assistant county attorney assigned to this matter.

Our Office will initially forego formal discovery to gather this data, assuming you share our goal to efficiently settle this case without going to trial and you will cooperate with the assessor's requests. Additionally, you may be required to timely provide to the assessor certain specific data on income producing property pursuant to Minn. Stat. § 278.05, subd. 6. When considering whether you will cooperate with the assessor's request, please keep in mind the assessment you are challenging is legally presumed correct. The County will not make an offer to settle a claim simply because a petition was filed. You are expected to provide credible evidence showing there is merit to the relief you request. The assessor will in good faith analyze your data and will provide an offer of

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adjustment if (s)he believes it is supported by the data. Additionally, due to the voluminous nature of petitions before the Tax Court, you can expect it will be a considerable period of time before the Court schedules this case for trial. Therefore, whether this case is resolved in satisfactory and expedient fashion may largely be dependent on you and whether you are willing to cooperate with the Assessor's Office by disclosing all of the information that supports your claim. If you fail to cooperate with the assessor's requests for information, you can expect to be served with formal discovery requests pursuant to the rules of Civil Procedure. From that point on our Office's consent permitting you to directly contact the Assessor's Office is withdrawn and you must deal directly with the undersigned attorney unless expressly noticed otherwise.

It is the hope of this Office and the Assessor's Office that by establishing the above-parameters we can continue our effort to fairly and efficiently resolve these cases. As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,
Your County Attorney Name, County Attorney
XYZ County, Minnesota

Name and contact information of Assistant County Attorney

Sample Informal Discovery

March 21, 2019

Petitioners Attorney Name, Address

RE: Petitioner Name v. County of ABC *County 2 digit #-CV-17-xxxx*

Parcel ID(s):

Property Address:

Dear Mr. XYZ,

This letter is in response to your 90-Day Production of Documents regarding the above referenced petition. Thank you for the information that you have provided, however in order to determine a market value that is accurate, it is necessary for our office to also obtain the following:

- Copy of any and all appraisals, analysis, certificates of value or any other documents which lead to, or indicate a value of the subject property. More specifically, the appraisal report and any related documents used in conjunction with the mortgage document #1234537 dated November 1, 2016 in the amount of \$mortgage amount.
- A complete copy of the active listing advertised by Commercial or Residential brokerage firm name, agent(s) names and phone numbers listing the property. This active listing advertises an asking price of \$(asking price here).
- Copy of any and all leases that were in place specific to the assessment year(s) under appeal. The lease information should include copies of the lease(s) as well as, the lease rate by unit, the lease terms, the leased premise(s), and any supporting information.
- Detailed income and expenses, including a breakdown of the repairs & maintenance identified within the income and expense statement (12-month) ending December 31, 2016 and December 31, 2017.
- Copy of the commercial building drawing and or building layout which includes both exterior and interior dimensions and a complete copy of the building plans.

I will calendar this matter for four weeks from the date of this letter to determine if formal discovery is deemed necessary. Please feel free to contact me direct at your telephone # or via e-mail: your e-mail address

Thank you,

Assessor's Name Address & Contact

Always include the Assessor's Office Data Practices Rights Advisory on the back of this request

MNMAAO – TAX COURT 101 – Q&A

Sample Assessor's Office Data Practices Rights Advisory

RE: **ABC** County Assessor's Office Data Practices Rights Advisory

This advisory is being provide to you in compliance with Minnesota Statute § 13.04, subd. 2. In order to accomplish its statutory and legal duties in as fair and effective manner as possible for the taxpayer and the citizens of Minnesota, the **ABC** County Assessor's Office collects from individuals and business entities certain data. Minnesota Statute § 13.51, subd. 2 classifies some data collected from individuals or business entities concerning income producing property as private or non-public data. The data that is classified as private or non-public includes detailed income and expense figures, average vacancy factors, verified net rentable areas or net usable areas, as appropriate, anticipated income and expenses, projected vacancy factors and lease information. Because the statutes classify this data as private or non-public data its accessibility to members of the public is limited and the **ABC** County Assessor's Office is providing you this written notice in compliance with the Minnesota Government Data Practices Act.

The purpose and intended use of this data by the **ABC** County Assessor's Office is to use this data in the assessment process to determine the market value of real estate. This information may be used for a variety of purposes by **ABC** County and the State of Minnesota, including but not limited to, determination of value for property tax purposes.

You are not required to provide or supply the requested data. However, if you do not provide this information, depending on the circumstances, it could have an impact on your particular assessment and therefore your property taxes. If you filed a petition for review of assessment before the Minnesota Tax Court, failure to provide this information consistent with the requirements of Minnesota Statute § 278.05, subd. 6 could result in dismissal of your property tax petition. If you did not file a petition for review of your assessment as it relates to your property taxes, not providing this information will not be used against you in the determination of the value of the property, but it could impact the ability of the Assessor's Office to accurately determine the assessed market value of your property. That fact in turn might cause the affected property to be valued at a higher amount than you believe is appropriate.

The information that is provided is used by the **ABC** County Assessor's Office for the purposes described in this Notice. In order to administer the property tax system this information may be shared in whole or in part, or on occasion in the form of summary data in which identifying information concerning your property is removed, with other government officials such as the Minnesota Department of Revenue, the **ABC** County Attorney's Office and other tax and real property sections within **ABC** County and the State of Minnesota. As private or non-public data, the data you provide is also available to you, those individuals to which you have signed a written informed consent, as ordered by a court, or as otherwise authorized or required by state or federal statutes.

The **ABC** County Assessor's Office wishes to thank you in advance for your anticipated cooperation in the providing of this data.

MNMAAO – TAX COURT 101 – Q&A

Sample of an inquiry relating to typical and non-typical responses relating to interrogatories. Each set of interrogatories are unique and should always be reviewed with your County Attorney.

The interrogatories seem typical. In our office, because this is a legal matter, they are primarily handled by our County Attorney's office. Some of the most frequent responses that I have seen include the following:

- To the extent that Respondent is in possession of answers to this interrogatory and information relevant thereto, pursuant to Rule 33.03 of the Rules of Civil Procedure the answer to said interrogatory may be derived or ascertained from the business records of the Respondent in possession of the (insert County Name) Assessor's Office and may be reviewed during normal business hours by making arrangements with the undersigned to accomplish the same.
- Because no appraisal has yet been done the response to this interrogatory has yet to be determined.
- To the extent documents exist in the possession of the respondent they may be reviewed during business hours in the Office of the (insert County Name) County Assessor by scheduling a time to do so with (insert County Assessor name) or (County Attorney name) of that office.

This is an example of a non-typical response:

- To the extent that Respondent is in possession of answers to this interrogatory and information relevant thereto, pursuant to Rule 33.03 of the Rules of Civil Procedure the answer to said interrogatory may be derived or ascertained from the business records of the Respondent in possession of the (insert County Name) Assessor's Office and may be reviewed during normal business hours by making arrangements with the undersigned to accomplish the same. The method and technique utilized to derive at the January 2, 201X, January 2, 201X and January 2, 201X assessed valuations prepared for ad valorem taxation relate specifically to the mass appraisal process. Respondent identified the subject property, reviewed the market area of consistent behavior that applied to properties; identified characteristics and the relationship that affect the creation of value in the market area; determined the contribution of the individual characteristics affecting value; applied the conclusions and reviewed the results of the mass appraisal results. If the subject property owner provides their actual pertinent data specific to their property including but not limited to:
 - Copy of any and all appraisals, analysis, certificates of value or any other documents, which lead to or indicate a value of the subject property.
 - Copy of any and all leases that are currently in place. The lease information should include a copy of the lease as well as, any supporting information.
 - Detailed income and operating expenses, including a breakdown of rental units and rates for the subject for years 201X, 201X, 201X, 201X and current year to date.
 - A copy of either (a) building plans and specifications; or (b) a detailed narrative description of the subject buildings and site improvements, including all mechanical systems, square footage per rental unit and perimeter building dimensions.
 - Gross Sales Data – (201X-current year).
 - If the property is currently vacant, we request that they include a copy of the active listing as part of their supporting documentation any additional information that they feel impacts their assessed valuation.

MNMAAO – TAX COURT 101 – Q&A

This information would have been reviewed, considered and utilized their information prior to finalizing the assessed valuation. All of the above are identified processes are completed in accordance with Minnesota Statutes Chapter 272 and 273 and Minnesota Department of Revenue Property Tax Administrator's Manual found at the following web address:

http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/ptamannual.aspx

Typical documents that we have available to us include a Property Record Card, a Plat Map or possibly an Assessment Report that would have been published on a county website for the general public.

Hopefully you will find this of some help. But again, these documents are completed by our County Attorney assigned to the file. We work directly with them in the event that they seek additional information or insight as to the specific question within the document however, because this is a legal matter, we follow their directive since they are our legal counsel.

MNMAAO – TAX COURT 101 – Q&A

Sample Motion – Dismissal



OFFICE OF THE WASHINGTON COUNTY ATTORNEY
 PETER J. ORPUT COUNTY ATTORNEY

September 9, 2013

Lisa Pister
 Court Administrator
 Minnesota Tax Court
 245 Minnesota Judicial Center
 25 Rev. Dr. Martin Luther King, Jr. Blvd.
 St. Paul, MN 55155

Re: ~~Richard D. Hodsdon~~ vs. County of Washington
 Court File No: 82-CV-~~11-160~~
 County Attorney File No. CV-~~0011-922~~

Dear Court Administrator:

Enclosed for filing are the following regarding the above-entitled matter: Notice of Motion and Motion for Dismissal of Petition, Memorandum of Law, Proposed Order, and Affidavit of Service by Mail. This matter is set for a hearing on October 16, 2013 at 10:00 a.m.

Thank you for your anticipated cooperation and assistance.

Very truly yours,

PETE ORPUT, COUNTY ATTORNEY
 WASHINGTON COUNTY, MINNESOTA

~~Richard D. Hodsdon~~

Assistant County Attorney
 Telephone: (651) 430-6119
 E-Mail: Rick.Hodsdon@co.washington.mn.us

Enclosure

cc: Rollie Huber, Assessor's Office w/enclosures

LAW ENFORCEMENT CENTER 15015 62ND STREET NORTH PO BOX 6 STILLWATER, MN 55082-0006
 PHONE: 651-430-6115 TTY: 651-430-6246
 WWW.CO.WASHINGTON.MN.US
 AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER

MNMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA
 COUNTY OF WASHINGTON

MINNESOTA TAX COURT
 REGULAR DIVISION

**NOTICE OF MOTION AND MOTION OF
 RESPONDENT TO DISMISS PURSUANT
 TO RULE 37, MINN. R. CIV. P. AND
 MINN. RULE 8610.0070**

[REDACTED]

 Petitioner,
 vs.
 County of Washington

 Respondent.

Court File No. 82-CV-11-2604

TO: **[REDACTED]** and attorney, **[REDACTED]**, 33 South Sixth Street, Suite 4160,
 Minneapolis, MN 55402

PLEASE TAKE NOTICE THAT on Sept 16, 2013 at 10:00 a.m. by telephonic
 conference call before the Honorable Joann Turner, the undersigned will move for an order from
 the Tax Court dismissing the Petition because of the Petitioner's unexcused failure to respond to
 Respondent's Interrogatories and Request for Production of Documents. Further, Respondent
 will move for an order of the court awarding its costs and disbursements herein.

This motion is based upon Rule 37, Minn. R. Civ. P. and Minnesota Rule 8610.0070, the
 pleadings filed herein, the attached Affidavit and a statement of points and authorities submitted
 herewith.

Dated this 9th day of September, 2013.

PETE ORPUT, COUNTY ATTORNEY
 WASHINGTON COUNTY, MINNESOTA

[REDACTED SIGNATURE]

[REDACTED]
 Assistant Washington County Attorney
 Washington County Government Center
 15015 62nd Street North
 P. O. Box 6
 Stillwater, MN 55082
 (651)430-6115

MNMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA
 COUNTY OF WASHINGTON

MINNESOTA TAX COURT
 REGULAR DIVISION

██████████

Petitioner,

vs.

County of Washington

Respondent.

**SUPPLEMENTAL AFFIDAVIT
 OF RICHARD D. HODSDON**

Court File No. 82-CV-██████████

STATE OF MINNESOTA)
)
 COUNTY OF WASHINGTON) ss.

██████████ Hodsdon, being first duly sworn under oath, deposes and states:

1. I am personally familiar with the content of this Affidavit and the efforts made at discovery and resolution of this discovery dispute prior to bringing this action before the court.
2. Attached hereto as Exhibit 1 is an affidavit and attachments previously submitted to the Court in support of the July 11, 2013 discovery motion.
3. As a result of the Petitioner's refusal to respond to discovery on May 28, 2013 I scheduled a Notice of Motion and Motion to Compel Discovery or in the alternative to Dismiss the Petition as a discovery sanction. As reflected in the attached Exhibit 2 that motion was scheduled for July 11, 2013 at 10:00 a.m. before Judge Turner.
4. On the morning of July 11, 2013 approximately one hour before the scheduled motion I was contacted by counsel for the Petitioner for the purpose of asking me to withdraw my motion to compel. In conversation I advised counsel I was not inclined to do so absent some assurance that I would promptly receive the discovery responses. I stated I would not agree to withdraw the motion absent such assurances.

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5. As a result of such a conversation counsel for the Petitioner agreed to enter into and sign a stipulation and order to be submitted to the Court compelling discovery. In the terms of that stipulation the petitioner agreed that on or before July 31, 2013 it would fully and completely respond to the discovery that was served on March 6, 2013. The Petitioner through counsel further agreed it would pay to the Respondent a sanction of \$500 for the failure to comply with said discovery.

6. A copy of the stipulation memorializing that agreement was immediately prepared by the Washington County Attorney's Office and on July 11, 2013 forwarded to counsel for the Petitioner. A copy of the proposed stipulation and order along with the cover transmittals is attached hereto as Exhibit 3.

7. The date of July 31, 2013 came and went and neither discovery was provided, a \$500 payment made nor was the stipulation ever executed and returned to Washington County Attorney's Office for filing with the Court.

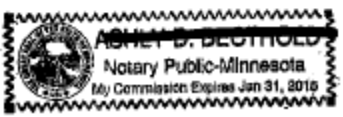
8. On August 13, 2013 the attached Exhibit 4 was sent to counsel for the Petitioner.

9. As of the date of this Affidavit counsel for the Petitioner has neither provided discovery, paid the \$500 or provided any explanation as to the failure and refusal to provide discovery, sign the stipulation that would have permitted entry of the order or take any other action.

~~Richard D. Davidson~~

Subscribed and sworn to before me
this 9th day of September, 2013.

~~Notary Public~~



MNMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA
COUNTY OF WASHINGTON

MINNESOTA TAX COURT
REGULAR DIVISION

~~_____~~

Petitioner,

**AFFIDAVIT OF
RICHARD D. HODSDON**

vs.

Court File No. 82-CV-~~_____~~

County of Washington

Respondent.

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

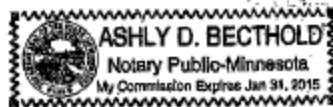
~~Richard D. Hodson~~, being first duly sworn under oath, deposes and states:

1. I am personally familiar with the content of this Affidavit and the efforts made at discovery and resolution of this discovery dispute prior to bringing this action before the court.
2. On or about March 6, 2013 interrogatories and request for production of documents were served upon counsel for the petitioner by the undersigned by means of the United States mail.
3. On April 22, 2013, the attached Exhibit A was served upon counsel for the Petitioner.
4. On May 6, 2013, the attached Exhibit B was served upon counsel for the petitioner.
5. As of this date neither the discovery requests nor letters have been responded to.

~~Richard D. Hodson~~
Richard D. Hodson

Subscribed and sworn to before me
this 20 day of May, 2013.

~~Ashly D. Bethold~~
Notary Public



MNMAAO – TAX COURT 101 – Q&A



OFFICE OF THE WASHINGTON COUNTY ATTORNEY
PETER J. ORPUT COUNTY ATTORNEY

April 22, 2013

[REDACTED]
[REDACTED]
33 South Sixth Street Suite 4160
Minneapolis, MN 55402

RE: [REDACTED] vs. County of Washington
County Attorney File No. CV-2013-0000
Court File No. 82-CV-11-0604
PIN: 05-030-00-00-0000

Dear Mr. Turner:

I acknowledge receipt of your responses to the County's Request for Admissions. However, you did not provide responses to Interrogatories and those responses are now overdue. Please provide the same at your earliest convenience. Failure to receive the information effectively precludes a meaningful response from Washington County as required by the Court's Scheduling Order. I trust you will be able to get the information without the necessity of involving the Court and I thank you for your prompt attention to this matter.

Very truly yours,

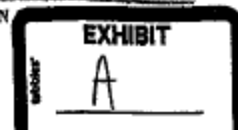
PETE ORPUT, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

[REDACTED SIGNATURE]

Richard D. Probst
Assistant County Attorney
Telephone: (651) 430-6119
E-Mail: Rick.Probst@co.washington.mn.us

cc: Nellie Traber, Washington County Deputy Assessor

LAW ENFORCEMENT CENTER 15015 62ND STREET NORTH PO BOX 6 STILLWATER, MN
PHONE: 651-430-6115 TTY: 651-430-6246
WWW.CO.WASHINGTON.MN.US
AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER



MNMAAO – TAX COURT 101 – Q&A



OFFICE OF THE WASHINGTON COUNTY ATTORNEY
PETER J. ORPUT COUNTY ATTORNEY

May 6, 2013

~~_____~~
Attorney at Law
33 South Sixth Street Suite 4160
Minneapolis, MN 55402

RE: ~~_____~~ vs. County of Washington
Court File No. 82-CV-~~_____~~
County Attorney File No. CV-~~_____~~

Dear ~~Mr. Toman~~:

A review of the file indicates that on March 6, 3024, I served your office with Respondent's First Set of Interrogatories and that on April 22, 2013, I requested a status update on our discovery requests. As of today I have not received a response to either letter.

I would ask that you provide answers to our requests for discovery by May 14, 2013, or be advised that I will be seeking appropriate relief from the Court.

Very truly yours,

PETE ORPUT, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

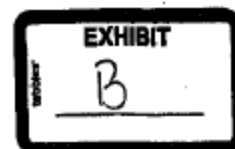
~~_____~~
~~_____~~
~~_____~~

Assistant County Attorney
Telephone: (651) 430-6119
E-Mail: ~~rick.hedden@_____~~ washington.mn.us

RDH/vk

cc: ~~Nalle Hahn~~, Washington County Assessor

LAW ENFORCEMENT CENTER 15015 62ND STREET NORTH PO BOX 6 STILLWATER, MN 55082-4006
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MNMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA

MINNESOTA TAX COURT

COUNTY OF WASHINGTON

REGULAR DIVISION

~~_____~~

Petitioner,

vs.

County of Washington

Respondent.

**NOTICE OF MOTION AND MOTION
OF RESPONDENTS TO DISMISS,
COMPEL DISCOVERY OR
ALTERNATIVELY TO DISMISS,
PURSUANT TO RULE 37, MINN. R. CIV. P.
AND MINN. RULE 8610.0070**

Court File No. 82-CV-~~11-260~~

TO: ~~Edward, Inc.~~ and attorney, ~~Douglas E. Turner~~, 233 South Sixth Street, Suite 4160,
Minneapolis, MN 55402

PLEASE TAKE NOTICE THAT on July 11, 2013, at 10:00 a.m., by telephonic conference call before the Honorable Joann Turner, the undersigned will move for an order from the Tax Court compelling discovery or, alternatively, dismissing the Petition in this matter because of the Petitioner's unexcused failure to respond to Respondent's Interrogatories and Request for Production of Documents. Further, Respondent will move for an order of the court awarding its costs and disbursements herein.

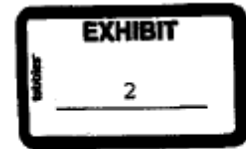
This motion is based upon Rule 37, Minn. R. Civ. P. and Minnesota Rule 8610.0070, the pleadings filed herein, the attached Affidavit and a statement of points and authorities submitted herewith.

Dated this 28 day of May, 2013.

PETE ORPUT, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

~~_____~~
~~_____~~

Assistant Washington County Attorney
Washington County Government Center
15015 62nd Street North
P. O. Box 6
Stillwater, MN 55082
(651)430-6115



MNMAAO – TAX COURT 101 – Q&A

[Redacted]

From: [Redacted]
Sent: Thursday, July 11, 2013 11:18 AM
To: 'turner@hnclaw.com'
Subject: [Redacted] County of Washington (82-CV- [Redacted])
Attachments: [Redacted] Stip and order.PDF

Mr. Turner:

Attached is the proposed stipulation and order.

[Redacted]
[Redacted] Legal Assistant
Washington County Attorney's Office
☎ (651) 430-6141 & (651) 430-6163



The contents of this e-mail are intended for the named addressee only. It may contain information that may be private or confidential. Unless you are the named addressee or an authorized designee, you may not copy or use, or disclose it to anyone else. If you received this in error, please notify us immediately and then destroy it.



MNMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA
 COUNTY OF WASHINGTON

MINNESOTA TAX COURT
 REGULAR DIVISION

**STIPULATION AND ORDER
 COMPELLING DISCOVERY**

Petitioner,

vs.

Court File No. 82-CV _____

County of Washington,

Respondent.

STIPULATION

In resolution of the respondent's motion to compel discovery the parties by and through their respective counsel do hereby stipulate and agree to entry of the below order.

FINDINGS AND ORDER

The above captioned matter came before the Court on stipulation of the parties in regard to the Respondent's motion to compel discovery. The Respondent was represented by Richard E. Hedlund, Assistant Washington County Attorney. The Petitioner was represented by Douglas E. Turner. Based upon the stipulation of the parties the Court issues the following order:

1. On or before July 31, 2013, the Petitioner shall respond fully and completely to the Interrogatories and Request for Production of Documents served upon its counsel on or about March 6, 2013.
2. If Petitioner fails to comply with this Court's Order as directed in paragraph 1 herein, upon written notice of the same being provided to this Court by Respondent's counsel, the petitioner shall pay to the respondent as a sanction for such failure the amount of \$500.00.

MNMAAO – TAX COURT 101 – Q&A

Dated: _____

~~HANBERY & TURNER, P.A.~~

~~Douglas E. Turner, #0275548~~
Attorney for Petitioner
Hanbery & Turner, P.A.
33 South Sixth Street, Suite 4160
Minneapolis, MN 55402
(612)340-9855

Dated: July 11, 2013

PETE ORPUT, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

~~Richard D. H. [Signature]~~

~~Richard D. H. [Signature]~~
Assistant Washington County Attorney
Washington County Government Center
15015 62nd Street North
P. O. Box 6
Stillwater, MN 55082
(651)430-6115

IT IS SO ORDERED

Dated: July _____, 2013

Honorable JoAnn Turner
Judge of the Tax Court

MNMAAO – TAX COURT 101 – Q&A



OFFICE OF THE WASHINGTON COUNTY ATTORNEY
PETER J. ORPUT COUNTY ATTORNEY

August 13, 2013

[Redacted]
[Redacted]
33 South Sixth Street, Suite 4160
Minneapolis, MN 55402

RE: [Redacted] vs. County of Washington
Court File No. 82-CV-14255
County Attorney File No. CV-3
PIN: [Redacted]

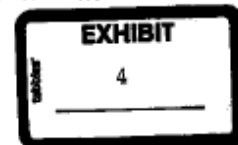
Dear Mr. [Redacted]

I write to you to express my deep disappointment as to how this file has been handled. You will recall I had scheduled a motion hearing to compel responses to discovery or in the alternative to dismiss this petition. That motion was to be heard before Judge Turner on July 11, 2013. That morning you and I had a telephone conversation in which you committed to an agreement in exchange for me withdrawing my motion. As part of that commitment you agreed to enter into a stipulation in which on or before July 31, 2013 you would forward response to discovery or if you did not your client would pay sanctions to the county in the amount of \$500. That very day I forwarded a signed copy of that stipulation to your office. On multiple occasions I contacted you to inquire as to the status of the same because I needed your signature on the documents so we could submit it to the court. You never provided this document back to me despite assurances by telephone message and email that you would.

July 31st has long come and gone. You have neither provided a signed copy of the stipulation, the discovery nor paid to the county the \$500 that would have been due and owing had you returned the stipulation signed in a timely manner so it could be signed by the judge.

I confess I was reluctant to enter into this stipulation with you on July 11, 2013 as my clients had expressed to me some concern that the agreement would not be complied with. I made assurances that as a reputable attorney and officer of the court you would ensure this matter was resolved consistent with the agreement we reached that morning. I confess that I now feel like I have played the part of a fool and extended false reassurances to my client. I will therefore proceed with scheduling a motion to dismiss as a sanction for what I can only take to be an intentional breach of not only discovery obligations but the agreement we had arrived at on July 11, 2013.

LAW ENFORCEMENT CENTER 15015 62ND STREET NORTH PO BOX 6 STILLWATER, MN 55082-0006
PHONE: 651-430-6115 TTY: 651-430-6246
www.co.washington.mn.us
AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER



MNMAAO – TAX COURT 101 – Q&A

Very truly yours,

PETE ORPUT, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

~~Rick Hodaden~~
Assistant County Attorney
Telephone: (651) 430-6119
E-Mail: ~~Rick.Hodaden@~~ ~~Washington.mn.us~~

RDH/thh

cc: ~~_____~~

MNMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA

MINNESOTA TAX COURT

COUNTY OF WASHINGTON

REGULAR DIVISION

[REDACTED]

Petitioner,

**STATEMENT OF POINTS
AND AUTHORITIES**

vs.

County of Washington

Court File No. 82-CV-[REDACTED]

Respondent.

INTRODUCTION

On or about April 27, 2011, the Petitioner through its counsel filed a Petition for Review of Real Estate Taxes payable in the year 2011. The Washington County Assessor's Office subsequently attempted through informal means to obtain relevant information to resolve this matter. The Assessor's Office was unsuccessful in obtaining that highly relevant information so the respondent sought it by means of formal discovery.

On or about March 6, 2013, Interrogatories and Request for Production of Documents were served upon the petitioner's counsel. No response was received to the same in a timely manner and on or about April 22, 2013, a letter was sent to petitioner's counsel requesting that the Interrogatories and Request for Production of Documents information responded to. A copy of that letter is attached to this memorandum. No discovery was forthcoming as a result of that inquiry. On or about May 6, 2013, an additional letter requesting discovery responses was sent to counsel for the petitioner. No discovery response was provided nor was the matter been otherwise resolved. As a result of the refusal to provide discovery on May 28, 2013 the respondent served and filed a notice of motion and motion to compel discovery to be set on July

MNMAAO – TAX COURT 101 – Q&A

11, 2013. Despite the fact that was almost one and half months advance notice it was not until the morning of July 11, 2013 approximately one hour before the scheduled hearing date that counsel for the Petitioner contacted the respondent in effort to resolve the discovery dispute. In that conversation counsel for the petitioner agreed to sign a stipulation that would permit the Court to enter into an order concerning discovery. The stipulation and order was to provide that discovery would be provided by July 31, 2013 or else the petitioner would pay to the respondent as a sanction the sum of \$500. The proposed stipulation and order was forwarded to the counsel for the petitioner within approximately one hour of entry into that agreement. Despite that fact to this date it has never been signed nor returned to the respondent's counsel for submission to the Court. The respondent has advised and reminded of that fact on multiple occasions and as of the date of this document has neither provided discovery, a signed stipulation nor payment of any funds. This motion is brought to dismiss the petition as a sanction for the petitioner's chronic, repeated, and inexcusable failure to provide basic and highly relevant discovery information and failure to honor the terms of discovery commitments.

ARGUMENT**THE COURT SHOULD DISMISS THE TAX PETITION**

Pursuant to the Rules of Civil Procedure and Tax Court Rules on or about March 6, 2013, the Respondent's counsel served upon Petitioner's counsel a set of Interrogatories and Request for Production of Documents. There was virtually no response to the same and they were clearly long past due. As noted above this is more than simply a situation of dilatory discovery. The petitioner has made explicit promises of compliance with discovery and in reliance on those promises the respondent has withdrawn its motion to compel discovery. Its good faith has been met with total noncooperation and intentional refusal to meet discovery obligations by the

MNMAAO – TAX COURT 101 – Q&A

petitioner. This case is subject to a scheduling order that puts certain burdens on the parties. The information sought is necessary for the respondent to properly comply with the order and prepare for trial. The above-described efforts at informal resolution were markedly unsuccessful. Therefore the respondent brings this motion to dismiss the petition as a sanction for failure to meet discovery obligations based upon the bad faith of the petitioner.

Under the relevant rules of civil and tax court procedure and pronouncements of the Minnesota courts this court has a broad range of discretion in compelling discovery and ordering sanctions including dismissal for failure to meet the requirements of discovery. *Bowman v. Bowman*, 493 N.W.2d 141 (Minn. App. 1992); *Przymus v. Comm'r of Public Safety*, 488 N.W.2d 829 (Minn. App. 1992); *Lundin v. Stratmoen*, 85 N.W.2d 828 (Minn. 1957). An award of attorney's fees and costs is clearly an appropriate component of any sanction. *Bowman v. Bowman, supra*. Chronic failure to meet discovery obligations can justify a court's order for dismissal of the action. *O'Neil v. Corrick*, 239 N.W.2d 230 (Minn. 1976); *Breza v. Schmitz*, 248 N.W.2d 921 (Minn. 1976); *State by Humphrey v. RiMel, Inc.*, 417 N.W.2D 102 (Minn. App. 1987); *Thomas v. Fey*, 376 N.W.2d 266 (Minn. App. 1985).

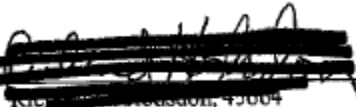
An order dismissing the case for failure to meet discovery obligations is particularly appropriate in this case due to the bad faith of the petitioner. It must be presumed that the information sought by the respondent in these discovery requests is and has long been in the possession of the petitioner. If the petitioner did not have this information, petitioner would have had no basis to file the petition with this court in the first place. In that case the petitioner should be sanctioned for filing a frivolous lawsuit. Therefore it can only be presumed that the failure of the petitioner to respond to these discovery requests is a willful act, intended to conceal from the

MNMAAO – TAX COURT 101 – Q&A

Respondent and this court highly probative and relevant evidence. That is something this court should not allow.

Dated this 9th day of September, 2013.

PETE ORPUT, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA


Assistant Washington County Attorney
Washington County Government Center
15015 62nd Street North
P. O. Box 6
Stillwater, MN 55082
(651)430-6115

MINMAAO – TAX COURT 101 – Q&A

STATE OF MINNESOTA
COUNTY OF WASHINGTON

MINNESOTA TAX COURT
REGULAR DIVISION

**ORDER
DISMISSING THE TAX PETITION**

Petitioner,

vs.

Court File No. 82-CV-_____

County of Washington

Respondent.

The above captioned matter came before this Court on _____ at _____ on Respondent's motion to dismiss the tax petition. The Respondent was represented by Richard D. Hodsdon, Assistant Washington County Attorney. The Petitioner was represented by Douglass E. Turner. Based upon the files and records of the proceedings herein the Court issues the following:

ORDER

1. Based upon the chronic bad faith of the petitioner in responding to discovery obligations, this matter is dismissed with prejudice.
- 2. The Respondent is therefore awarded costs and attorneys fees in the amount of \$_____.

Dated: _____

BY THE COURT:

Tax Court Judge

MNMAAO – TAX COURT 101 – Q&A

Sample Commercial Field Inspection Worksheet

Commerical Field Inspection Worksheet					
ID Number:		Roof Cover		Heating	
Property Address:		Pitch & Gravel	Radiant	%	%
		Wood Shingle	Forced Air	%	
Occupancy ie office, retail, etc.:		Asphalt Shingles	Hot Water	%	Parking
		Other	Space	%	Ramp
		Air Conditioning	Package	%	Surface
Year Built:		Package	HVAC	%	Underground
Effective Age:		Central	Other	%	Garage
Construction Quality:		Wall			# of spaces
Construction	Condition	% of Area A/C			Detached
A) Steel Frame	Excellent		Sprinkler		Building Area
B) Rein. Concrete	Above Average	% of Area		Area Above Ground	Attached
C) Concrete Block	Average			Mezzanine	Built-In
D) Wood Frame	Fair		Floors	Use Of Mezzanine	Tenancy
E) Pre-Fab	Poor	Cement		Perimeter	Single
S)Steel		Hardwood		Canopy	Multiple
P)Pole	Exterior Walls	Carpet		Building Sketch on the back side of	
Other	Brick	Tile		card.	Notes
Basement Area	Stucco	Unfinished			
NO	Wood			Plumbing	
1/4	Metal		Interior Walls	Restrooms	
1/2	Concrete	Plaster			
3/4	Glass	Paneling		Electrical	
Full	Other	Drywall		Above Average	
Use:		Unfinished		Average	
	Elevator			Below Average	
Roof Structure	Quantity				
Wood		Ceiling		Height	
Steel		Security System	Acouse Ceiling	Avg/Story	
Precast	Yes		Drywall	# of Stories	
Other	No		Unfinished	Clear Height	
Depreciation Comments (Physical, Functional, and Economic)					
Inspection Date:					
By:					

MNMAAO – TAX COURT 101 – Q&A

Construction Type

- Class A – Fireproofed structural steel frames with reinforced concrete or masonry floors/roofs.
- Class B – Reinforced concrete frames and concrete or masonry floors and roofs.
- Class C – Masonry load bearing walls may have framing consisting of other materials.
- Class D – Wood or steel studded load bearing walls.
- Class S – Steel
- Class P – Pole

Quality of Construction (Grade)

- Good
- Good/Average
- Average – Majority of properties
- Fair
- Low

The quality of construction may vary within a property each should be graded separately. Example being office/warehouse properties the office may be good and the warehouse may be average.

Wall Height

1. Methods:
 - Measure with a steel tape.
 - Count the courses of block and size of block.
 - Count overhead door panels and estimate distance over that. Measure the height of each panel and multiply by the number of panels.

MNMAAO – TAX COURT 101 – Q&A

Number of Concrete Block & Bed Joint Courses	Wall Height in feet - inches	Concrete Block & Bed Joint Courses	Wall Height in feet - inches	Concrete Block & Bed Joint Courses	Wall Height in feet - inches
1	8"	21	14'-0"	41	27'-4"
2	1'-4"	22	14'-8"	42	28'-0"
3	2'-0"	23	15'-4"	43	28'-8"
4	2'-8"	24	16'-0"	44	29'-4"
5	3'-4"	25	16'-8"	45	30'-0"
6	4'-0"	26	17'-4"	46	30'-8"
7	4'-8"	27	18'-0"	47	31'-4"
8	5'-4"	28	18'-8"	48	32'-0"
9	6'-0"	29	19'-4"	49	32'-8"
10	6'-8"	30	20'-0"	50	33'-4"
11	7'-4"	31	20'-8"	51	34'-0"
12	8'-0"	32	21'-4"	52	34'-8"
13	8'-8"	33	22'-0"	53	35'-4"
14	9'-4"	34	22'-8"	54	36'-0"
15	10'-0"	35	23'-4"	55	36'-8"
16	10'-8"	36	24'-0"	56	37'-4"
17	11'-4"	37	24'-8"	57	38'-0"
18	12'-0"	38	25'-4"	58	38'-8"
19	12'-8"	39	26'-0"	59	39'-4"
20	13'-4"	40	26'-8"	60	40'-0"

Building Area Definitions

- **Basement** – The area of a building which is either partially or completely below grade. The substructure of a building. Basements should be computed separately from the upper floors as construction costs differs. Finished basements, i.e. those containing offices, retail stores, etc., as a general rule of thumb cost 75% to 80% of the comparable above ground portion of the building. Semi-basements that are half exposed will cost 85% to 90% of the same figure.
- **Mezzanines** – An intermediate floor with less area than the regular floors. A secondary area of less importance in relation to the main level. A mezzanine can be either enclosed or open to the balance of the building. This area may be added after original construction. Construction costs for mezzanines differ from those of the rest of the building, and should be computed separately.
- **Gross Building Area (GBA)** – Gross building area is the total floor area of a building, excluding basements, mezzanines, canopies and enclosed areas, measured from the exterior of the walls.
- **Gross Leasable Area (GLA)** – Total floor area designed for the occupancy and exclusive use of tenants, including basements and mezzanines; measured from the center of the joint partitioning to the outside wall surfaces.

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- Gross Living Area (GLA) – Total area of finished, above-grade residential space; calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space. (Finished basements and attic areas are not generally included in total gross living area. Local practices, however, may differ.)

Heating and Cooling Descriptions

- Forced air unit – Gas-fired or electric-powered unit which circulates the warm air with a motor driven fan. Cool air is taken from various points in the building, passed over a combustion chamber and flue, and distributed throughout the duct system.
- Package unit – Basically the same as central air (warmed and cooled air) except for the capacity amount of ductwork involved. Typically, a small package system contains one short duct and thermostat per unit, and it is not uncommon to find a number of individual units servicing one building. A “split system” is a type of package which has a separate gas-fired, forced-air heating unit either gas or electric remote refrigerated cooling unit. These are individual roof-mounted units or ground units having their own individual compressors.
- HVAC – A complete heating, ventilating, and air conditioning system for restaurants, general hospitals, and surgical centers.
- Hot Water or Hydronic (also referred to as In-floor Radiant Heat) – In simple terms, refers to a central heating system that utilizes hot water to heat a building. Hot water pumped by circulator through pipes to radiators and cold water is returned to the boiler to be reheated. In radiant heating systems, hot water is pumped through narrow pipes embedded in floors, walls, and ceilings rather than through radiators.
- Steam – Produced by a boiler, distributed through a one-pipe gravity system (identical to the piping used in hot water systems), and transferred through radiators. More complex and expensive two-pipe systems are found in larger, high-quality structures. In many states, licenses are required for certain classes of steam boilers.
- Electric – Includes heat pumps, wall heaters, baseboard units, duct heating units, heating units installed in air-conditioning ducts, and radiant heat produced by electric heating elements embedded in floors, walls, and ceilings. The automatic regulation of a heating system helps it operate efficiently. A multiple-zone system with separate thermostats is more efficient than a single zone system with one thermostat. Complex systems provide an individual temperature control for each room. The efficiency of certain systems can be increased by putting a thermostat on the outside of the building. This helps building operators anticipate how much heat the system will need to produce.
- Space heaters – Comprised of individual units generally suspended from the ceiling and roof structure. Within the unit there is generally a fan or blower system used to move the warm air. This type of system is typically utilized in structures with large open areas.
- Radiant – Individual gas fired units suspended from the ceiling or roof structure, with characteristic long tube which transfers heat by direct radiation to surrounding objects.

Number of Stories

- Do not include mezzanines as second story.

Commercial Leases

There are three basic types of commercial real estate leases. These leases are organized around two rent calculation methods: “Net” and “Gross.” The Gross Lease typically means a tenant pays one lump sum for rent, from which the landlord pays his expenses. The Net Lease has a smaller base rent, with other expenses paid for by the tenant. The Modified Gross Lease is a happy medium between the two. While terms vary widely building by building, this basic overview will help you understand the differences between them when analyzing the income data.

Gross Lease or Full Service Lease

In a Gross Lease, the rent is all-inclusive. The landlord pays all or most expenses associated with the property, including real estate taxes, insurance, and maintenance out of the rents received from the tenant(s). Utilities and janitorial services are included within one easy, tenant-friendly rent payment. Excess utility consumption beyond building standards is sometimes charged back to the tenant. This will be clarified in the lease.

Single Net Lease (N Lease)

In this lease, the tenant pays base rent plus a pro-rata share of the buildings property tax (meaning a portion of the total bill based on the proportion of total building space leased by the tenant); the landlord covers all other building expenses. The tenant also pays utilities and janitorial services.

Double Net Lease (NN Lease)

The tenant is responsible for base rent plus pro-rata share of property taxes and property insurance. The landlord covers expenses for structural repairs and common area maintenance. The tenant once again is responsible for their own janitorial and utility expenses.

Triple Net Lease (NNN Lease)

This is the most popular type of net lease for commercial freestanding buildings and retail space. It is known as the “net net net lease”, NNN Lease or triple net lease, where the tenant pays all or part of the three “nets” – property taxes, insurance, and CAMS – on top of a base monthly rent. Common area utilities and operating expenses are usually lumped in as well. Tenants also pay the costs of their own occupancy, including janitorial services, utilities, and their own insurance and taxes.

Landlords typically estimate expenses and charge tenants a portion of these expenses based on their proportionate, or pro-rata share. A tenant who leases 1,000 sqft of a 10,000 sqft building would be expected to pay 10% of the buildings taxes, insurance, and CAMS for example.

Triple net leases tend to be more landlord-friendly, and tenants should carefully review NNN fees and negotiate caps on the amounts they can be raised annually. A NNN lease can also fluctuate from month to month and year to year as operating expenses increase or decrease, making the company’s expenses forecasting tricky.

There are tenant benefits in the NNN leases. Transparency is an excellent perk, since tenants can see business operating expenses in relation to what they are charged. Cost savings in operating expenses

MNMAAO – TAX COURT 101 – Q&A

are passed on to the tenant rather than the landlord. In addition, the monthly rent in a NNN lease is potentially lower than in a gross lease, as tenants have a higher level of responsibility for the building.

Absolute Triple Net Lease

This is a less common option that is more rigid and finding than the NNN lease, where tenants carry every imaginable real estate risk, for example being responsible for construction expenses to rebuild after a catastrophe, or for continuing to pay rent even after the building has been condemned.

Modified Gross Lease

As the Gross lease is more tenant-friendly, and the net lease tends to be more landlord-friendly, there exists a compromise lease for the convenience of both parties. The modified gross lease (sometimes called the modified net lease) is similar to a gross lease in that the rent is requested in one lump sum, which can include any or all of the “nets” – property taxes, insurance, and CAMS. Utilities and janitorial services are typically excluded from the rent, and covered by the tenant. Tenants and landlords negotiate which “nets” are included in the base rental rate.

The modified gross lease is more popular with tenants, because its flexibility translates into an easier agreement between tenant and landlord. Unlike the NNN lease, if insurance, taxes or CAM charges increase, the lease rate would not change. Of course, if those expenses decrease, the cost savings is passed onto the landlord. As janitorial services and electricity are not covered, tenants can better control how much they spend compared to a gross lease.

LEASE TYPE	UTILITIES	PROPERTY TAXES	INSURANCE	PROPERTY MAINTENANCE	STRUCTURAL REPAIRS
GROSS	LANDLORD	LANDLORD	LANDLORD	LANDLORD	LANDLORD
MODIFIED GROSS	TENANT AND LANDLORD SHARE EXPENSES				
SINGLE NET	TENANT	TENANT OR LANDLORD PAYS ONE OR THE OTHER		LANDLORD	LANDLORD
DOUBLE NET	TENANT	TENANT	TENANT	LANDLORD	LANDLORD
TRIPLE NET	TENANT	TENANT	TENANT	TENANT	LANDLORD (We only use Mgmt & Reserves)
ABSOLUTE NET	TENANT	TENANT	TENANT	TENANT	TENANT

On a side note, when reviewing the actual lease and owner’s income & expense data – *REMEMBER*: Tenant Improvements are typical in all turnovers. We do not reduce for Tenant Improvements unless they are excessive because we utilize market rent.

Examples of Allowable Expenses

Management (% of EGI)

Insurance

Utilities

Maintenance

Legal & Accounting Fees

Employees' Wages & Fringe Benefits

Yard Care

Miscellaneous Expenses

Reserves for Replacement

Examples of Non Allowable Expenses

Depreciation (Depreciation, defined as a loss in value from any source, is considered in the income approach as recapture and treated as part of the capitalization rate rather than as an operating expense. See page 259 in the red book)

Capital Improvements (e.g. New pool, or an addition)

Franchise Fees

Owners Personal Expenses

Debt Services

Real Estate Taxes (Since real estate taxes are included in the capitalization rate, they are not considered an allowable expense in determining the net operating income. Some appraisers do include real estate taxes as an allowable expense but then a lower cap rate is used to compute value)