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Wal-Mart Real Estate Business Trust v. County of Clay

Minnesota Tax Court

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STATE OF MINNESOTA

TAX COURT

COUNTY OF CLAY

REGULAR DIVISION

Wal-Mart Real Estate Business Trust,

Petitioner,

vs.

County of Clay,

Respondent.

**ORDER GRANTING COUNTY'S
MOTION TO DISMISS**

File No: 14-CV-17-1450

Filed: February 13, 2018

This matter came before the Honorable Tamar Gronvall, Judge of the Minnesota Tax Court, on respondent Clay County's motion to dismiss.

Robert A. Hill, Attorney at Law, represents petitioner Wal-Mart Real Estate Business Trust.

Jenny M. Samarzja, Assistant Clay County Attorney, represents respondent Clay County.

Respondent Clay County moves to dismiss one parcel from this property tax case on the ground that petitioner Wal-Mart Real Estate Business Trust failed to timely disclose income and expense information as required by Minn. Stat. § 278.05, subd. 6(a) (2016). We grant the County's motion.

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

ORDER

Respondent Clay County's motion to dismiss PID No. 52.618.0010 from Wal-Mart's petition is granted.

IT IS SO ORDERED.

BY THE COURT:



Tamar Gronvall

Tamar Gronvall, Judge
MINNESOTA TAX COURT

DATED: February 13, 2018

MEMORANDUM

I. Introduction

Minnesota Statutes § 278.05, subd. 6(a) (2016), requires that a property tax petitioner contesting the valuation of an income-producing property provide the county assessor with income and expense information about the subject property by August 1 of the taxes payable year. Failure to provide the information requires the petition to be dismissed. *Id.*, subd. 6(b). The County now moves for dismissal, contending that the contested Wal-Mart property is income-producing and that Wal-Mart failed to provide the required income and expense information.¹ We agree and grant the County's motion.

¹ Resp't's Notice Mot. & Mot. Dismiss (filed Sept. 18, 2017); Resp't's Mem. Supp. Mot. Dismiss 2-3 (filed Sept. 18, 2017).

II. Factual and Procedural Background

Wal-Mart timely filed and served a property tax petition contesting the January 2, 2016 assessment for taxes payable in 2017.² The subject property is a Wal-Mart retail store located at 415-34th St. N., Dilworth, Minnesota.³ Wal-Mart leases space inside its store to three other businesses: Smart Style Hair Care, Regal Nails, and Subway.⁴

In a June 15, 2017 letter to Wal-Mart, the Clay County Assessor, Nancy Gunderson, “advised that if the [subject] property is in any way income producing,” Wal-Mart is “obligat[ed] to provide the income information required by [Minn. Stat. § 278.05, subd. 6].”⁵ The assessor also requested Wal-Mart’s leases stating: “We have determined that a copy of all leases for this property are necessary to evaluate it properly. We formally request a copy of any actual lease(s), in effect on the assessment date or during 2016” pursuant to Minn. Stat. § 278.05, subd. 6(c) (2016).⁶ On July 30, 2017, Wal-Mart provided the County with a one-page spreadsheet, or “rent roll”, with some information about the three tenant businesses but did not provide any financial statements or anticipated income and expense information.⁷

On September 18, 2017, the County filed its motion to dismiss alleging that Wal-Mart failed to provide complete income and expense information for the subject property as required by

² Pet. (filed Apr. 27, 2017); *see* Affidavit of Nancy Gunderson ¶¶ 2-3 (Sept. 15, 2017).

³ Pet.; Affidavit Robert A. Hill ¶ 2, Ex. A (Oct. 16, 2017). Wal-Mart’s petition included two parcels: PID Nos. 52.618.0010 and 52.618.0040. The County’s counsel represented that PID No. 52.618.0010 is the store site whereas PID No. 52.618.0040 is vacant land surrounding the store. Tr. 4; *see also* Pet. The County includes only the store site in its motion to dismiss. Tr. 4.

⁴ Gunderson Aff. ¶ 4; Hill Aff. Ex. A.

⁵ Gunderson Aff. Ex. A.

⁶ Gunderson Aff. Ex. A.

⁷ Gunderson Aff. ¶¶ 6-8, Ex. B; Tr. 9, 17 (Wal-Mart’s counsel describing the one-page submission as a “rent roll” or “lease abstract”).

Minn. Stat. § 278.05, subd. 6(a).⁸ In support of its motion, the County submitted the affidavit of Nancy Gunderson, Clay County Assessor.⁹ Wal-Mart opposed the motion,¹⁰ and submitted affidavits from Aaron Smith, Senior Manager in the Property Tax Department at Walmart Stores Inc.,¹¹ and Michael R. Wedl, a Minnesota licensed assessor and President and CEO of USAPTA, Inc.¹² The County's motion was heard on October 23, 2017.¹³ At the hearing, Wal-Mart acknowledged that it had not provided copies of the lease agreements the County had previously requested.¹⁴ Wal-Mart indicated, however, that it was willing to make the agreements available.¹⁵ We ordered Wal-Mart to give copies of the leases to the County by October 30, 2017.¹⁶ We also allowed the County time to evaluate, in light of the leases, whether the rent roll Wal-Mart initially provided satisfied the statutory disclosure requirement.¹⁷

In a November 6, 2017 letter to the court, the County confirmed that Wal-Mart had supplied copies of "various lease agreements."¹⁸ The County observed, however, that "some of the attachments provided, to which the Master Agreements referred, were those pertaining to other

⁸ Resp't's Notice Mot. & Mot. Dismiss; Resp't's Mem. Supp. Mot. Dismiss 2-3.

⁹ Gunderson Aff. ¶ 1.

¹⁰ Pet'r's Opp'n. Br. Mot. Dismiss (filed Oct. 16, 2017).

¹¹ Affidavit of Aaron Smith ¶ 1 (Oct. 16, 2017).

¹² Affidavit of Michael R. Wedl ¶ 4 (Oct. 16, 2017).

¹³ Tr. 1.

¹⁴ Tr. 15-16.

¹⁵ Tr. 15-16.

¹⁶ Tr. 36-38.

¹⁷ Tr. 36

¹⁸ Letter from Jenny M. Samarzja to Judge Gronvall (Nov. 6, 2017) (on file with the Minnesota Tax Court).

Wal-Mart stores”¹⁹ The County requested leave to file the agreements, which were subject to a confidentiality agreement between the parties.²⁰ Finally, having received the leases, the County renewed its claim that Wal-Mart had failed to provide complete income and expense information and, therefore, that Wal-Mart’s petition should be dismissed.²¹

That same day, Wal-Mart e-mailed the tax court indicating that it objected to the County’s letter.²² On November 13, 2017, the County filed a motion to seal the lease agreements it sought to file.²³ A hearing on the County’s motion was scheduled for November 29, 2017. Then, on November 16, 2017, Wal-Mart’s counsel submitted the agreements with a letter indicating that “[g]iven that the County has brought a motion to file my client’s contractual agreements with the Court, we have submitted them under seal for the Court’s use as it sees fit.”²⁴ The County subsequently withdrew its motion to seal, and the hearing was cancelled.²⁵

III. GOVERNING LAW

Minnesota Statutes § 278.05, subd. 6(a) (the “Mandatory Disclosure Rule” or “Rule,” formerly the “60-Day Rule”), is a mandatory disclosure provision that applies to “income-producing property.” The Rule provides, in pertinent part:

¹⁹ Letter from Jenny M. Samarzja to Judge Gronvall (Nov. 6, 2017) (on file with the Minnesota Tax Court).

²⁰ Letter from Jenny M. Samarzja to Judge Gronvall (Nov. 6, 2017) (on file with the Minnesota Tax Court); Affidavit of Jenny M. Samarzja ¶ 3, Ex. 1 (Nov. 13, 2017).

²¹ Letter from Jenny M. Samarzja to Judge Gronvall (Nov. 6, 2017) (on file with the Minnesota Tax Court).

²² E-Mail from Robert Hill to Tax Court Submissions (Nov. 6, 2017) (on file with the Minnesota Tax Court).

²³ Resp’t’s Notice Mot. & Mot. Seal Exs. (filed Nov. 13, 2017).

²⁴ Letter from Robert A. Hill to the Court Clerk (Nov. 16, 2017) (on file with the Minnesota Tax Court).

²⁵ E-Mail from Jenny M. Samarzja to Lisa Pister (Nov. 28, 2017) (on file with the Minnesota Tax Court).

In cases where the petitioner contests the valuation of income-producing property, the following information must be provided to the county assessor no later than August 1 of the taxes payable year:

- (1) a year-end financial statement for the year prior to the assessment date;
- (2) a year-end financial statement for the year of the assessment date;
- (3) a rent roll on or near the assessment date listing the tenant name, lease start and end dates, base rent, square footage leased and vacant space;
- (4) identification of all lease agreements not disclosed on a rent roll in the response to clause (3), listing the tenant name, lease start and end dates, base rent, and square footage leased;
- (5) net rentable square footage of the building or buildings; and
- (6) anticipated income and expenses in the form of a proposed budget for the year subsequent to the year of the assessment date.

Minn. Stat. § 278.05, subd. 6(a).

Failure to timely furnish the specified information mandates dismissal of the petition “*unless* (1) the failure to provide it was due to the unavailability of the information at the time that the information was due, or (2) the petitioner was not aware of or informed of the requirement to provide the information.” Minn. Stat. § 278.05, subd. 6(b) (emphasis added). A petitioner’s duty to disclose information covered by the Mandatory Disclosure Rule is strictly enforced. *78th St. OwnerCo, LLC v. Cty. of Hennepin*, 813 N.W.2d 409, 417 (Minn. 2012). Absent the two above exceptions, failure to disclose under the Rule requires dismissal, *Kmart Corp. v. Cty. of Becker*, 639 N.W.2d 856, 861 (Minn. 2002), even if that failure causes no prejudice to the county, *BFW Co. v. Cty. of Ramsey*, 566 N.W.2d 702, 706 n.6 (Minn. 1997).

IV. ANALYSIS

A. The Lease Agreements

As a threshold matter, we must determine the status of the lease agreements for purposes of this motion. Wal-Mart filed the agreements with a letter indicating: “Given that the County has brought a motion to file my client’s contractual agreements with the Court, we have submitted

them under seal for the Court's use as it sees fit.”²⁶ Wal-Mart's counsel also filed an affidavit attesting that the agreements were “filed under seal.”²⁷ Wal-Mart, however, did not file a motion to seal the exhibits, seek an in-camera hearing, or identify which legal standard the court should apply to evaluate whether the documents merit protection. Minn. R. Civ. P. 7.02(a) (“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. . . .”);²⁸ see *In re Rahr Malting Co.*, 632 N.W.2d 572, 576 (Minn. 2001) (“Each case involves a weighing of the policies in favor of openness against the interests of the litigant in sealing the record.” (citing *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202-03 (Minn. 1986)); see also *id.* (“Conclusory allegations of harm do not support a finding that data constitutes a trade secret.”). Additionally, the County withdrew its motion to seal,²⁹ and there is no order of this court allowing either party to file any document under seal. On this record, we decline to seal the lease documents.

We must also address the County's contention that not all of the attachments to the agreements apply to the subject property.³⁰ Walmart submitted the following documents:³¹

²⁶ Letter from Robert A. Hill to the Court Clerk (Nov. 16, 2017) (on file with the Minnesota Tax Court).

²⁷ Affidavit of Robert A. Hill ¶ 2 (Nov. 16, 2017) (“Nov. Hill Aff.”).

²⁸ The tax court is subject to the Minnesota Rules of Civil Procedure “where practicable.” Minn. Stat. § 271.06, subd. 7 (2016).

²⁹ E-Mail from Jenny M. Samarzja to Lisa Pister (Nov. 28, 2017) (on file with the Minnesota Tax Court).

³⁰ Letter from Jenny M. Samarzja to Judge Gronvall (Nov. 6, 2017) (on file with the Minnesota Tax Court).

³¹ Wal-Mart filed additional appendices and amendments that we do not include in this list because we do not specifically rely on them.

- *Regis Corporation*: (1) Master Lease Agreement for Smart Style, dated July 2005; (2) Attachment A to the Master Lease Agreement for the subject property setting a five-year lease term, dated July 2007; and (3) a letter dated January 2013, extending the lease term for another five years at the subject property.
- *Regal Nails, LLC*: (1) Master Lease Agreement for Regal Nails, dated March 2009; (2) Appendix 1 Basic Lease Terms; and (3) Attachment A to the Master Lease Agreement for an *Illinois* store setting a five-year lease term, dated September 2016.
- *Twin Towers Trading Site Management, LLC*: (1) Master Relationship Agreement to sublicense food service operations, dated September 2003; and (2) Attachment A to a March 2010 Master Lease Agreement between Wal-Mart and Twin Towers for a Subway in a *Texas* store setting a ten-year lease term, dated May 2016.³²

The master agreements indicate that for each outside retailer operating a store within a Wal-Mart, an Attachment A must be executed to identify the particular store and detail applicable rental terms.³³ Here, Wal-Mart submitted Attachment A for a Regal Nails inside an Illinois Wal-Mart, and for a Subway inside a Texas Walmart.³⁴ It did not submit attachments for the Regis

³² Wal-Mart did not file the March 2010 Master Lease Agreement with the court.

³³ Regis Master Lease Agreement 6 (“Lease of Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased Premises described in Attachment A to have and to hold subject to the Leased Premises.”); Regis Attach. A, at 1; Regal Nails Master Lease Agreement 1, 5-6, 11-12 (“Upon the full execution of the applicable Attachment A, Landlord leases to Tenant and Tenant rents from Landlord . . . the Leased Premises identified in the applicable Attachment A . . . to have and to hold subject to the terms of this Master Lease, by which the parties intend to be legally bound”); Regal Nails Attach. A, at 1, 2-3; Twin Towers Master Lease Agreement 1-2 (unnumbered) (“Each property licensed . . . shall be described on Attachment A to this Agreement.”) [hereinafter Subway Master Lease Agreement]; Subway Attach. A, at 1-2.

³⁴ Regal Nails Attach. A, at 1; Subway Attach. A, at 1.

Nails or Subway leasing space inside the Dilworth store. The Regis Nails and Subway attachments pertain to lease periods *after* the assessment date.³⁵ In an affidavit, Wal-Mart's counsel represented that the filed documents were "copies of the national licensure agreements Petitioner has in place for the three national retailers occupying . . . [part of the] warehouse Walmart built and occupies as owner in Dilworth, Minnesota."³⁶ Since one of the attachments pertains to an Illinois store and another to a Texas store we will treat these two attachments as *representative* of the agreements governing the subject property as of the assessment date, but not the *actual* governing attachments.³⁷

B. Income-Producing Property

Next, we must determine whether the subject property is income-producing as of the assessment date within the meaning of the Mandatory Disclosure Rule. *Kmart*, 639 N.W.2d at 859. "[W]hether a property is income-producing is a fact issue and must be determined on a case by case basis." *KinderCare Learning Ctrs., Inc. v. Cty. of Hennepin*, No. 30795, 2004 WL 895633, at *3 (Minn. T.C. Apr. 6, 2004). The Minnesota Supreme Court has defined income-producing property, for purposes of the Rule, as "[p]roperty that generates rental income for its owner." *Kmart*, 639 N.W.2d at 859 n.1.

³⁵ Regal Nails Attach. A, at 2 (establishing rent commencement date of March 31, 2017); Subway Attach. A, at 1 (establishing rent commencement date of May 15, 2017).

³⁶ Nov. Hill Aff. ¶ 2.

³⁷ *Cf. Link v. Wabash R. Co.*, 370 U.S. 626, 633-64 (1962) (noting that conduct of counsel binds the client because the latter "voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney" (internal quotation marks and citations omitted)).

The County argues that Wal-Mart's rental of portions of the store to other businesses renders the subject property "income-producing."³⁸ Wal-Mart does not dispute that it receives income from the space it rents.³⁹ Rather, Wal-Mart characterizes the revenue from rent as *business* income based on nationwide contracts, not *real estate* income based on local leases.⁴⁰ Stressing that only 1.9% of the store's space is occupied by tenant businesses (the remainder being owner-occupied), Wal-Mart contends that an appraiser cannot readily use lease income information to conduct an income approach to value.⁴¹

Wal-Mart's agreements with Smart Style, Regal Nails, and Subway give each of those entities the right to occupy space inside the subject property for a specified number of years (with the opportunity to renew) in exchange for rent.⁴² Each Master Agreement provides that an Attachment A must be executed for each particular Wal-Mart store to detail the rental rate for that store.⁴³ Representative Attachment As also require reimbursements to Wal-Mart for expenses relating to the property, such as for common area maintenance and utility fees.⁴⁴ Based on the

³⁸ Resp't's Mem. Supp. Mot. Dismiss 2-3; Gunderson Aff. Ex. B (listing renters). The County does not contend that the retail portion of the store is income-producing. Tr. 5.

³⁹ Pet'r's Opp'n. Br. Mot. Dismiss 3-4.

⁴⁰ Pet'r's Opp'n. Br. Mot. Dismiss 3-4.

⁴¹ Pet'r's Opp'n. Br. Mot. Dismiss 3-4; *see also* Wedl Aff. ¶¶ 8-15.

⁴² Regis Master Lease Agreement 1, 6-7; Regis Attach. A, at 1; Letter to Regis Corporation from Wal-Mart (dated January 23, 2013); Regal Nails Master Lease Agreement 1, 5-6, 11-12; Subway Master Lease Agreement 1 (unnumbered); *see* Regal Nails Attach. A, at 1-3; Subway Attach. A, at 1-4.

⁴³ Regis Master Lease Agreement 1, 6; Regis Attach. A, at 1; Letter to Regis Corporation from Wal-Mart (dated January 23, 2013); Regal Nails Master Lease Agreement 1, 5-6, 11; Regal Nails Attach. A, at 1, 2-3; Subway Master Lease Agreement 1-2 (unnumbered); Subway Attach. A, at 1-2.

⁴⁴ Regal Nails Attach. A, at 3-4 (listing CAM and utility reimbursement fees but setting amount at \$0.00); Subway Attach. A, at 2-3 (requiring CAM/Utility fee "to cover Landlord's costs

evidence in the record, we find that the income Wal-Mart earned from leasing store space to other businesses is related to the property itself. We therefore conclude the subject property was income-producing as of the assessment date within the meaning of the Mandatory Disclosure Rule.

We reject Wal-Mart's attempt to recharacterize its rental income as "business income" unrelated to the property. We also reject Wal-Mart's suggestion that renting only 1.9% of the property is nominal or demonstrates that its rental income is unrelated to the property. *Cf. Allina Med. Clinic v. Cty. of Washington*, No. C2-02-1994, 2008 WL 169734, at *1-2 (Minn. T.C. Jan. 15, 2008) (concluding that payments Allina received for the use of 2 of 33 examination rooms, which were not assigned, for 2 hours per week for a nominal fee of \$120 per week did not render the clinic property income-producing); *Lake Minnetonka Sailing Sch. v. Cty. of Hennepin*, No. 27681, 1999 WL 1253038, at *1 (Minn. T.C. Dec. 16, 1999) (holding a minimal rental fee charged by the nonprofit sailing school for the incidental and occasional use of the subject property for weddings and other social events did not render it income-producing.). Although Wal-Mart's business primarily involves retail sales, Wal-Mart has, at least since 2003, regularly earned significant rental income by leasing store space to other retail businesses. Thus, unlike the small and incidental payments for *occasional* use of the premises in *Allina Medical Clinic* and *Lake Minnetonka Sailing School*, Wal-Mart leased store space to its three tenants for the primary purpose of driving foot traffic in its store and thereby also increasing its own retail sales. Where property is consistently used to generate income from rental or lease activities, the property is income-producing. *Kmart*, 639 N.W.2d at 859 n.1.

associated with the following items," including floor and roof maintenance, utilities, and real estate taxes).

Because Wal-Mart is partly in the business of leasing store space, the distinction between “business income” and real estate income is illusory with respect to revenue Wal-Mart derives from its leases. *Cf. KinderCare Learning Ctrs.*, 2004 WL 895633, at *3 (casting aside subsidiary’s argument that because it paid its parent company, the property owner, a “management fee” for 106 child care centers nation-wide with no portion of the fee “assigned as a rental payment for any specific property” that its properties were not income-producing); *Baker Invs., LLC v. Cty. of Hennepin*, No. TC-27107, 1998 WL 802000, at *2 (Minn. T.C. Nov. 16, 1998) (“The argument that the revenue is not obtained through leasing parking spaces but through managing a business activity is not persuasive. Petitioner’s customers are not paying for management skills; they are leasing space for their cars.”). Again, Wal-Mart’s lease of its store space to these tenant retailers is directly related to its business purposes of generating retail sales in its own store.

Finally, when determining whether a property is income-producing for purposes of Minn. Stat. § 278.05, subd. 6, it is immaterial whether, as Wal-Mart contends, its income or expense information “is not competent evidence to develop an income approach to value.”⁴⁵ *Cf. BFW Co.*, 566 N.W.2d at 705 (holding “the statute clearly requires the petitioner to provide all information to which the petitioner has access, even if that information [is incomplete or not fully accurate and] might not allow the county assessor to reach a final conclusion regarding the property’s value.”); *see also KinderCare Learning Ctrs.*, 2004 WL 895633, at *3 (explaining that although the management fee was not broken down on a site-by-site basis and the taxpayer maintained the fee was not rent for the subject property, “the assessor . . . had no opportunity to examine these transfers which may or may not represent market rents”). Furthermore, if a property is income-producing and thus subject to the Mandatory Disclosure Rule, a petitioner “may not refuse

⁴⁵ Pet’r’s Opp’n. Br. Mot. Dismiss 3.

to provide information based on its own assessment that such information is inaccurate or incomplete and thus unhelpful to valuation.” *78th St. OwnerCo*, 813 N.W.2d at 413.

Because we find the subject property to be income-producing as of the assessment date, we next determine whether Wal-Mart met the Rule’s disclosure requirements.

C. Disclosure of Income and Expense Information

The County argues that Wal-Mart failed to comply with the Mandatory Disclosure Rule because it did not submit financial statements for the year prior to and the year of the assessment date, or anticipated income and expense information for the following year.⁴⁶ Minn. Stat. § 278.05, subd. 6(a)(1)-(2), (6). The County also contends what information Wal-Mart did submit was incomplete.⁴⁷ Wal-Mart argues it “already produced the income and expense information it maintains for the licensed portion of the subject property, in compliance with” subdivision 6.⁴⁸ We agree with the County that the one page spreadsheet Wal-Mart submitted by the disclosure deadline did not comply with the Rule. The lease agreements Wal-Mart provided after the August 1 deadline only reinforce the inadequacy of Wal-Mart’s initial submission.

⁴⁶ Resp’t’s Mem. Supp. Mot. Dismiss 3.

⁴⁷ Tr. 6-7; Letter from Jenny M. Samarzja to Judge Gronvall (Nov. 6, 2017) (on file with the Minnesota Tax Court).

⁴⁸ Pet’r’s Opp’n. Br. Mot. Dismiss 4-5; *see also* Smith Aff. ¶ 4 (The spreadsheet “is the complete income and expense information associated with the 1.9% of the store occupied by Walmart licensees/tenants at the Subject Property. . . . [I]t is the only income and expense information Walmart has regarding the subject property.”).

The following is the information Wal-Mart timely provided to the County in the form of a one-page spreadsheet:⁴⁹

	Starting Date	Ending Date	Gross Amount	Rentable Area	Annual Sq Ft	Annual Gross
Store #1627 Subway	3/8/2013	6/30/2021	850	2,214.00	4.61	10,200.00
	7/1/2011	6/30/2021	125	2,214.00	0.68	1,500.00
Store #1627 Smart Style Hair Care	3/1/2013	2/28/2018	2,862.00	828	41.48	34,344.00
Store #1627 Regal Nails	6/1/2017	5/31/2018	2,255.00	960	28.19	27,060.00
	6/1/2018	5/31/2019	2,311.37	960	28.89	27,736.44

This appears to be a rent roll that lists “the tenant name, lease start and end dates, base rent, [and] square footage leased”⁵⁰ Minn. Stat. § 278.05, subd. 6(a)(3). Subdivision 6(a)(3) requires, however, that the rent roll be “on or near the assessment date.” The information Wal-Mart provided for Regal Nails fails that requirement, as the lease begins one year after the January 2, 2016 assessment date. There is no dispute that Regal Nails was operating in the subject property as of the assessment date.⁵¹ Because Wal-Mart did not provide the required rent roll information for Regal Nails to the County as of the August 1 deadline, Wal-Mart failed to meet the requirements of the Rule.

⁴⁹ Gunderson Aff. Ex. B; Hill Aff. Ex. A.

⁵⁰ See Tr. 9, 17 (Wal-Mart’s counsel describing the one-page submission as a “rent roll” or “lease abstract”).

⁵¹ See Gunderson Aff. ¶ 4; Tr. 16. Representative Attachment A for the Illinois Regal Nails store indicates that Regal Nails must pay base rent, with yearly percentage increases, and percentage rent based on gross sales. Regal Nails Attach. A, at 2-3.

Wal-Mart also failed to provide complete income information. The leases make clear that all three tenants are subject to percentage rent clauses.⁵² Appraisal Institute, *Dictionary of Real Estate Appraisal* 145 (5th ed. 2010) (defining “percentage lease” as “[a] lease in which the rent or some portion of the rent represents a specified percentage of the volume of business, productivity, or use achieved by the tenant”). Wal-Mart’s submission gives no indication whether the percentage rent clauses were triggered, and if so, how much the three tenants actually paid in total rent.⁵³ Wal-Mart was required to provide this information under the Rule. *See Kmart*, 639 N.W.2d at 860-61 (holding percentage rent, in addition to minimum rent, must be disclosed under the then 60-Day Rule); *see also* Minn. Stat. § 278.05, subd. 6(a)(1)-(2) (requiring property tax petitioners to provide year-end financial statements for the year prior to and the year of the assessment date). It is improbable that Wal-Mart does not have information about whether the percentage rent clauses were triggered and what amount each tenant paid under them, particularly when all three tenants must submit sales data at least monthly, and sometimes even daily.⁵⁴

⁵² Regis Master Lease Agreement 9; Regis Attach. A, at 1; Regal Nails Master Lease Agreement 12; Subway Master License Agreement 2; *see* Regal Nails Attach. A, at 3; Subway Attach. A, at 1-2.

⁵³ *See* Gunderson Aff. Ex. B. The Regis lease documents indicate the Smart Style “monthly rent” was \$2,862. Letter to Regis Corporation from Wal-Mart (dated January 23, 2013). This amount is the same Wal-Mart reported in its spreadsheet for base rent (labeled “gross amount”), which Wal-Mart multiplied by 12 months to get an “annual gross” rent of \$34,344. Gunderson Aff. Ex. B. Thus, no percentage rent was reported. Similarly, the base rent indicated in the Regal Nails representative Attachment A (for the Illinois store) corresponds with the base rent Wal-Mart reported on its spreadsheet, which Wal-Mart multiplied by 12 months to report “annual gross” rent. *Compare* Regal Nails Attach. A, at 2-3, *with* Gunderson Aff. Ex. B. For Subway, Wal-Mart reported on its spreadsheet a flat monthly rent (also multiplied by 12 months to determine “annual gross”) even though its license agreement and representative Attachment A (for the Texas store) indicate no base rent is owed, only percentage rent. Subway Master License Agreement 2; Subway Attach. A, at 1-2.

⁵⁴ Regis Master Lease Agreement 9; Regal Nails App.-1-3; Subway Master License Agreement 2. In the case of Regal Nails and Subway, the agreements specifically provide that

Additionally, Wal-Mart provided no expense information. Real estate expense information is necessary under the Mandatory Disclosure Rule because it is “useful to the appraisal process, and in particular, lease expense information is relevant to the income model of property tax appraisal.” *Irongate Enters., Inc. v. Cty. of St. Louis*, 736 N.W.2d 326, 330 (Minn. 2007) (citing *Kmart Corp. v. Cty. of Stearns*, 710 N.W.2d 761, 766 (Minn. 2006)). Wal-Mart argues it did not separately calculate expenses for the Dilworth store.⁵⁵ Certain provisions of the agreements, however, suggest that Wal-Mart did have at least some store-specific expense information. For example, the Regal Nails lease agreement allows Wal-Mart to demand a pro rata share of real estate taxes from Regal Nails.⁵⁶ The representative Attachment A to the Subway agreement (for the Texas store) also requires Subway to pay Wal-Mart a monthly common area maintenance/utilities fee.⁵⁷ At the very least, the Rule required Wal-Mart to provide estimated

Wal-Mart will use the information to calculate the percentage rent due. Regal Nails App.1, at 3; Subway Master License Agreement 2.

⁵⁵ Pet’r’s Opp. Br. Mot. Dismiss 5; Smith Aff. ¶ 6 (“Because the amount paid to Walmart is treated as business income to the company, we do not maintain any separate records of any kind regarding the payments made to Walmart by our licensees/tenants. So, any suggestion Walmart did not supply the expenses associated with the business income generated by the national agreements at the subject property is not accurate much less based in fact.”). At the motion hearing, Wal-Mart’s counsel suggested the “annual gross” figures on the rent roll “should” include both income and “pro rata reimbursement” for property expenses that Wal-Mart recoups based on the agreements. Tr. 22-25; Hill Aff. Ex. A. But as discussed previously, the “annual gross” figures are simply the base rent multiplied by 12 months, *see supra* note 51, which does not include all of the expenses tenants must reimburse Wal-Mart for under the agreements’ terms.

⁵⁶ Regal Nails Master Lease Agreement 14-15. We also note that this master agreement provides for common area maintenance and utility reimbursement fees, Regal Nails Master Lease 12, although the representative Attachment A (for the Illinois store) lists these amounts at \$0.00, Regal Nails Attach. A, at 3-4.

⁵⁷ Subway Attach. A, at 2-3 (“The parties acknowledge and agree that the CAM/Utility fee is intended to cover *Landlord’s costs associated with the following items*: (i) HVAC maintenance; (ii) electrical/power fees and maintenance; (iii) plumbing/drainage/sewer maintenance . . . ; (iv) lighting fixture maintenance . . . ; (v) trash disposal and removal; (vi) pest control; (vii) floor maintenance; (viii) dining room ceiling tile maintenance; (ix) dining room HVAC diffuser maintenance; (x) grease interceptor/tank maintenance . . . ; (xi) hot water heater maintenance . . . ;

expenses (and income) for the year after the assessment date. *See* Minn. Stat. § 278.05, subd. 6(a)(6) (requiring “anticipated income and expenses in the form of a proposed budget for the year subsequent to the year of the assessment date”); *cf.* *BFW Co.*, 566 N.W.2d at 705 (holding a petitioner must provide all information it possesses, even if “incomplete or not fully accurate”). Moreover, in *78th St. OwnerCo, LLC*, the Minnesota Supreme Court made clear that failure to maintain documents that satisfy subdivision 6(a) does not excuse a petitioner from having to provide the County with *information* in its possession. 813 N.W.2d at 415; *see also* *Sadat v. Cty. of Hennepin*, No. 70-CV-12-8405, 2015 WL 410442, at *3 (Minn. T.C. Jan. 29, 2015) (“Far from supporting petitioner’s argument that his incomplete disclosure satisfies the Rule because he does not maintain a ‘rent roll’ . . . , *78th Street* indicates that petitioner’s failure to provide the County with available information that would be contained in a rent roll requires dismissal.”).

V. CONCLUSION

Strict enforcement of the Mandatory Disclosure Rule requires dismissal of the above referenced store parcel from Wal-Mart’s petition. *See 78th St. OwnerCo*, 813 N.W.2d at 417. The supreme court has recognized “the harsh nature of the remedy imposed by” the Rule. *Irongate Enters.*, 736 N.W.2d at 331. The supreme court, however, has long held that the Rule requires a petitioner to “disclose *all information* to which it has access so that a county can conduct a thorough and accurate assessment.” *78th St. OwnerCo*, 813 N.W.2d at 413 (emphasis added). Wal-Mart was therefore on notice that full compliance was necessary, and proceeded at its peril by failing to disclose information required by the statute. *See id.* at 417 (“[S]trict enforcement of

(xii) roof maintenance; (xiii) provision of utilities to the Leased Premises and (xiv) real estate taxes.” (emphasis added)).

the statute is both commonly understood and settled by our prior case law.”). The County’s motion to dismiss is granted.

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