

4-27-2017

KCP Hastings, LLC. Vs. County of Dakota

Minnesota Tax Court

Follow this and additional works at: <https://researchexchange.iaao.org/avl-year-2017>

Recommended Citation

Minnesota Tax Court, "KCP Hastings, LLC. Vs. County of Dakota" (2017). 2017. 10.
<https://researchexchange.iaao.org/avl-year-2017/10>

This Book is brought to you for free and open access by the AVLR by Year at IAAO Research Exchange. It has been accepted for inclusion in 2017 by an authorized administrator of IAAO Research Exchange. For more information, please contact researchexchange@iaao.org.

STATE OF MINNESOTA

TAX COURT

COUNTY OF DAKOTA

REGULAR DIVISION

KCP Hastings, LLC,

Petitioner,

**ORDER ON MOTIONS FOR
AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
ON REMAND**

vs.

County of Dakota,

Respondent.

File Nos: 19HA-CV-11-2713
19HA-CV-12-2223
19HA-CV-13-1742

Filed: April 27, 2017

This matter came before The Honorable Joanne H. Turner, Chief Judge of the Minnesota Tax Court, on the parties' motions for amended findings of fact and conclusions of law.

Dan Biersdorf and Ryan Simatic, Biersdorf & Associates, P.A., represented petitioner KCP Hastings, LLC.

Suzanne W. Schrader, Assistant Dakota County Attorney, represented respondent Dakota County.

These property tax cases concern the market value of a multi-tenant retail shopping center in Hastings, Minnesota, as of January 2, 2010, January 2, 2011, and January 2, 2012. On November 12, 2014, we filed findings of fact, conclusions of law, and order for judgment finding that the assessed value of the subject property understated its market value as of all three valuation dates. *KCP Hastings, LLC v. Cty. of Dakota*, Nos. 19HA-CV-11-2713 et al., 2014 WL 6345861 (Minn. T.C. Nov. 12, 2014). Petitioner KCP Hastings appealed our decision to the Minnesota Supreme Court. The supreme court affirmed our findings concerning gross building area and our rejection of KCP's expert's sales comparison approach, but remanded the matter for further

valuation under the discounted-cash-flow approach. *KCP Hastings, LLC v. Cty. of Dakota*, 868 N.W.2d 268, 273-76 (Minn. 2015).

We held an evidentiary hearing on August 11, 2016, accepting testimony and evidence “limited to opinions of value under the discounted-cash-flow approach and final reconciliations of value under the discounted-cash-flow approach and the sales-comparison approach as previously admitted.” Order ¶ 1 (filed Nov. 18, 2015). We filed our decision on remand on December 29, 2016. *KCP Hastings, LLC v. Cty. of Dakota*, Nos. 19HA-CV-11-2713 et al., 2016 WL 7638310 (Minn. T.C. Dec. 29, 2016). Both parties moved for amended findings of fact and conclusions of law.¹ We deny KCP’s motion to amend our findings with respect to the outlot and with respect to the square footage of the property, but correct a clerical mistake with respect to capitalization rates, as authorized by Minn. R. Civ. P. 60.01. We then address the County’s motion.

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

ORDER

1. The following language on page 50 of our December 29, 2017 decision shall be corrected to read as follows:

~~We include in potential gross revenue the maximum property taxes and common-area maintenance to be reimbursed by tenants assuming the property is fully leased, and reduce potential gross revenue~~ effective gross income by the amount of expenses to be borne by the landlord as a result of vacancies.²

¹ Pet’r’s Mot. Amended Findings 11 (filed Jan. 13, 2017); Resp’t’s Not. Mot. & Mot. Amended Findings & Conclusions Law (filed Jan. 17, 2017).

² *KCP Hastings, LLC v. Cty. of Dakota*, 2016 WL 8638310, at *22.

2. The following language on page 58 of our December 29, 2017 decision shall be corrected to read as follows:

We use a terminal cap rate of 10.0% for 2011 (75 basis points below our chosen discount rate).

and the table on page 58 corrected to read as follows:

	2010	2011	2012
Discount rate	10.75%	10.75%	10.50%
Terminal cap rate	10.25%	<u>10.00%</u>	10.00% ³

3. Using the factors and methodology identified in section B and C of this memorandum, KCP shall re-calculate the subject property's market value using a discounted-cash-flow approach for each assessment date. KCP shall file and serve the re-calculation no later than May 30, 2017.

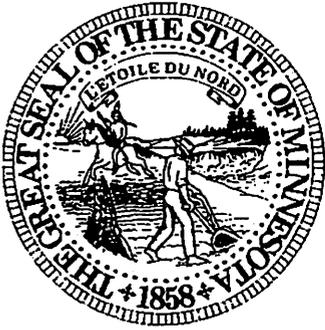
4. No later than ten days after service of KCP's re-calculation, the County may file and serve objections, if any, that address only the consistency of KCP's re-calculation with this order.

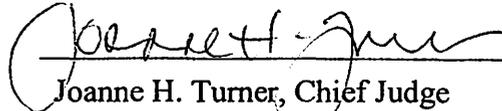
5. If the County files no objection to KCP's re-calculation, the court will promptly reconcile the values under the discounted-cash-flow approach with the previously determined values under the sales comparison approach and file a final order for judgment. If the County files objections, the court will determine the appropriate valuation under the discounted-cash-flow approach and file a final order for judgment.

³ *KCP Hastings*, 2016 WL 7638310, at *25.

IT IS SO ORDERED.

BY THE COURT:




Joanne H. Turner, Chief Judge
MINNESOTA TAX COURT

DATED: April 27, 2017

MEMORANDUM

“Upon motion of a party . . . the court may amend its findings or make additional findings.” Minn. R. Civ. P. 52.02; *see also* Minn. Stat. § 271.08, subd. 1 (2016) (authorizing motions for amended findings of fact and conclusions of law). A motion for amended findings authorizes a court “to review all of the evidence and all of [its] findings” and to revise its findings in a manner either favorable or unfavorable to the moving party. *McCauley v. Michael*, 256 N.W.2d 491, 499-500 (Minn. 1977). We therefore examine each finding and discounted-cash-flow analysis input for correctness and modify as necessary. We begin, however, by addressing KCP’s failure to timely notify the County of its motion.

A. KCP’S MOTION

On December 29, 2016, we mailed notice of our decision on remand to the parties. Minnesota Statutes § 271.08, subd. 1, requires a motion for rehearing (including amended findings) be served and filed “within 15 days after mailing of the notice by the court.” Notice by the court to the parties via United States mail extends the statutory filing deadline by three days. Minn. R. Civ. P. 6.05; *see Johnson v. Comm’r of Revenue*, No. 8544 R, 2014 WL 4792998, at *1 (Minn. T.C. Sept. 11, 2014) (noting that on a motion for amended findings, the court allows a

movant three additional days for mailing of our decision); *see also Soyka v. Comm'r of Revenue*, 842 N.W.2d 682, 686 (Minn. 2014) (holding that “when a deadline runs from . . . ‘mail[ing] to [a] party notice’ and notice is served by United States mail, Rule 6.05 extends the deadline by 3 days”) (alterations in original). In addition, because January 16, 2017, was a holiday, the deadline to file a motion to amend our December 29, 2016 findings was Tuesday, January 17, 2017. *See* Minn. R. Civ. P. 6.01(a).

On Friday, January 13, 2017, after the close of business, KCP filed with the court a 12-page document captioned “Petitioner’s Motion for Amended Findings.”⁴ KCP’s motion argued that the court’s findings with respect to capitalization rates “must be clarified and amended,” that the court’s approach with respect to the property’s outlot was “flawed,” and that the court’s findings with respect to the square footage of the property “must be amended.”⁵ No notice of motion or proposed order accompanied the motion. Indeed, as of January 13, KCP’s counsel had not even requested a hearing date on its motion.

Also after the close of business on January 13, KCP served the County via facsimile with the same 12-page document, but no notice of motion or proposed order.⁶

On January 17, 2017, the County filed and served its own motion for amended findings, accompanied by a notice of motion, a memorandum of law, supporting affidavit, and proposed

⁴ *See* Pet’r’s Mot. Amended Findings.

⁵ Pet’r’s Mot. Amended Findings 1, 3-4, 7.

⁶ Affidavit of Suzanne W. Schrader Opp’n Resp’t’s [sic] Mot. Amended Findings ¶¶ 3, 5 (filed Jan. 31, 2017) (attesting that KCP’s motion was faxed to the County at 5:01 p.m. on January 13, 2017); *see* Tr. 9 (Feb. 9, 2017) (Mr. Simatic stating that KCP never filed or served a notice of its motion for amended findings).

order. The County's notice of motion advised KCP that the County's motion would be heard on February 9, 2017, at 9:00 a.m.⁷

According to the tax court's records, KCP's counsel's office e-mailed the tax court administrator at 4:19 p.m. on January 17, requesting a hearing date for KCP's motion "in the next 30 days."⁸ At 4:21 p.m., the tax court administrator offered February 9, 2017, at 9:00 a.m.⁹ At 4:24 p.m., counsel's representative responded that February 9 "works great."¹⁰ On Wednesday, January 18, 2017, the tax court administrator confirmed the hearing date of February 9, 2017, at 9:00 a.m.¹¹ Later on January 18, KCP notified the Assistant County Attorney representing the County in this matter, but only by e-mail, that KCP's motion for amended findings would also be heard on February 9.¹²

The County contends that because KCP "did not serve a notice of motion to Respondent" as required by Minn. R. Civ. P. 7.02, "its motion for amended findings should be dismissed."¹³ Although KCP admits it did not serve a notice of motion on the County,¹⁴ it argues that "a separate

⁷ Resp't's Not. Mot. & Mot. Amended Findings & Conclusions Law.

⁸ E-mail from Grace Bolt, Biersdorf & Associates, to Lisa Pister, Tax Court Administrator (Jan. 17, 2017, 16:19 CST).

⁹ Email from Lisa Pister to Grace Bolt, copying Ryan Simatic (Jan. 17, 2017, 16:21 CST).

¹⁰ Email from Grace Bolt to Lisa Pister, copying Ryan Simatic (Jan. 17, 2017, 16:24 CST).

¹¹ Email from Lisa Pister to Grace Bolt, copying Ryan Simatic (Jan. 18, 2017, 09:08 CST).

¹² Schrader Aff. ¶ 5.

¹³ Resp't's Mem. Opp'n Pet'r's Mot. Amended Findings & Conclusions Law 2 (filed Jan. 31, 2017).

¹⁴ Tr. 9.

document noticing the motion” is “not specifically required by [Minn. Stat. § 271.08, subd. 1].”¹⁵ According to KCP, to so require would be to “writ[e] something in that’s not [in the statute].”¹⁶ Moreover, KCP contends, the County had timely notice of the motion itself (if not the hearing date) and “suffered no prejudice.”¹⁷

We begin with Minn. Stat. § 271.08, subd. 1, which provides:

The Tax Court, except in Small Claims Division, shall determine every appeal by written order containing findings of fact and the decision of the Tax Court. A memorandum of the grounds of the decision shall be appended. Notice of the entry of the order and of the substance of the decision shall be mailed to all parties. A motion for rehearing, which includes a motion for amended findings of fact, conclusions of law, or a new trial, must be served by the moving party within 15 days after mailing of the notice by the court as specified in this subdivision, and the motion must be heard within 30 days thereafter, unless the time for hearing is extended by the court within the 30-day period for good cause shown.

The tax court is subject to the Minnesota Rules of Civil Procedure “where practicable.” Minn. Stat. § 271.06, subd. 7 (2016); *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 651 (Minn. 2012) (“The legislative intent expressed in Minn. Stat § 271.06, subd. 7 [] is clear: with the exception of certain statutory disclosure requirements . . . the rules of civil procedure ‘shall govern the procedures in the Tax Court, where practicable.’ ”); *see also Harlow v. Comm’r of Revenue*, No. 5780, 1990 WL 235981, at *1 (Minn. T.C. Dec. 24, 1990) (noting that the tax court “generally follows the Rules of Civil Procedure, except as modified elsewhere in the tax court rules”). Rule 7.02(a), Minn. R. Civ. P., provides, in pertinent part:

An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the

¹⁵ Tr. 3.

¹⁶ Tr. 3.

¹⁷ Pet’r’s Reply Mem. Supp. Mot. Amended Findings 2 (filed Feb. 6, 2017).

motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made *ex parte*.

In light of the obligation that we apply the Rules of Civil Procedure “where practicable,” and because “[e]very law shall be construed, if possible, to give effect to all its provisions,” Minn. Stat. § 645.16 (2016), we hold that Rule 7.02(a), Minn. R. Civ. P., applies to motions for rehearing brought under Minn. Stat. § 271.08, subd. 1. *See, e.g., Soyka*, 842 N.W.2d at 684 (applying Rule 6.05 and Minn. Stat. § 271.06, subd. 2, to extend a filing deadline by three days when the “notice of the making and filing of an order of the commissioner” was served by United States mail). We therefore conclude that a party moving for rehearing under Minn. Stat. § 271.08, including moving for amended findings, must provide notice of the motion to any opposing party.

As to the timing of the notice of motion, neither party cites case law directly on point, and our research has found none.¹⁸ In an analogous procedural setting, however, Minnesota courts have held that failure to give notice of a motion within the statutory time for bringing the motion is fatal to the motion only if the lack of notice is prejudicial. Under the Minnesota Uniform Arbitration Act, Minn. Stat. ch. 572B (2016), a motion to vacate an arbitration award must be filed within 90 days of notice of the award. Minn. Stat. § 572B.23(b). The Minnesota Supreme Court has held that the failure to provide notice of a motion to vacate an arbitration award does not deprive the district court of jurisdiction to hear the motion, provided there is no prejudice to the

¹⁸ The court of appeals has held that failure to timely serve and file a motion for amended findings under Minn. R. Civ. P. 52.02 bars the trial court from hearing the motion. *See Kloncz v. Kloncz*, 670 N.W.2d 618, 620 (Minn. App. 2003) (holding that failure to timely file a motion for amended findings is a jurisdictional defect); *Ring v. McPeck*, 423 N.W.2d 711, 712 (Minn. App. 1988) (holding the trial court had no jurisdiction to amend its findings of fact or to address a motion for new trial when the motion was not timely filed). This case law, however, addresses the failure to timely file and serve the motion as a whole, not just the notice of motion.

respondent. *Haekenkamp v. Allstate Ins. Co.*, 265 N.W.2d 821, 823-24 (Minn. 1978); *see also Khawaja v. State Farm Ins. Cos.*, 631 N.W.2d 106, 112-13 (Minn. 2001) (holding that a motion to vacate an arbitration award can be heard more than 90 days after notice of the award itself, provided there is no prejudice to the respondent).

We agree with the supreme court's observation in *Haekenkamp*: the filing of a motion "without setting a prompt hearing date opens the entire judicial process to manipulation and abuse and the practice is to be condemned." 265 N.W.2d at 824. In the absence of prejudice to the County, however, we conclude that it does not prevent us from hearing or deciding KCP's motion for amended findings.

B. KCP'S MOTION FOR AMENDED FINDINGS

We turn, then, to the merits of KCP's motion for amended findings.

1. VALUATION OF THE OUTLOT

First, KCP contends that we erred in assigning it the burden to prove that the outlot is not excess land or otherwise has no value.¹⁹ *See KCP Hastings*, 2016 WL 7638310, at *26. According to KCP, because the outlot is not a separate parcel, there is "no outlot in the assessments that Petitioner has the burden to address."²⁰ We disagree. Under well-established law, the assessor's estimated market value is prima facie valid. *S. Minn. Beet Sugar Coop*, 737 N.W.2d 545, 558-60 (Minn. 2007). Even if the taxpayer overcomes prima facie validity, the taxpayer retains the burden to prove the market value of the property. *Stronge & Lightner Co. v. Comm'r of Taxation*, 228 Minn. 182, 195-96, 36 N.W.2d 800, 807 (1949). Here, KCP's expert appraiser declined to value

¹⁹ Pet'r's Mot. Amended Findings 5-7.

²⁰ Pet'r's Mot. Amended Findings 5.

the outlot, not because doing so was inappropriate or because the outlot had no value, but because he was unsure *how* to value it.²¹ The only evidence in our record of value, therefore, was the opinion of the County’s expert, Mr. Ducklow, who valued the outlot at \$462,600 each year.²² Moreover, the fact that KCP listed the outlot for sale as a discrete parcel belies its contention here that the outlot has no value separate and apart from the rest of the subject property.

KCP further contends that we should not have separately valued the outlot under the income approach “because the ‘outlot’ does not produce income whatsoever” and it is not a “legally recognized” parcel.²³ Again, we disagree. The question is not whether the outlot is a separate, legally recognized parcel, but whether it is excess land. *See* Appraisal Institute, *The Appraisal of Real Estate* 200 (14th ed.) (“Excess land has the potential to be sold separately and must be valued separately.”).²⁴ Again, the fact that KCP listed the outlot for sale belies its contention that the outlot is not excess land.

Finally, KCP contends that we should not have valued the outlot under the income approach because we effectively valued it under the sales comparison approach.²⁵ We disagree. We do not value the subject property under *either* the income approach *or* the sales comparison approach. To the contrary, and where appropriate, we value the entire property under all three approaches to value.

²¹ Tr. 88-89 (June 23, 2014).

²² Ex. R1A, at 3, 11, 13, 15.

²³ Pet’r’s Mot. Amended Findings 4.

²⁴ The Fourteenth Edition defines “excess land” as follows: “Land that is not needed to serve or support the existing use.” *Appraisal of Real Estate* 200.

²⁵ Pet’r’s Mot. Amended Findings 4-5, 5 (“Whatever value the outlot might have is already included in the sales comparison approach. It is thus ‘double dipping’ to incorporate the outlot again as a separate value under the income approach.”).

For these reasons, we deny KCP's motion for amended findings with respect to the outlot.

2. SQUARE FOOTAGE OF THE SUBJECT PROPERTY

KCP also contends that we must amend our December 2016 findings to reflect the parties' stipulated gross building area, rather than the property's *actual* gross building area. We addressed KCP's arguments in our December 2016 decision and, for the reasons expressed there, deny KCP's present motion in that respect. *See KCP Hastings*, 2016 WL 7638310, at *4, *22.

3. TERMINAL CAPITALIZATION RATE

Our December 2016 decision set discount rates of 10.75% as of January 2, 2010, and January 2, 2011 (10.5% as of January 2, 2012), and terminal cap rates of 10.25% as of January 2, 2010; 9.75% as of January 2, 2011; and 10.0% as of January 2, 2012. *KCP*, 2016 WL 7638310, at *25. KCP contends that we necessarily erred in setting the terminal cap rate as of January 2, 2011, at only 9.75%.²⁶ We agree, and amend our decision to set the terminal cap rate as of January 2, 2011, at 10.0%. *See* Minn. R. Civ. P. 60.01 (allowing the court to correct “[c]lerical mistakes . . . and errors . . . arising from oversight or omission . . . at any time”).²⁷

²⁶ Pet'r's Mot. Amended Findings 2-3.

²⁷ We correct one additional typographical error. We amend section 3.b.(4)(c) of our December 2016 decision to refer to “effective,” rather than “potential,” gross income:

We disagree with this approach. We therefore treat expense reimbursements as the County does. We ~~include in potential gross revenue the maximum property taxes and common area maintenance to be reimbursed by tenants assuming the property is fully leased,~~ and reduce potential gross revenue effective gross income by the amount of expenses to be borne by the landlord as a result of vacancies.

KCP, 2016 WL 7638310, at *22; slip op. at 50. By making this modification, expense reimbursements are subtracted from EGI (to which we apply vacancy and credit losses), rather than potential gross income (which does not account for vacancy or credit losses). *See* Minn. R. Civ. P. 60.01 (allowing a court to correct clerical mistakes at any time upon its own initiative).

C. COUNTY’S MOTION

The County requests that we amend our findings of fact “by showing the various calculations [we] performed” in our discounted-cash-flow [DCF] approach.²⁸ During the hearing, we proposed as an alternative providing the parties with specific parameters from which the parties could make their own DCF calculations, agree on the result if possible, and if not, submit their separate calculations to the court for resolution.²⁹ Based on their consent,³⁰ we provide the parties with the following inputs:

1. Market rents

We adopt Mr. Bakken’s rent schedules³¹ with two exceptions: as of January 2, 2010, the market rent of spaces 100 (Goodwill) and 480/500 (Clancy’s) is \$6.00 per square foot; and \$5.50 per square foot as of January 2, 2011, and January 2, 2012.

For January 2, 2010, the first-year rents for each category of rental space are as follows:

<u>Category</u>	<u>Tenants By Suite Number</u>	<u>First-Year Market Rent/Square Foot</u>
GAS	Gas Station A	\$10.00
INLINE	101; 106; 340; 360A; 360B; 360B; 360C; 380; 420; 440; 460	\$6.50
SMALL	110; 120; 150; 210; 230; 240; 310; 320; 330	\$6.00
LARGE	200; 220	\$5.00
ANCHOR	100; 480/500	\$6.00

²⁸ Resp’t’s Mem. Supp. Mot. Amended Findings & Conclusions Law 1.

²⁹ Tr. 42-44 (explaining that the court lacks access to the specialized software used by KCP’s appraiser to perform DCF calculations).

³⁰ Tr. 42-44.

³¹ See Ex. 1A (KCP’s supplement appraisal), at 84-86 (providing Mr. Bakken’s 2010 market rent calculations), 99 (providing Mr. Bakken’s 2011 and 2012 market rent calculations).

We decrease market rent by 3% each year in 2011, 2012, and 2013; increase it by 2% in both 2014 and 2015; and increase it by 3% per year from 2016 through 2020.

For January 2, 2011, the first-year rents for each category of rental space are as follows:

<u>Category</u>	<u>Tenants By Suite Number</u>	<u>First-Year Market Rent/Square Foot</u>
GAS	Gas Station A	\$10.00
INLINE	101; 106; 340; 360A; 360B; 360B; 360C; 380; 420; 440; 460	\$6.00
SMALL	110; 120; 150; 210; 230; 240; 310; 320; 330	\$5.50
LARGE	200; 220	\$4.50
ANCHOR	100; 480/500	\$5.50

We decrease market rent by 3% per year in 2012, 2013, and 2014; increase it by 2% in both 2015 and 2016; and increase it by 3% per year from 2017 through 2021.

For January 2, 2012, the first-year rents for each category of rental space are as follows:

<u>Category</u>	<u>Tenants By Suite Number</u>	<u>First-Year Market Rent/Square Foot</u>
GAS	Gas Station A	\$10.00
INLINE	101; 106; 340; 360A; 360B; 360B; 360C; 380; 420; 440; 460	\$6.00
SMALL	110; 120; 150; 210; 230; 240; 310; 320; 330	\$5.50
LARGE	200; 220	\$4.50
ANCHOR	100; 480/500	\$5.50

We decrease market rent in 2013 by 3%; increase it by 2% in both 2014 and 2015; and increase it by 3% per year from 2016 through 2022.

2. Probability of renewal

We adopt a renewal probability of 70% as of each valuation date for each tenant, except with respect to Space 100 (Goodwill). The renewal probability as of each valuation date for Goodwill is 50%.

3. Vacancy rates and credit losses

The appropriate vacancy rates are:

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2010	13%	20%	15%	15%	15%	12%	12%	10%	10%	10%	n.a.	n.a.
2011	n.a.	20%	20%	15%	15%	12%	12%	10%	10%	10%	8%	n.a.
2012	n.a.	n.a.	20%	15%	15%	12%	12%	10%	10%	10%	8%	8%

We assume a credit (or collection) loss of 1% for each year of the analysis.

4. Common-area maintenance (CAM), property taxes, and expense reimbursements

a. Common-area maintenance

For January 2, 2010, we adopt Mr. Bakken's assumed initial expenditures for common-area maintenance (CAM) of \$2.50 per square foot of net rentable area, or \$323,688, increasing them by 3% each year thereafter.³² For January 2, 2011, the assumed initial expenditures for CAM is \$333,398, increasing by 3% each year thereafter. For January 2, 2012, the assumed initial expenditures for CAM is \$343,400, increasing by 3% each year thereafter.

b. Property taxes

We assume property taxes payable as of the first year of each analysis equates to the actual property taxes payable in that year and, like Mr. Bakken, increase them by 3% each year.³³ The calculation of market value as of January 2, 2010, uses property taxes actually payable in 2010,

³² See Ex. 1A, at 96-98, 135, 139.

³³ Ex. 1A, at 96-97.

increased by 3% each year thereafter; the calculation of market value as of January 2, 2011, uses property taxes actually payable in 2011 increased by 3% each year thereafter; and the calculation of market value as of January 2, 2012, uses property taxes actually payable in 2012 increased by 3% each year thereafter.

c. Unreimbursed expenses

We reduce EGI by the amount of expenses to be borne by the landlord as a result of vacancies and credit losses. For example, in 2010, we subtract from EGI 14% of CAM (13% for vacancy and 1% of credit losses) and 14% of property taxes.

5. Reserves for replacement

We adopt Mr. Bakken's estimated reserves for replacement of \$0.15 per square foot of net rentable area, increasing by 3% each year. We apply that figure to the gross building area (153,749 square feet), not just the net rentable area.³⁴

6. Tenant improvements

We assume tenant improvements of \$1.00 per square foot of net rentable area for lease renewals and \$5.00 per square foot for new leases.

7. Leasing commissions

We assume leasing commissions of \$5.00 per square foot for new leases and \$2.00 per square foot for lease renewals.

8. Capitalization rates

We adopt each capitalization rate applied on remand except the terminal rate for 2011, which we correct to 10.0%.

³⁴ See *KCP Hastings*, 2016 WL 7638310, at *4, 22 (discussing supreme court's affirmance of gross building area of 153,749 square feet).

To summarize our chosen rates:

	2010	2011	2012
Discount rate	10.75%	10.75%	10.5%
Terminal cap rate	10.25%	10.0%	10.0%

9. Costs of sale

For each assessment year, we deduct 3% from the reversion value for costs associated with the sale.

J.H.T.