

NOV 23 1998

FILED

STATE OF MINNESOTA
IN THE SUPREME COURT

FILE NO. C1-98-2035

IN RE: MINNESOTA PROPERTY TAX
OVERPAYMENT LITIGATION

DEFENDANT ITASCA COUNTY'S
RESPONSE TO PLAINTIFFS' PETITION FOR AN
EXTRAORDINARY WRIT

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INTRODUCTION

Itasca County opposes the Plaintiffs' Petition for an Extraordinary Writ dated November 13, 1998 on two grounds: First, granting the Writ will violate the Plaintiffs' stipulation with Itasca County that the instant matter be transferred to the Minnesota Tax Court; and, secondly, granting the Writ will violate Itasca County's right to certain procedural safeguards and a hearing in asserting its position that class certification is improper in the Itasca County proceedings.

ARGUMENT

I. GRANTING THE INSTANT PETITION WILL VIOLATE THE PLAINTIFF'S STIPULATION WITH DEFENDANT ITASCA COUNTY.

The Plaintiffs originally brought their complaint in District Court. See attached Exhibit #1 (Plaintiffs' Complaint dated August 14, 1997). On October 30, 1997 counsel for the Plaintiffs and the Defendant stipulated that the matter be transferred to the Minnesota Tax Court. See attached Exhibit #2 (Stipulation to Transfer to Minnesota Tax Court). On December 19, 1997 the District Court approved the stipulation and transferred the case to the Minnesota Tax Court. See attached Exhibit #3 (Order of District Court dated December 19, 1997).

The Plaintiffs' instant Petition is one that seeks an Order of this Court which, if granted, will allow the Plaintiffs to repudiate its stipulation with Itasca County. The Petition should be denied. Minn. Stat. 480.051. See also Plaintiffs' Petition at page 3, asserting that a Party's act of abridging a stipulation violates Minn. Stat. 480.051. See also Plaintiffs' Petition at page 22 and Authorities cited (stipulations are highly favored; parties entering into stipulations should be bound by them).

For these reasons, the Plaintiffs' Petition for an Extraordinary Writ should be denied.

II GRANTING THE INSTANT PETITION WILL VIOLATE ITASCA COUNTY'S RIGHT TO THE PROCEDURAL SAFEGUARDS OF RULE 23 IN ASSERTING ITS OPPOSITION TO CLASS ACTION CERTIFICATION.

The Plaintiffs request in the instant Petition that the Court appoint a single Tax Court Judge to preside over the 20,000 potential claims that they claim exist. Plaintiffs' Petition at page 21. To the extent that this request is

one considered by this Court to be a Motion for Class Action Certification, Itasca County vehemently opposes it. Itasca County has communicated to Plaintiffs' counsel that it opposes class action certification in these proceedings. In Itasca County, the number of potential claims asserted by the Plaintiffs is small, possibly in the 10-15 in number range. Whether any of the claimed parcels are entitled to any relief will be subject to the unique facts and circumstances relating to each parcel and its ownership. There are fact-based issues whether Plaintiffs named representative, Mr. Klegstad, raises claims typical to those of the class. See E.G. Rule 23.01(c), Rules of Civil Procedure. The fact-based issues presented by Rule 23.01 and 23.02 require resolution before a class action certification determination is made.

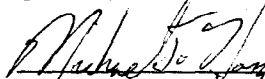
The instant Petition is woefully inappropriate to bypass the factual and legal determination process contained in Rule 23 to address the appropriateness of class certification. As made apparent from the Rule, there are numerous fact and legal issues necessary for the Court to consider before making its Order. Itasca County should be given a meaningful opportunity to respond in a motion/hearing process with the opportunity to submit affidavits in defense of its position, before a court deliberates and ultimately rules upon whether the criteria of Rule 23 are met. For these reasons, the instant Motion should be denied.

CONCLUSION

For these reasons, Itasca County opposes the Plaintiffs' Petition for an Extraordinary Writ.

Dated: 11-18-98

Respectfully submitted,



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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

CASE TYPE: STATUTORY/EQUITABLE

Guy Klegstad, Individually, and on
behalf of all other persons similarly
situated,

File No.

Plaintiffs,

COMPLAINT

v.

CLASS ACTION

Robert O. Zuehlke, in his capacity
as Treasurer and Auditor for Itasca
County; Itasca County Board of
Commissioners; and Itasca,
Minnesota,

JURY TRIAL DEMANDED

Defendants.

PARTIES

1. Plaintiff Guy Klegstad ("Klegstad" or as Class Representative "Plaintiffs") is the owner of commercial property located at 1005 Hwy 2 West, Cohasset, Minnesota. Klegstad made overpayments to Defendant Itasca County during the period from May 15, 1987 to the present, based exclusively upon the Defendants' incorrect and mistaken property tax bills.

2. Defendant Robert O. Zuehlke is the County Treasurer and Auditor for Itasca County. Defendant Itasca County Board of Commissioners is the legislative and executive body charged by law with the duty of levying commercial and industrial property taxes on the Plaintiff Class in accordance with Minn. Stat. § 275.08 subd. 1(a). Mr. Zuehlke and the Itasca County Board of Commissioners are being sued in their official capacities in connection with the preparation of property tax bills and the collection of taxes on commercial, industrial, and utility

property in Itasca County. Defendant Itasca County is a political subdivision of the State of Minnesota.

CLASS ACTION ALLEGATIONS

3. Plaintiffs bring a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of themselves and as class representatives on behalf of a class of similarly situated owners of all commercial, industrial and utility property in Itasca County (the "Class"). The Plaintiffs and the Class all mistakenly made overpayments on their real estate property taxes during the period from May 15, 1987 to the present (the "Class Period").

4. The precise number of members in the Class is presently unknown to the Plaintiffs, as class representatives, but the identity and address of the Class and the identity of the subject properties can be determined from property tax records and state, county and other local governmental public information available from Itasca county and its municipalities.

5. The claims of the Plaintiffs as class representative are typical of the claims of the Class, and the Plaintiffs as class representative have no claims that are antagonistic to those of the Class.

6. Plaintiffs as class representative will fairly and adequately represent the members of the Class. Plaintiffs have retained counsel to represent the Plaintiffs and the Class who are competent and experienced in class action and complex litigation.

7. A class action is superior to other methods for the fair and efficient adjudication of the controversy because the damages suffered by many individuals of the class may be relatively small in relationship to the costs of litigation. The expense and burden of individual

litigation makes it difficult, if not impossible, for members of the class to redress the wrongs done to them individually.

8. There will be no unusual difficulty in the management of this case as a class action. On the other hand, if this suit is not certified as a class action, the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants opposing the class, would as a practical matter result in disposition of the interests of the other members not parties to the adjudication, would substantially impair or impede their ability to protect their interests, and would prejudice members of the class.

9. Common questions of law and fact exist and predominate over questions affecting only individual members of the class.

10. Common questions of law and fact with respect to Plaintiffs and all other Class members include, but are not limited to, the following:

- (a) Did the Defendants make a mistake in calculating the amounts due on the first \$100,000 of assessed value for one parcel of commercial, industrial or utility property owned by Plaintiffs and the Class?
- (b) Did Plaintiffs and the Class mistakenly overpay the amounts due on the first \$100,000 of assessed value for one parcel of commercial, industrial or utility property owned by Plaintiffs and the Class?
- (c) Did the amounts demanded by the Defendants and paid by Plaintiffs and the Class exceed the amounts permitted by Minn. Stat. § 275.08, subd. 1(a)?
- (d) Are Plaintiffs and the Class entitled to a refund of overpayments under Minn. Stat. § 276.19?
- (e) Are Plaintiffs and the Class entitled to a judgment and other relief against the Defendants for the return of all funds mistakenly demanded and paid under the

equitable doctrines of money had and received, money paid by mistake, and unjust enrichment?

- (f) Are Plaintiffs and the Class entitled to a judgment against the Defendants for breach of an implied-in-law contract in failing to return funds which are owned by Plaintiffs and the Class?
- (g) Are Plaintiffs and the Class entitled to an adjustment of their property taxes pursuant to Minn. Stat. § 275.26?
- (h) Are Plaintiffs and the Class entitled to an abatement of their property taxes under Minn. Stat. § 375.192?
- (i) Have Defendants, through their acts and omissions, violated Plaintiffs' and Plaintiff Class constitutional rights?

For all of these reasons, this action should be certified and proceed as a class.

BACKGROUND FACTS

11. In 1985, the Minnesota Legislature revised Minn. Stat. § 273.13 so that the first \$100,000 in market value for every commercial, industrial, and utility property in a county is to be taxed at:

[A] class rate of 3.3% of the first \$100,000 of market value for taxes payable in 1990, 3.2% for taxes payable in 1991, 3.1% for taxes payable in 1992, and 3% for taxes payable in 1993 and thereafter, and 5.06% of the market value over \$100,000. In the case of state-assessed commercial, industrial and utility property owned by one person or entity, only one parcel has a reduced class rate on the first \$100,000 of market value. In the case of other commercial, industrial, and utility property owned by one person or entity, only one parcel in each county has a reduced class rate on the first \$100,000 of market value.

Minn. Stat. § 273.13, subd. 24, Class 3(a) (1989).

12. During the process of calculating the property tax bills of Plaintiffs and the Class for the Class Period, the Defendants failed to apply the "reduced class rate on the first \$100,000 of market value" for Plaintiff Class commercial, industrial and utility real property as required

under Minn. Stat. § 275.08, subd. 1(a). Upon information and belief, the Defendants' failure to correctly calculate the property tax bills of Plaintiffs and the Class is the result of a mistake made by the Defendants in applying the appropriate rate to the first \$100,000 in value on Plaintiff Class commercial, industrial or utility property under Minn. Stat. § 275.08, subd. 1(a).

13. As the result of the County's calculation error on the first \$100,000 of assessed value, during the Class Period the Defendants sent Plaintiffs and the Class property tax bills which were incorrect and overstated the amounts due by approximately \$2,000 per year. Plaintiffs and the Class justifiably relied upon the property tax bills and involuntarily paid the amounts the Defendants mistakenly said were due. These mistaken property tax bills and the mistaken payment of the bills by Plaintiffs and the Class resulted in overpayments to the Defendants.

14. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite these repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are the property of Plaintiffs and the Class.

15. As the direct and proximate result of the mistakes and overpayments hereinabove alleged, and the Defendants' refusal to refund the overpayments, Plaintiffs and the Class have suffered damages in excess of \$50,000, the exact amount of which shall be proven at trial.

COUNT I

Recovery Pursuant to Minn. Stat. § 276.19 of Overpayments

16. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 15, inclusive.

17. This claim includes a request for a declaratory judgment pursuant to Minnesota Statutes Chapter 555, and additional relief in the form of an injunction and money judgment.

18. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

19. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

20. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by the Plaintiffs and the Class during the Class Period.

21. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are due and owing to Plaintiffs and the Class.

22. The amounts overpaid by Plaintiffs and the Class constitute “overpayments” within the meaning of Minn. Stat. § 276.19, under which the responsible county official was and is obligated to notify Plaintiffs and the Class of the overpayments. The Defendants have not provided the Plaintiffs or the Class with notice required by the statute.

23. Plaintiffs and the Class are entitled to a refund of the amounts overpaid to the Defendants under Minn. Stat. § 276.19. Although Plaintiffs have made requests and demands for refund of the overpayments, the Defendants refuse to do so.

24. As the direct and proximate result of the acts and conduct of the Defendants regarding the overpayments as hereinabove alleged, Plaintiffs and the Class have been damaged and are entitled to the following relief:

- (a) A declaration of this court pursuant to Minnesota Statutes Chapter 555 that Plaintiffs and the Class are entitled to refunds of the overpayments under Minn. Stat. § 276.19;
- (b) A mandatory injunction compelling the Defendants to administer the refund of the overpayments in the manner required by Minn. Stat. § 276.19; and
- (c) A money judgment against the Defendants in the amount of the refunds to which the Plaintiffs and Class are entitled under Minn. Stat. § 276.19, together with interest thereon at the applicable rate.

COUNT II

Recovery of Money Had And Received

25. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 24, inclusive.

26. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded

was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

27. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

28. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by Plaintiffs and the Class during the Class Period.

29. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are the property of Plaintiffs and the Class.

30. Under the facts hereinabove alleged, Plaintiffs and Class are entitled to a judgment against the Defendants in the amount of the overpayments, with interest thereon, under the equitable doctrine of money had and received.

COUNT III

Recovery of Money Paid by Mistake

31. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 30, inclusive.

32. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

33. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

34. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by Plaintiffs and the Class during the Class Period.

35. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are the property of Plaintiffs and the Class.

36. Under the facts hereinabove alleged, Plaintiffs and Class are entitled to a judgment against the Defendants in the amount of the overpayments, with interest thereon, under the equitable doctrine of money paid by mistake.

COUNT IV

Breach of Contract

37. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 36, inclusive.

38. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

39. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

40. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by the Plaintiffs and the Class during the Class Period.

41. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are the property of Plaintiffs and the Class.

42. The Defendants were not and are not legally entitled to the overpayments paid by mistake. Upon the receipt of the overpayments, an implied-in-law contract was created which

obligates the Defendants to return the overpayments to Plaintiffs and the Class as the rightful owners.

43. The refusal of the Defendants to repay the overpayments constitutes a breach of the implied-in-law contract which exists between the Defendants and the Plaintiffs as representatives of the Class.

44. As the direct and proximate result of the Defendants breach of that contract, Plaintiffs and the Class have been damaged, the exact amount of which shall be proven at trial.

COUNT V

Unjust Enrichment

45. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 44, inclusive.

46. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

47. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

48. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by Plaintiffs and the Class during the Class Period.

49. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are the property of Plaintiffs and the Class.

50. The Defendants were not and are not legally entitled to the overpayments paid by mistake and have been unjustly enriched by the mistakes which resulted in the overpayments. Upon the receipt of the overpayments, a constructive trust was created under which the Defendants held the overpaid funds for the benefit of the Plaintiffs.

51. Plaintiffs and the Class are entitled to judgment ordering the Defendants to convey the funds held in the trust to Plaintiffs and the Class.

COUNT VI

Recovery Pursuant to Minn. Stat. § 275.26 of Excess Taxes Collected

52. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 51, inclusive.

53. This claim includes a request for a declaratory judgment pursuant to Minnesota Statutes Chapter 555, and additional relief in the form of an injunction and money judgment.

54. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

55. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

56. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by Plaintiffs and the Class during the Class Period.

57. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which are were mistakenly received by the Defendants and which are due and owing to Plaintiffs and the Class.

58. The amounts overpaid by Plaintiffs and the Class constitute an excessive collection of taxes within the meaning of Minn. Stat. § 275.26, under which the Defendants are required to correct the excessive collection of property taxes which violate Minn. Stat. § 275.08, subd. 1(a).

59. As the direct and proximate result of the acts and conduct of the Defendants regarding the excessive collection of taxes, as hereinabove alleged, Plaintiffs and the Class have been damaged are entitled to the following relief:

- (a) A declaration of this court pursuant to Minnesota Statutes Chapter 555 that Plaintiffs and the Class are entitled to a correction and adjustment in the amount of property taxes they have paid, all as required by Minn. Stat. § 275.26;

- (b) A mandatory injunction compelling the Defendants to correct and adjust the amount of property taxes collected by the Defendants, all as required by Minn. Stat. § 275.26; and
- (c) A money judgment against the Defendants in the amount of the excessive property taxes which the Plaintiffs and Class have paid, all as required under Minn. Stat. § 275.26, together with interest thereon at the applicable rate.

COUNT VII

Abatement of Property Taxes Pursuant to Minn. Stat. 375.192

60. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 59, inclusive.

61. This claim includes a request for a declaratory judgment pursuant to Minnesota Statutes Chapter 555, and additional relief in the form of an injunction and money judgment.

62. During the Class Period, the Defendants sent real estate property tax bills to Plaintiffs and the Class stating an amount certain that the Defendants represented and demanded was due and necessary to be paid by Plaintiffs and the Class to the Defendants as real estate property taxes.

63. Plaintiffs and the Class, believing the real estate property tax bills they received to be correctly stated, and justifiably relying thereon, paid the full amount stated therein to the Defendants in each of the years during the Class Period.

64. The real estate property tax bills Plaintiffs and the Class received from the Defendants during the Class Period were incorrect and mistakenly overcharged the Plaintiffs and the Class approximately \$2,000 each for the initial parcel of commercial, industrial or utility property owned by Plaintiffs and the Class during the Class Period.

65. The Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and

demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which are were mistakenly received by the Defendants and which are due and owing to Plaintiffs and the Class.

66. The abatement process provided by Minn. Stat. § 375.192 is a safety net provision intended by the Legislature to enable taxing authorities to give relief in appropriate cases where no relief may otherwise be afforded by Minnesota Statutes Chapter 278, whose strict time limitation for appeals of real estate tax assessments to the Minnesota Tax Court and other procedural requirements can sometimes cause injustice and hardship.

67. The Defendants have refused to consider all requests for abatement.

68. The abatement policy of the County Assessor in refusing to even consider the applications for abatements for all applicable years during the Class Period is arbitrary, capricious and unreasonable, and in plain contravention of the intention of the Legislature in enacting Minn. Stat. § 375.192.

69. As the direct and proximate result of the acts and conduct of the Defendants regarding the abatement of property taxes, as hereinabove alleged, Plaintiffs and the Class have been damaged and are entitled to the following relief:

- (a) A declaration of this court pursuant to Minnesota Statutes Chapter 555 that Plaintiffs and the Class are entitled to an abatement of property taxes pursuant to Minn. Stat. § 375.192;
- (b) A mandatory injunction compelling the Defendants to abate the property taxes of Plaintiffs and the Class pursuant to § 375.192; and
- (c) A money judgment against the Defendants in the amount of the abatement of property taxes to which the Plaintiffs are entitled under Minn. Stat. § 375.192, together with interest thereon at the applicable rate.

COUNT VIII

Equal Protection Clause Violation

70. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 69, inclusive.

71. This claim includes a claim for a declaratory judgment pursuant to Minnesota Statutes Chapter 555, and additional relief in the form of an injunction and money judgment.

72. The Equal Protection Clause arising from the Fourteenth Amendment of the United States Constitution prohibits governmental bodies from the systematic, arbitrary, or intentional collection of property taxes against some property at a substantially higher tax rate than other identical types of property in the same class.

73. Plaintiffs and the Class have a constitutionally-protected interest in receiving a tax rate against their property in conformance with and identical to the tax rate used to calculate property taxes for all other commercial, industrial, and utility property owners of property falling within the class rate provisions set forth in Minn. Stat. § 273.13, subd. 24, Class 3(a).

74. Plaintiffs and the Class have incurred significant damages proximately caused by Defendants' failure to properly calculate real estate taxes for their commercial, industrial, and utility properties as required by Minn. Stat. §§ 275.08 subd. 1(a) and 276.04, subd. 2.

75. Defendants' failure to properly calculate Plaintiffs and Plaintiff Class real property tax bills during the Class Period violates Federal Equal Protection Clause guarantees arising out of and enforceable upon the states under the Fourteenth Amendment to the United States Constitution. Defendants' failure to properly calculate Plaintiffs' and Plaintiff Class property tax bills, is, therefore, unconstitutional, and Plaintiffs and the Class are entitled to

recover their damages proximately caused by Defendants' arithmetic errors, in accordance with Minn. Stat. § 276.19 and 42 U.S.C. § 1983.

76. The Defendants have been advised that the mistaken and the erroneous tax bills have resulted in overpayments made by the Plaintiffs in the Class. Plaintiffs have requested and demanded that the Defendants refund to Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants which are due and owing to the Plaintiffs and the Class.

77. As the direct and proximate result of the acts and conduct of the Defendants regarding the collection of excess property taxes, Plaintiffs and the Class have been damaged and are entitled to the following relief:

- (a) A declaration of this Court pursuant to Minn. Stat. Ch. 555. that Defendants' actions violate the Federal Equal Protection Clause made applicable to the states under the 14th Amendment to the United States Constitution;
- (b) A mandatory injunction compelling the Defendants to recalculate the property taxes of Plaintiffs and the Class pursuant to Minn. Stat. §276.19; and
- (c) A money judgment against the defendants in the amount of the excess property taxes to which the Plaintiffs are entitled under Minn. Stat. § 276.19 and 42 U.S.C. § 1983, together with interest thereon at the applicable rate, costs, disbursements, and reasonable attorney fees under 42 U.S.C. § 1988.

COUNT IX

Due Process Clause Violation

78. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 77, inclusive.

79. This claim includes a claim for declaratory judgment pursuant to Minn. Stat. Ch. 555, and additional relief in the form an injunction and money judgment.

80. The Due Process Clause of the Fourteenth Amendment of the United States Constitution prohibits governmental bodies from depriving “any person of life, liberty, or property, without due process of law.”

81. Plaintiffs and the Class have been denied due process to adequately challenge the erroneous and excessive real property taxes paid to Defendants because Defendants never provide the Plaintiff Class with any information regarding “net tax capacity” or “class rates” sufficient to place Plaintiffs on notice that an arithmetic error has occurred in calculating their property tax bills.

82. Plaintiffs and the Class have incurred significant damages proximately caused by Defendants’ deprivation of the rights secured to Plaintiffs and the Class by the Fourteenth Amendment to the United States Constitution and are therefore entitled to recover their damages pursuant to Minn. Stat. § 276.19 and 42 U.S.C. §1983.

83. Defendants have been advised of the mistaken and the erroneous tax bills and the resulting overpayments made by the Plaintiffs and the Class. Plaintiffs have requested and demanded that the Defendants repay Plaintiffs and the Class all amounts overpaid to the Defendants. Despite the repeated requests and demands, the Defendants refuse to repay the funds which were mistakenly received by the Defendants and which are due and owing to Plaintiffs and the Class.

84. As the direct and proximate result of the acts and conduct of the Defendants regarding their refusal to refund the excess payments made by Plaintiffs and the Class, as hereinabove alleged, Plaintiffs and the Class have been damaged and are entitled to the following relief:

- (a) A declaration of this court pursuant to Minn. Stat. Ch. 555 that Defendants' acts and omissions have violated Plaintiffs and Plaintiff Class Constitutional Procedural Due Process Rights as secured to them by the Due Process Clause of the 14th Amendment to the United States Constitution;
- (b) A mandatory injunction compelling the Defendants to refund the overpayments made by Plaintiffs and the Class pursuant to §276.19; and
- (c) A money judgment against the Defendants in the amount of the overpayments to which the Plaintiffs are entitled under Minn. Stat. § 276.19 and 42 U.S.C. §1983, together with interest thereon at the applicable rate, costs, disbursements, and reasonable attorneys fees in accordance with 42 U.S.C. § 1988.

COUNT X

Minnesota Constitution Violation

85. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 through 84, inclusive.

86. This claim includes a request for a declaratory judgment pursuant to Minn. Stat. Ch. 555, and additional relief in the form of an injunction and money judgment.

87. Article I, § 2 of the Minnesota Constitution provides that “[n]o member of this state shall be disenfranchised or deprived of any of the rights and privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Article X, § 1 of the Minnesota Constitution provides that “[t]axes shall be uniform upon the same class of subjects. . . .”

88. Defendants' failure to properly calculate Plaintiffs' and Plaintiff Class property tax bills, prohibiting Plaintiffs and the Class from being taxed in a manner uniform to other commercial, industrial, and utility property owners subject to the same provisions of Minnesota law, denied Plaintiffs and the Class the equal protection of the laws of the State of Minnesota.

89. Plaintiffs and the Class have a constitutionally protected interest in receiving property tax bills calculated based upon the identical tax rates used in calculating property tax bills for the other commercial, industrial, and utility properties in the same class, and in having equal benefit of the laws of the State of Minnesota.

90. Plaintiffs and the Class have incurred significant damages proximately caused by Defendants' failure to properly calculate their property tax bills.

91. Defendants failure to properly calculate Plaintiffs' and Plaintiff Class property tax bills violates the Equal Protection Clause Guarantees of Article I, § 2 and the Uniformity Clause guarantees of Article X, § 1 of the Minnesota Constitution. Defendants' failure to properly calculate Plaintiffs and the Class property tax bills is, therefore, unconstitutional, and Plaintiffs and the Class are entitled to the following relief:

- (a) A declaration of this court pursuant to Minn. Stat. Ch. 555 that Defendants acts and omissions have violated Plaintiffs rights under Article 1, § 2 of the Minnesota Constitution as well as Article 10, Section 1 of the Minnesota Constitution;
- (b) A mandatory injunction compelling the Defendants to refund the overpayments they have received from Plaintiffs and the Class pursuant to Minn. Stat. §276.19; and
- (c) A money judgment against the Defendants in the amount of the overpayments of property tax to which the Plaintiffs are entitled under Minn. Stat. § 276.19, together with interest thereon at the applicable rate.

WHEREFORE, Plaintiffs and Class, and each of them, respectfully request the following relief:

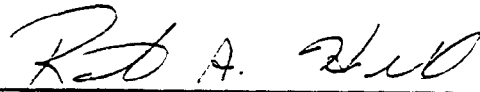
1. A declaration of this court pursuant to Minnesota Statutes Chapter 555 that the Defendants wrongfully calculated the amount of property taxes due on the commercial, industrial and/or utility property of Plaintiffs and the Class;
2. A mandatory injunction compelling the Defendants to undertake the actions required by applicable Minnesota law to refund amounts overpaid by Plaintiffs and the Class;

3. A money judgment against the Defendants in the amount of the overpayments, together with interest thereon at the applicable rate;
4. An award of costs, disbursements and reasonable attorneys' fees incurred in bringing this action; and
5. Such further and other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs and the Class, and each of them, demand a trial by advisory jury of all issues set forth in this complaint which are so triable.

Dated: August 14, 1997.



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C. Brent Robbins (265287)
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Keith E. Simons (101278)
KEITH E. SIMONS, P.A.
Suite 310
1011 First Street South
Hopkins, Minnesota 55343
(612) 935-1697

ATTORNEYS FOR PLAINTIFFS

0321260.01

ACKNOWLEDGMENT

I hereby acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.21, Subd. 2., to the party against whom the allegations in this pleading are asserted.

By: 
Robert A. Hill

STATE OF MINNESOTA
COUNTY OF ITASCA

DISTRICT COURT
NINTH JUDICIAL DISTRICT
CASE TYPE: STATUTORY/EQUITABLE

Guy Klegstad, et al.,

File No.

Plaintiffs.

v.

**STIPULATION TO TRANSFER TO
MINNESOTA TAX COURT**

Robert O. Zuehlke, et al.,

Defendants.

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

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

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

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

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

ATTORNEYS FOR PLAINTIFFS

By: *Alan L. Kildow*
Alan L. Kildow (143133)
John J. Steffenhagen (198947)
Karin M. Nelsen (269724)
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(612) 935-1697

Attorneys for Plaintiffs

Date: *October 30*, 1997.

ATTORNEYS FOR DEFENDANTS

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

Dated: *December 1*, 1997.

MICHAEL J HAIG
ASSISTANT COUNTY ATTORNEY
123 NE FOURTH STREET
GRAND RAPIDS MN 55744

STATE OF MINNESOTA
COUNTY OF ITASCA

NOTICE OF:

- FILING OF ORDER
- ENTRY OF JUDGMENT
- DOCKETING OF JUDGMENT

ALAN L KILDOW
ATTORNEY AT LAW
1500 NORWEST FINANCIAL CENTER
7900 XERXES AVE S
BLOOMINGTON MN 55431-1194

Court File No: 31-C9-97-1465

IN RE: GUY KLEGSTAD, ET AL -VS- ROBERT O ZUEHLKE, ET AL

- You are hereby notified that on DECEMBER 19, 1997 an Order was duly filed in the above entitled matter.
- You are hereby notified that on _____ a Judgment was duly entered in the above entitled matter.
- You are hereby notified that on _____ a Judgment was duly docketed in the above entitled matter in the amount of \$ _____.

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04

Dated: DECEMBER 19, 1997

DIANE E. GROSS
Court Administrator

By: Linda R. Griffith
Deputy

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

GUY KLEGSTAD, ET AL.,
PLAINTIFFS,

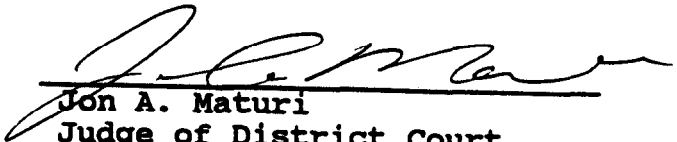
-VS-

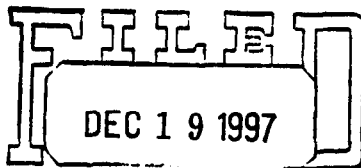
ORDER TRANSFERRING VENUE
31-C9-97-1465

ROBERT O. ZUEHLKE, ET AL.,
DEFENDANTS.

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

Dated: 12-19-97


Jon A. Maturi
Judge of District Court



DIANE E. GROSS
COURT ADMINISTRATOR
ITASCA COUNTY, MINN.
BY _____

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Carver County Attorney
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Government Center, Justice Center
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Dakota County Judicial Center
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206 South Broadway, Suite 505
Marquette Bank Building
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Assistant Anoka County Attorney
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Susan K. McNellis
Assistant County Attorney
Scott County Courthouse 206
428 Holmes Street
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WRIGHT COUNTY

Brian Asleson
Assistant County Attorney
Wright County Courthouse
10 Second Street NW
Buffalo, Minnesota 55313

R. Lawrence Harris, Esq.
Melchert, Hubert, Sjodin & Willemsen
121 West Main Street
Suite 200
P.O. Box 150
Waconia, Minnesota 55387

WASHINGTON COUNTY

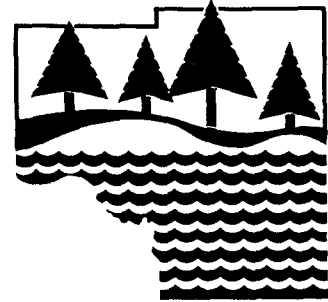
Howard R. Turrentine
Assistant Washington County Attorney
Washington County Government Center
14900 61st Street North
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Stillwater, Minnesota 55082-0006

Office of the Itasca County Attorney

County Attorney
John J. Muhar

Assistants
Bernard L. Bodien
Michael J. Haig
W. James Mason
Heidi M. Pertlicek

Support Staff
Connie Bentson
Rene' Mann
Donna Medure
Barbara Nelson
Peggy Wilson



November 18, 1998

Clerk of Appellate Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

NOV 23 1998

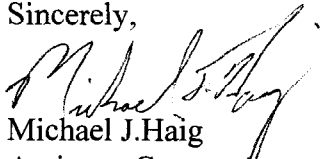
FILED

In Re: Minnesota Property Tax Overpayment Litigation

Dear Sir/Madam:

Enclosed for filing please find fourteen (14) copies of Itasca County's Response to Plaintiffs' Petition for an Extraordinary Writ, two of which copies are unbound, together with proof of service upon counsel for the Parties.

Sincerely,


Michael J. Haig
Assistant County Attorney

MJH/b
Enc.

MICHAEL O. FREEMAN
COUNTY ATTORNEY



(612) 348-5550

OFFICE OF THE HENNEPIN COUNTY ATTORNEY

A-2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

OFFICE OF
APPELLATE COURTS

NOV 23 1998

November 20, 1998

FILED

Frederick K. Grittner
Supreme Court Administrator
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

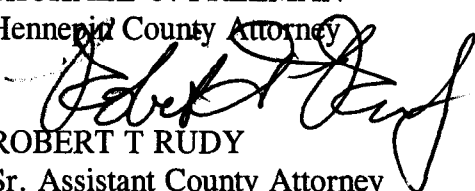
Re: In re Minnesota Property Tax Litigation Involving the Application
of Minn. Stat. § 273.13, subd. 24 to Class 3 (a) Commercial,
Industrial or Utility Property
Supreme Court No. C1-98-2035

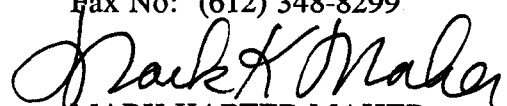
Dear Mr. Grittner:

Enclosed for filing with the Court please find an original and three copies of
Defendants' Reply to Plaintiffs' Memorandum with regard to the above-entitled matter. Also
attached is an affidavit showing that counsel has been served.

Sincerely,

MICHAEL O. FREEMAN
Hennepin County Attorney


ROBERT T RUDY
Sr. Assistant County Attorney
Telephone: (612) 348-5519
Fax No: (612) 348-8299


MARK KAPTER MAHER
Assistant County Attorney
Telephone: (612) 348-6754
Fax No: (612) 348-8299

MKM:mb
Enclosures

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

AFFIDAVIT OF SERVICE

Mary M. Battmer, being first duly sworn on oath, deposes and says:

That on the 20th day of November, 1998, she served the annexed Defendants' Reply to Plaintiff's Memorandum on each of the following by mailing to each of them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the Hennepin County mail system, in Minneapolis, Minnesota, directed to them at their last known address as follows:

Alan L. Kildow
Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Norwest Financial Center
7900 Xerxes Avenue South
Bloomington, MN 55431-1194

Robert A. Hill
Suite 2450
Centre Village Offices
431 South Seventh Street
Minneapolis, MN 55415

Keith E. Simons
Suite 310 Norwest Bank Building
1011 First Street South
Hopkins, MN 55343

Mary M. Battmer

Subscribed and sworn to before
me this 20th day of November, 1998.

Eileen M. Bergren
Notary Public



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ATTORNEYS FOR PLAINTIFFS

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John J. Steffenhagen
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