STATE OF MINNESOTA

IN SUPREME COURT

A22-0671

Tax Court

Chutich, J.
Concurring, Thissen, Anderson, JJ.

1300 Nicollet, LLC,

Relator,

vs.

Filed: May 17, 2023
Office of Appellate Courts

County of Hennepin,

Respondent.

Thomas R. Wilhelmy, Judy S. Engel, Gauri S. Samant, Fredrikson & Byron, P.A., Minneapolis, Minnesota, for relator.

Mary F. Moriarty, Hennepin County Attorney, Sara L. Bruggeman, Jeffrey M. Wojciechowski, Rebecca L.S. Holschuh, Assistant County Attorneys, Minneapolis, Minnesota, for respondent.

S Y L L A B U S

1. Because Minnesota Statutes section 278.05, subdivision 3 (2022), and Minnesota Statutes section 13.03, subdivision 6 (2022), can be read together, the tax court did not abuse its discretion when it applied the balancing test of section 13.03,

subdivision 6, and found that only the information that respondent county provided to its expert and on which he relied had to be made available to the taxpayer.

2. The tax court's adjustments to the market valuations of the subject property were not clearly erroneous.

Affirmed.

O P I N I O N

CHUTICH, Justice.

This case arises from the Minnesota Tax Court's market valuation of the real estate of the Minneapolis Hyatt Regency Hotel (the Hotel) for the tax years 2016, 2017, and 2018. Relator 1300 Nicollet, LLC (1300 Nicollet), which owns the Hotel, challenged the market values assessed by respondent County of Hennepin (the County) for these tax years. 1300 Nicollet first contests the tax court's discovery and evidentiary decisions related to the nonpublic assessor's records in the County's possession. It asserts that the tax court erred by ordering that only the information that the County provided to the County's expert—and upon which he relied—needed to be provided to 1300 Nicollet in discovery.

1300 Nicollet next contends that the tax court clearly erred when the court accepted the appraisal report of 1300 Nicollet's expert, but then made unsupported and unexplained adjustments to the expert's valuations. Through its adjustments, the tax court increased the market value of the Hotel real estate from the expert's appraised values of $39,700,000,

$39,300,000, and $35,200,000 to $71,703,000, $67,940,000, and $68,881,000, for tax years 2016, 2017, and 2018, respectively.[1]

We hold that when a county opposes discovery and the taxpayer moves to compel discovery, as happened here, the balancing test found in Minnesota Statutes section 13.03, subdivision 6 (2022), is applicable. Because the tax court did not err as a matter of law or abuse its discretion in reaching its discovery and evidentiary rulings and did not clearly err when adjusting 1300 Nicollet's valuation of the Hotel real estate, we affirm.

FACTS

1300 Nicollet owns the Hyatt Regency Hotel, which is located at 1300 Nicollet Mall in downtown Minneapolis. The County assessed the value of the Hotel real estate for the years 2016, 2017, and 2018, and 1300 Nicollet appealed the valuations to the tax court. *See* Minn. Stat. § 278.01, subd. 1 (2022) (providing for appeals of assessed value to the tax court). The Hotel has approximately 78,000 square feet of meeting and event space. It has two restaurants, the Prairie Kitchen and Bar and Vitali's Bistro, and a convenience store, the MPLS Market. The Hotel operates each of these facilities. 1300 Nicollet now disputes the tax court's discovery and evidentiary rulings, as well as adjustments it made to 1300 Nicollet's expert's valuation of the Hotel real estate.

Before trial, 1300 Nicollet served the County with written discovery requests, including requests for income and expense information and assessor's data for 10 other

[1] The property was assessed at $53,750,000 for 2016, $70,540,000 for 2017, and $70,540,000 for 2018. The County's expert, Peter F. Korpacz, had submitted substantially higher appraised values: $110,000,000 for 2016, $115,000,000 for 2017, and $105,000,000 for 2018.

Minneapolis hotels.[2] The County refused to produce appraisal reports and assessor's data for competitor hotels, asserting that they contained information protected by the Minnesota Government Data Practices Act (Data Practices Act), Minnesota Statutes sections 13.01–.90 (2022).

1300 Nicollet then moved to compel the production of tenancy, income, and expense information related to the 10 downtown properties and proposed a protective order providing that the data would be used only for these proceedings. Several downtown Minneapolis hotels intervened to oppose the motion to compel, arguing that the dissemination of their data to a competitor would cause them substantial harm. The County and 1300 Nicollet then exchanged their respective experts' appraisal reports. The County's appraisal showed that its expert, Peter F. Korpacz, considered data of at least four downtown Minneapolis hotels in his appraisal.

The tax court found that the requested information was "assessor's data" and is classified as private or nonpublic under Minnesota Statutes section 13.51, subdivision 2, of the Data Practices Act. It therefore used the two-prong balancing test laid out in Minnesota Statutes section 13.03, subdivision 6, of the Data Practices Act to determine whether to grant 1300 Nicollet's motion to compel. The first prong requires the presiding officer to determine whether the data are discoverable under the relevant court rules. Minn. Stat. § 13.03, subd. 6. Then, under the second prong, the presiding officer weighs the

[2] Specifically, 1300 Nicollet requested: "(a) documents regarding the valuation or assessment of such property; (b) information relating to management leasing, income, expenses, personal property, intangible business value allocation, and cap or yield rates of such property; and (c) [Assessor's Commercial Exchange] sheets."

benefit to the party seeking access to the data to determine whether that benefit outweighs the confidentiality interests of the entity maintaining the data or a third party. *Id.*

The tax court relied heavily on our decision in *EOP-Nicollet Mall, L.L.C. v. County of Hennepin*, 723 N.W.2d 270 (Minn. 2006), when applying the balancing test. The tax court analyzed the first prong of the test, whether the information was discoverable, under Minnesota Rule of Civil Procedure 26.02(b). The tax court found the requested information to be relevant and not privileged. But when considering the proportionality of the requested discovery to the needs of the case, the tax court found that David C. Lennhoff, 1300 Nicollet's expert, was able to make an informed appraisal without access to the requested information based on other available sources and that hotel valuations do not require any extraordinary discovery. Specifically, Lennhoff stated in a sworn affidavit, "I most certainly had more than sufficient information upon which to perform my appraisal analysis," but that the requested information "would have been useful and considered by me for purposes of confirming my opinions of market value." Because the "marginal benefit" to 1300 Nicollet was outweighed by the burden that disclosure would place on the County, the tax court found that the requested materials were not discoverable under the first prong of the balancing test. Accordingly, it did not consider the second prong of the balancing test (weighing the confidentiality interests at stake).

Despite denying 1300 Nicollet's motion to compel the requested information of 10 competitor properties, the tax court considered whether the County was required to produce information about the four hotel properties that it gave Korpacz, and that he relied on in his appraisal. The tax court found under the first prong of the balancing test

(discoverability) that the information was again relevant and not privileged, but that the proportionality question "changes substantially" for disclosure of data that the County provided to its expert. Although the tax court found that 1300 Nicollet would benefit only marginally from receiving information about other downtown properties, it found that 1300 Nicollet would gain a more specific benefit in being able to effectively cross-examine Korpacz about the information of the four hotels upon which he relied. Using the factors set forth in Rule 26.02(b), the tax court therefore concluded that the information the County gave to Korpacz, and upon which he relied, was discoverable.

The tax court then weighed the confidentiality interests at stake in providing information about those four hotels to 1300 Nicollet under the second prong of the balancing test in section 13.03, subdivision 6. The tax court found that because the County chose to provide certain nonpublic data to Korpacz, the data must likewise be provided to 1300 Nicollet and likely disseminated at trial. According to the tax court, the benefit to 1300 Nicollet in receiving the information that the County had provided to Korpacz outweighed the confidentiality interests of third parties and of the County. Thus, the tax court granted 1300 Nicollet's motion to compel in part and ordered the County to provide 1300 Nicollet with any information (including assessor's data) concerning downtown Minneapolis hotels that it gave to Korpacz and upon which he relied in preparing his appraisal. The tax court "encourage[d] the parties to promptly negotiate a suitable protective order and to take all reasonable measures to prevent the unnecessary dissemination of protected information."

The County later filed a motion in limine to exclude 1300 Nicollet's proposed exhibits 16–26 containing 10 affidavits of third-party properties,[3] arguing that the affidavits were irrelevant, hearsay, and lacked foundation. 1300 Nicollet argued that this information was necessary to confirm what information Korpacz had access to when preparing his appraisal. The tax court preserved the exhibits for the record but refused to admit them into evidence, finding that "[t]he fact that the County received the information does not show that the information was given to Mr. Korpacz."

The case proceeded to trial. 1300 Nicollet and the County each presented their expert appraisals and testimony in support of their proposed valuations. Importantly, exempt personal property, including personal intangible assets,[4] are not included when valuing real property for tax purposes. *See* Minn. Stat. §§ 272.02, subd. 9 (2022); 272.03, subds. 1–2 (2022). We recognize three approaches for valuing real property: the cost approach, the sales comparison approach, and the income capitalization approach. *Inland Edinburgh Festival, LLC v. County of Hennepin*, 938 N.W.2d 821, 825 (Minn. 2020). The parties' experts disagreed on the methodology to be used to account for intangible assets.

1300 Nicollet's expert, Lennhoff, relied exclusively on the income capitalization approach. "The income capitalization approach determines the value of income-producing property by capitalizing the income the property is expected to generate over a specific

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[3] These affidavits of the properties generally confirm that the County had nonpublic data related to the competitor hotels and urge the tax court not to compel disclosure of their nonpublic data.

[4] Examples of intangible assets include "franchise agreements, other business contracts, and business goodwill." *The Appraisal of Real Estate* 663 (15th ed. 2020).

period of time at a specified capitalization yield rate." *Cont'l Retail, LLC v. County of Hennepin*, 801 N.W.2d 395, 402 (Minn. 2011). Lennhoff then used the parsing income method to separate real property value from business and other intangible value. This method involves estimating the business entity's total value (or "going concern"[5]) and then removing the value of income and expenses that are not attributable to the real estate itself. Lennhoff acknowledged that valuing a hotel "requires specialized analysis" and that "it is essential that you be consistent in how you approach those valuations."

Lennhoff excluded income derived from food and beverage revenues from the value of the real estate as an intangible asset. He then used an appraisal technique called "proxy rent" to attribute a portion of food and beverage revenues to the real estate. Rent paid by a tenant can be attributed to the real estate value itself. Here, 1300 Nicollet did not lease out its food service spaces; instead, the Hotel operated the spaces itself. The proxy rent technique seeks to establish what the rent *would* be, had the spaces been leased to a third party. Under Lennhoff's proxy rent technique, he removed food and beverage revenues from the total going-concern value as intangible business assets, but then estimated a hypothetical rental value using 10 percent of projected gross food and beverage sales. This 10 percent figure was based on restaurant rental rates market data. The hypothetical rental value was then added back into the Hotel's market value. Food and beverage revenues were then not attributed to the real estate as an intangible asset, but the rental value of food

[5] A business entity's "going concern" can include "real property, tangible personal property (such as furniture, fixtures, and equipment) and intangible assets." *The Appraisal of Real Estate*, *supra*, at 663.

and beverage space was included in the market value. The proxy rent technique was therefore intended to prevent undervaluing the subject property after food and beverage revenues were removed.

By contrast, the County's expert, Korpacz, used the income capitalization and the sales comparison approaches to estimate the market value of the Hotel real estate. The sales comparison approach "compares the subject property to similar properties recently sold in actual market transactions." *Inland Edinburgh Festival*, 938 N.W.2d at 825. Korpacz then used the "management fee approach" (or "Rushmore" method) to separate real property value from business or intangible value. The management fee approach involves "valuing tangible assets exclusive of intangible assets." *The Appraisal of Real Estate* 676 (15th ed. 2020). Korpacz rejected the proxy rent technique. Instead, he addressed all intangibles by deducting management fees under the management fee approach. Korpacz believed it appropriate, when valuing hotel-run restaurants, to include all food and beverage revenues (minus expenses) in the market value. He therefore attributed all food and beverage net income to the real property itself, increasing the value of the real estate.

A government's assessed market value is prima facie valid. *S. Minn. Beet Sugar Coop v. County of Renville*, 737 N.W.2d 545, 557 (Minn. 2007). The tax court found that 1300 Nicollet had overcome the prima facie validity of the assessments by introducing Lennhoff's appraisal. The parties stipulated that the cost approach did not produce reliable results here, and the tax court agreed. The tax court then found that Korpacz's sales comparison approach did not produce reliable value indications for this property, so it

relied solely on the income capitalization approach. The tax court also formally adopted the parsing income method for its income capitalization analysis and used Lennhoff's appraisal as a "paradigm," including his use of the proxy rent technique. Notably, the County does not dispute the tax court's use of the income capitalization approach or the parsing income method.

Despite adopting much of Lennhoff's analysis, the tax court adjusted Lennhoff's calculations in four areas: (1) undistributed expenses; (2) management fees; (3) replacement reserve; and (4) valuation of furniture, fixtures, and equipment. Its primary reason for these adjustments was to ensure consistent application of the proxy rent technique used by Lennhoff. The tax court acknowledged that "the proxy rent technique in this case is not ideal" because it is typically used to value restaurants, but here it was extended to apply to venue rental and food service operations. The tax court found that a typical restaurant is much smaller than the Hotel's facilities, and the 10 percent figure is speculative. Nevertheless, the tax court concluded that the proxy rent technique was a reasonable "means" to allocate a portion of the food and beverage division revenues to the real estate on this record.

The tax court first adjusted undistributed expenses, reasoning that the proxy tenant would be responsible for some of these expenses. According to the tax court, the adjustment was necessary to ensure an equal treatment of food and beverage income *and expenses* under the parsing income method. The tax court used either square footage or income contribution to calculate the amount of expenses that could reasonably be allocated

to the proxy tenant. It also adjusted the management fee[6] and replacement reserve deductions to calculate these amounts using gross receipts incorporating the proxy rent technique, rather than totals that include food and beverage receipts that can be attributed to the proxy tenant. Lastly, the tax court reduced Lennhoff's estimates of furniture, fixtures, and equipment by 10 percent to "account for items that would be owned by the proxy tenant rather than 1300." These adjustments resulted in a large increase in the market value from Lennhoff's valuations.

A summary of the valuations is as follows:

Date	Assessed value	1300 Nicollet's Expert (Lennhoff) Appraisal	The County's Expert (Korpacz) Appraisal	Tax Court Valuation
01/02/2016	$53,750,000	$39,700,000	$110,000,000	$71,703,000
01/02/2017	$70,540,000	$39,300,000	$115,000,000	$67,940,000
01/02/2018	$70,540,000	$35,200,000	$105,000,000	$68,881,000

1300 Nicollet petitioned for review through certiorari, challenging the tax court's discovery and evidentiary rulings, as well as the tax court's adjustments to its expert appraisal.

ANALYSIS

I.

1300 Nicollet first argues that the tax court's discovery and evidentiary rulings violated its constitutional right to due process. 1300 Nicollet challenges the tax court's

[6] The management fee was treated as a business expense under Lennhoff's appraisal using the parsing income method. Under the management fee approach used by Korpacz, the management fee is treated as an intangible asset.

decision denying in part its motion to compel information of other Minneapolis hotels. Specifically, 1300 Nicollet maintains that our recent decision in *G&I IX OIC LLC v. County of Hennepin*, 979 N.W.2d 52 (Minn. 2022), holding that assessor's records may be admissible at trial, in turn means that Minnesota Statutes section 278.05, subdivision 3 (2022) mandates the discoverability of assessor's records. We read this argument as 1300 Nicollet contending that the balancing test of Minnesota Statutes section 13.03, subdivision 6, no longer applies to the discoverability of assessor's records.[7]

A trial court has discretion to grant or deny discovery requests, so we review these decisions under an abuse of discretion standard. *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 305–06 (Minn. 1990). Accordingly, we will not disturb the tax court's decision "unless the trial court abused its discretion, exercised its discretion in

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[7] Minnesota Statutes section 13.03, subdivision 6, provides in relevant part:

> If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer . . . an action to compel discovery or an action in the nature of an action to compel discovery.
>
> The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.
>
> If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. . . .

an arbitrary or capricious manner, or based its ruling on an erroneous view of the law." *Id.* at 306. But when the evidentiary ruling concerns the interpretation of a statute, we apply de novo review. *G&I*, 979 N.W.2d at 57.

Whether discovery of nonpublic assessor's records is mandated by Minnesota Statutes section 278.05, subdivision 3, is an issue of statutory interpretation. "The purpose of statutory interpretation is to determine the Legislature's intention by reading the statute as a whole." *G&I*, 979 N.W.2d at 57. This court also interprets "each section in light of the surrounding sections to avoid conflicting interpretations." *Id.* (citation omitted) (internal quotation marks omitted). "We will not engage in any further construction if we conclude that the statute is plain and unambiguous." *Id*.

We recently held in *G&I* that Minnesota Statutes section 278.05, subdivision 3, allows a county to use nonpublic data in "assessor's records" at trial, including in its expert appraisal report. *G&I*, 979 N.W.2d at 63. Section 278.05 "governs disclosure of 'assessor's real estate tax records' in the tax litigation context." 979 N.W.2d at 60 (quoting Minn. Stat. § 13.4965, subd. 4). Section 278.05, subdivision 3, provides in full:

> Assessor's records, including certificates of real estate value, assessor's field cards and property appraisal cards shall be made available to the petitioner for inspection and copying and *may be offered at the trial subject to the applicable rules of evidence and rules governing pretrial discovery and shall not be excluded from discovery or admissible evidence on the grounds that the documents and the information recorded thereon are confidential or classified as private data on individuals*. Evidence of comparable sales of other property shall, within the discretion of the court, be admitted at the trial.

(Emphasis added.)

The plain language clearly states that assessor's records are subject to the rules of pretrial discovery—not that they are discoverable as a matter of right. The pertinent language of the statute provides that assessor's records "may be offered at the trial subject to the applicable rules of evidence and rules governing pretrial discovery and shall not be excluded from discovery . . . on the grounds that the documents and the information recorded thereon are confidential." Minn. Stat. § 278.05, subd. 3. The statute's language does not prevent assessor's records from being excluded from discovery on *other* grounds, such as the balancing test found in Minnesota Statutes section 13.03, subdivision 6.

Our decision in *G&I* that section 278.05, subdivision 3, permits a county to use nonpublic data at trial likewise does not render the section 13.03, subdivision 6 balancing test inapplicable to discovery of assessor's records. *See Cilek v. Off. of Minn. Sec. of State*, 941 N.W.2d 411, 415 (Minn. 2020) ("This case requires that we interpret—*and read together*—portions of the Minnesota Government Data Practices Act . . . and the Minnesota Election Law . . . ." (emphasis added)). The tax court is tasked with analyzing the discoverability of the assessor's records under the Rules of Evidence and Civil Procedure, and it cannot automatically, without further analysis, exclude assessor's records from discovery solely because they contain confidential information. *See* Minn. Stat. § 278.05, subd. 3 ("Assessor's records . . . may be offered at the trial subject to the applicable rules of evidence and rules governing pretrial discovery. . . ."); Minn. Stat. § 271.06, subd. 7 (2022) ("[T]he Rules of Evidence and Civil Procedure for the district court of Minnesota shall govern the procedures in the Tax Court, where practicable.").

The balancing test in section 13.03, subdivision 6, is not triggered until "a government entity opposes discovery of government data or release of data pursuant to court order" and the petitioner moves to compel the data. Minn. Stat. § 13.03, subd. 6. When this happens, the section 13.03, subdivision 6 balancing test first requires the tax court to consider whether the data are discoverable under applicable court rules, including the Rules of Civil Procedure.[8] If the data are discoverable, the second prong of the balancing test then requires the tax court to weigh the benefit to the petitioner against confidentiality interests. Minn. Stat. § 13.03, subd. 6. The balancing test provides a framework for the tax court to consider various factors such as relevance, privilege, proportionality, and confidentiality. Section 278.05, subdivision 3, and section 13.03, subdivision 6, each preclude the tax court from denying discoverability *solely* because data are confidential or nonpublic. *See G&I*, 979 N.W.2d at 63 (interpreting "confidential" in section 278.05, subdivision 3, to have its ordinary meaning, therefore encompassing nonpublic data in assessor's records). In other words, sections 278.05 and 13.03 can be read together so that each has effect.

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[8] The tax court here relied on Minnesota Rule of Civil Procedure 26.02(b) to determine whether the requested information was discoverable. Rule 26.02(b) provides:

> Unless otherwise limited by court order, the scope of discovery is as follows. Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

This interpretation is also consistent with our precedent. *G&I*, 979 N.W.2d at 62 (stating that a taxpayer "retains the power under our prior decisions to seek to compel discovery through the Data Practices Act balancing test for discovery of not public data"); *Montgomery Ward*, 450 N.W.2d at 306 (holding that the two-part balancing test in section 13.06, subdivision 6, is mandatory when a discovery dispute occurs). The interplay of these two statutes is evidenced in this case, as the tax court allowed discovery of some confidential data while excluding other confidential data.

1300 Nicollet argues that this reading of sections 278.05 and 13.03 allows the County to "cherry pick" which data it chooses to provide to its expert and therefore ensure that only data that are favorable to its valuation are discoverable by the other side. With the information produced, however, 1300 Nicollet was able to cross-examine Korpacz on his methodology and sources while due consideration was given to the interests of third parties. We recognize once again that counties are in the unique position of collecting and holding nonpublic data, assessing taxes on income-producing properties, and litigating those very assessments. We have previously noted the competing interests between owners of income-producing properties and "government entities that collect data *and* assess taxes on income-generating properties." *G&I*, 979 N.W.2d at 63. These complex "interests include facilitating accurate assessment of the value of properties, protecting the data privacy of third parties, and ensuring due process for each party involved in property tax litigation." *Id.* We have also noted that the Legislature could provide more guidance on how to balance these competing interests, but until then, we are bound by the statutes as written. *Id.*

1300 Nicollet contends that even if the balancing test was the proper means to analyze the discovery requests, the tax court abused its discretion in doing so. It raises several arguments, many of which we have addressed before in previous cases, to support this contention.

First, 1300 Nicollet states that the tax court should not consider, when applying the balancing test, whether an expert can prepare an adequate appraisal without receiving the requested information from the County's expert. It claims that, for due process to be satisfied, the parties need access to the same relevant facts. 1300 Nicollet next contends that the relevant confidentiality interests of third parties were the same in each discovery analysis. Accordingly, it asserts that it was nonsensical for the tax court to conclude, in one instance, that the benefit of compelling discovery of the information that the County's expert relied on outweighed the confidentiality interests of those third parties, but that the benefit of compelling discovery of the data related to the *other* properties did *not* outweigh their confidentiality interests.

We have rejected the argument that the tax court abuses its discretion when it considers, as part of the section 13.03, subdivision 6 balancing test, whether an appraiser is able to make an informed appraisal without the information a party seeks to compel. *EOP-Nicollet Mall*, 723 N.W.2d at 277 ("Given that the benefit to EOP of receiving the broad information at issue was minimized by the fact that EOP's appraiser was able to come to a conclusion of value on the subject property without the requested material, it was not arbitrary or capricious for the tax court to conclude that the harm of disclosure outweighed the benefit to EOP."). That part of 1300 Nicollet's argument therefore fails.

Further, the tax court's discovery decisions are well reasoned and supported by the record. The tax court explained that the benefit to 1300 Nicollet increased regarding the more limited information concerning the four hotels because 1300 Nicollet needed the information to effectively cross-examine Korpacz. The harm to the County and third parties, according to the tax court, decreased because less information was being disclosed to 1300 Nicollet. Nothing in the record shows that the tax court abused its discretion in reaching its conclusions.[9]

In sum, 1300 Nicollet's due process rights were not violated by the tax court's discovery and evidentiary decisions. *See EOP-Nicollet Mall*, 723 N.W.2d at 280 n.14 (concluding that the taxpayer's due process rights were not violated when the tax court

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[9] 1300 Nicollet makes three other arguments that the tax court erred, none of which has merit. First, the tax court did not abuse its discretion in granting the County's motion in limine excluding third-party affidavits because no showing was made that the information was provided to Korpacz. Next, the tax court acted within its discretion in not ruling on 1300 Nicollet's motion to reconsider. We have explained that "courts will 'rarely' exercise their power to reconsider decisions, and 'are likely to do so only where intervening legal developments have occurred . . . or where the earlier decision is palpably wrong in some respect.' " *Stern 1011 First St. S., LLC v. Gere*, 979 N.W.2d 216, 220 (Minn. 2022) (quoting Minn. Gen. R. Prac. 115.11 advisory comm. cmt.—1997). Here, the tax court did not give express permission for the "motion to clarify," and as noted above, the tax court's discovery decisions were not "palpably wrong."

Finally, 1300 Nicollet has not demonstrated the relevance of Korpacz's status as an independent appraiser, and the tax court was therefore not required to engage in a section 13.03 balancing test analysis before the County disclosed nonpublic data to its own expert. The balancing test concerns *party access*, and because the county is not seeking access to the data or opposing its discovery, section 13.03 does not require use of the balancing test before a county can share the information with its expert. *See* Minn. Stat. § 13.03, subd. 6 (stating that "the party that seeks access to the data" may bring an action to compel discovery); *EOP-Nicollet Mall*, 723 N.W.2d at 280 ("[N]othing in the plain language of the statute or our case law supports the dissent's theory that the tax court should have applied the balancing test to determine whether the county's expert could rely on information that was rightly in her files.").

used the section 13.03 balancing test to resolve the issue of which nonpublic data should be provided to the taxpayer).

II.

1300 Nicollet challenges four of the tax court's adjustments to its expert's appraisal. The tax court mainly accepted the methodologies and opinions of 1300 Nicollet's expert, Lennhoff, but adjusted his valuations of (1) undistributed expenses; (2) management fees; (3) replacement reserve; and (4) valuation of furniture, fixtures, and equipment.

We review the tax court's valuation of property for clear error, which occurs when the decision is not reasonably supported by the evidence as a whole. *Hansen v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995). "The inexact nature of property assessment necessitates that this court defer to the decision of the tax court unless the tax court has either clearly overvalued or undervalued the subject property, or has completely failed to explain its reasoning." *Id.* "The tax court need not accept an appraiser's valuation in its entirety; instead, it may adjust the calculations based on evidence in the record and its own expertise." *KCP Hastings, LLC v. County of Dakota*, 868 N.W.2d 268, 275 (Minn. 2015). It is not our role to reweigh the evidence or to assess the credibility of witnesses. *Medline Indus., Inc. v. County of Hennepin*, 941 N.W.2d 127, 131 (Minn. 2020).

Each of the tax court's adjustments was clearly explained and supported by the record. In adjusting the value of undistributed expenses, the tax court relied on its expertise and found that tenants may be responsible for expenses apart from rent. 1300 Nicollet's undistributed expenses included expenses categorized as administration and general, information technology, marketing and sales, repairs and maintenance, and utilities. These

expenses are deemed "undistributed" because they cannot be easily allocated to a specific department. 1300 Nicollet argues that Lennhoff's calculation of proxy rent was *gross rent* based on restaurant market data, and a tenant would not be independently responsible for additional expenses. No conclusive evidence was presented on how expenses would be allocated for food and beverage tenants *within* a hotel, because Lennhoff based his analysis on restaurant data. The tax court explained its reasoning for the adjustment—namely, to treat receipts and expenses the same under the proxy rent technique. The tax court based this determination on evidence from the record that showed that these expenses benefitted the entire hotel operation. It also thoroughly explained its process and calculations as to the *amount* of undistributed expenses it would attribute to the proxy tenant, employing the same methods that Lennhoff used to allocate revenues to another tax parcel. The tax court's treatment of undistributed expenses was not clearly erroneous.

1300 Nicollet next argues that no evidence in the record supports applying the management fees and replacement reserve to the food and beverage proxy rent, so the adjustments were clearly erroneous. The tax court determined that these percentage-based fees should be based on gross receipts that incorporate the proxy rent technique. The tax court also pointed to the management agreement between 1300 Nicollet and the hotel parent company, which defined "gross receipts" to include rents payable by tenants. Because the tax court explained its reasoning for the adjustments to the management fees and replacement reserve and supported its decisions with evidence from the record, these adjustments were not clearly erroneous.

Lastly, the tax court explained that it adjusted the value of furniture, fixtures, and equipment under an assumption that if the restaurant space was leased to a third party, that third party would also own a portion of furniture, fixtures, and equipment. As support for this adjustment, the tax court cited to Lennhoff's inclusion of restaurant and event spaces costs in his estimates of furniture, fixtures, and equipment as well as other persuasive authority. The tax court explained that it attributed 10 percent of furniture, fixtures, and equipment to the proxy tenant. In context it is apparent that the tax court was using the same square footage figure used to allocate some categories of undistributed expenses to the proxy tenant to also allocate furniture, fixtures, and equipment. 1300 Nicollet also recognized that this figure could be based on the tax court's square footage analysis.

In fact, 1300 Nicollet's own expert employed a proxy rent technique based on hypotheticals, and the tax court sought to consistently apply such a technique in its adjustments. The tax court recognized that the proxy rent technique presented several issues in the context of hotel facilities and therefore made adjustments based on its expertise and the record in an effort to use the technique fairly. We therefore find that the tax court's adjustments were not clearly erroneous.

CONCLUSION

For the foregoing reasons, we affirm the decision of the tax court.

Affirmed.

C O N C U R R E N C E

THISSEN, Justice (concurring).

I concur in the decision of the court.

We once again take up the rules governing discovery of income property assessment data in the context of tax litigation. The statutory framework is as follows: The Data Practices Act makes "income property assessment data" private data on individuals or nonpublic data on entities that are not natural persons. Minn. Stat. § 13.51, subd. 2 (2022); *see* Minn. Stat. § 13.02, subd. 9 (2022) (defining "nonpublic data" as "data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data"); Minn. Stat. § 13.02, subd. 12 (2022) (defining "private data on individuals" as "data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data"). Consequently, income property assessment data[1] is "not public." Minn. Stat. § 13.02, subd. 8a (2022) (defining "not public data"). A government entity generally may not disclose such not public data to anyone except the subject of the data (the property

[1] "Income property assessment data" is defined as the following information about an income-producing property: detailed income and expense figures related to the property, anticipated income and expenses, average and projected vacancy factors, verified net rentable areas or net usable areas, and lease information. Minn. Stat. § 13.51, subd. 2. Minnesota statutes direct that "all property shall be valued at its market value." Minn. Stat. § 273.11, subd. 1 (2022). This is all data that the property tax assessor (here, Hennepin County) needs to assess the value of the income-producing property. To aid the assessors, Minnesota law requires that property owners contesting the valuation of income-producing properties disclose six categories of information that parallel the categories of data identified in section 13.51, subdivision 2. Minn. Stat. § 278.05, subd. 6(a) (2022). Certain income property assessment data may also be relevant under the sales comparison approach to determining market value. *See infra* at n.8.

owner). Minn. Stat. § 13.03, subds. 1–3 (2022) (setting forth the process for disclosing upon request public data and informing requesting parties that other data may not be disclosed).

The analysis becomes more complicated in the context of tax litigation where property owners challenging the tax assessment of their property may seek, through a discovery request, disclosure of income property assessment data related to other properties, or the taxing entity may itself decide to disclose income property assessment data from other properties to support its own valuation appraisal at trial.[2] The Legislature has crafted more specific rules for those circumstances.

For instance, the Legislature requires that owners of property be notified about a discovery request for income property assessment data related to their property. Minn. Stat. § 13.51, subd. 4 (2022). Furthermore, the Data Practices Act directs that "[d]isclosure of assessor's real estate tax records [including income property assessment data] for litigation purposes is governed under section 278.05." Minn. Stat. § 13.4965, subd. 4 (2022); *see also G&I IX OIC LLC v. County of Hennepin*, 979 N.W.2d 52, 58–59 (Minn. 2022) (concluding that income property assessment data as defined in section 13.51, subdivision 2, are "assessor's records" under section 278.05, subdivision 3). Section 278.05, subdivision 3, in turn, provides:

> Assessor's records . . . shall be made available to the [property owner challenging a tax assessment] for inspection and copying and may be offered at the trial subject to the applicable rules of evidence and rules governing

[2] These potential uses of income property assessment data broadly reflect a fundamental principle of taxation that "[t]axes shall be uniform upon the same class of subjects." Minn. Const. art. X, § 1.

> pretrial discovery and shall not be excluded from discovery or admissible evidence on the grounds that the documents and the information recorded thereon are confidential or classified as private data on individuals. Evidence of comparable sales of other property shall, within the discretion of the court, be admitted at the trial.

Minn. Stat. § 278.05, subd. 3 (2022). In *G&I*, we read the term "confidential" broadly according to its plain and ordinary meaning. 979 N.W.2d at 59, 63.

Under section 278.05, subdivision 3, then, income property assessment data are admissible in a tax court trial despite the fact that such information could not otherwise be disclosed to anyone other than the subject of the data (the owner of the particular property) under the Data Practices Act. *G&I*, 979 N.W.2d at 59–63 (holding that the "confidential" nature of income property assessment data is not grounds for excluding the information from evidence at trial); *see generally* Minn. Stat. 13.03, subd. 4(a) (2022). In addition, because section 278.05, subdivision 3, applies equally to both discovery and admissibility of evidence, *discovery* of income property assessment data by a property owner must be governed by the same rule: the "confidential" nature of the income property assessment data is not grounds for denying discovery. *G&I*, 979 N.W.2d at 64 (Thissen, J., concurring). However, the right to discovery of income property assessment data may be limited in accordance with the rules governing pretrial discovery. *See* Minn. Stat. § 278.05, subd. 3 (stating that assessor's records, including income property assessment data, shall be made available to the property owner challenging a tax assessment for inspection and copying subject to the applicable rules governing pretrial discovery).

Consequently, we are faced with the following puzzle: On the one hand, under section 278.05, subdivision 3, and the plain implications of our decision in *G&I*, income

property assessment data may not be withheld by the taxing entity from discovery on the ground that the data are confidential (including specifically its confidential or not public nature under the Data Practices Act). On the other hand, under Minn. Stat. § 13.51, subd. 1 (2022), income property assessment data are generally classified as not public data that may only be disclosed to the subject of the data, and nothing in Minn. Stat. § 13.4965 (2022) or Minn. Stat. § 278.05, subd. 3, explicitly says that status disappears in the context of litigation. How do we reconcile those provisions?

Section 13.03, subdivision 6, provides some clues. That statute establishes a framework for handling litigation discovery requests for not public data.[3] Minn. Stat. § 13.03, subd. 6 (2022).

Under subdivision 6, a government entity must first oppose discovery of government data "on the grounds that the data are classified as not public." *Id.* Second, the party seeking the data may bring a motion to compel discovery of the information. *Id.* Third, if a motion is filed, the court must "first decide whether the data are discoverable or releasable [under] the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action." *Id.* Fourth, if the court determines that the data are discoverable, the court must balance the benefit to the party seeking access to the data against the confidentiality interests of the government entity maintaining the data and the confidentiality or privacy interests of the persons that provided, are the subject of, or are

[3] Section 13.03, subdivision 6, is limited to disclosure through discovery. It does not address or apply to a decision of a taxing entity to use and publicly disclose not public income property assessment data as part of a litigation strategy at trial. Accordingly, section 13.03, subdivision 6, was not relevant to our decision in *G&I*.

identified in the data and, if appropriate, fashion and issue a protective order necessary to assure proper handling of the data by the parties. *Id.*

Arguably, section 13.03, subdivision 6, may not apply to discovery requests for income property assessment data under the first step (the government entity must oppose discovery of the material) because section 278.05, subdivision 3, says that the confidential nature of the assessment data (including its status as not public data) is not grounds for denying discovery. However, section 278.05, subdivision 3, does not expressly reclassify income property assessment data as public data. Accordingly, under the terms of section 13.03, subdivision 6, there is a good (if not watertight) argument that a government entity may oppose the discovery of the data because the data continue to be "classified as not public."

And if we read further in the statute, that latter reading becomes clearer. In the third step of the section 13.03, subdivision 6, process, the court must ask whether the not public data are "discoverable or releasable pursuant to the rules of evidence and of . . . civil, or administrative procedure appropriate to the action." Minn. Stat. § 13.03, subd. 6. The fact that the court is empowered to ask this question makes clear that the Legislature understood that there is a difference between data being classified as not public and data being discoverable—under some circumstances not public data may still be discoverable; otherwise, section 13.03, subdivision 6, would be unnecessary. That distinction precisely captures the apparent conflict between section 13.51, subdivision 2 (classifying income property assessment data as not public), and section 278.05, subdivision 3 (stating that income property assessment data are discoverable in tax litigation despite its confidential—

not public—status). Consequently, a taxing entity can object to discovery on the ground the income property assessment data are not public, but the court may determine whether the data are discoverable. Thus, the best reading of the agglomeration of statutes discussed above is that section 13.03, subdivision 6, remains applicable to discovery of income property assessment data.[4]

On a motion to compel discovery of income property assessment data in the context of a property tax assessment challenge, the inquiry into whether the data are discoverable is limited. Consistent with section 278.05, subdivision 3, which specifically allows the tax court to invoke the "rules governing pretrial discovery," the tax court may refuse to order, or limit, discovery. *See* Minn. R. Civ. P. 26.02(b) (providing that the court must consider whether the information sought "is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information,

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[4] In my concurrence in *G&I*, I suggested that the general balancing test in Minn. Stat. § 13.03, subd. 6, does not apply to discovery requests for income property assessment data because, as the majority in *G&I* stated, the Data Practices Act itself makes clear in Minn. Stat. § 13.4965, subd. 4 (2022), that the disclosure of assessor's records (including income property assessment data) is governed by section 278.05 and not the Data Practices Act. 979 N.W.2d at 58, 60; *see also id.* at 64 (Thissen, J., concurring). I reasoned that, if the Data Practices Act does not govern the disclosure of income property assessment data, then section 13.03, subdivision 6, which is part of the Data Practices Act, cannot apply to the disclosure of income property assessment data. 979 N.W.2d at 65 (Thissen, J., concurring). For the reasons stated above, I conclude that both the *G&I* court and I spoke too broadly on that point. Under the hodgepodge of statutes governing disclosure of income property assessment data in the context of tax litigation, two distinct things may be true at once: (1) the fact that income property assessment data is confidential is not grounds for refusing to provide the information in discovery or refusing to admit the information at trial, *and* (2) income property assessment data remains classified as private data on individuals or nonpublic data under section 13.51 of the Data Practices Act.

the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit"). But under section 278.05, subdivision 3 (and the clear implication of *G&I*), the tax court cannot refuse to order disclosure in discovery of income property assessment data based solely on the government entity's obligation under the Data Practices Act to withhold not public (confidential) data.

If the tax court determines that some or all of the income property assessment data are discoverable, the only further question before the tax court under section 13.03, subdivision 6, is whether the benefit to the person seeking discovery is outweighed by the privacy interest of the owner of the property that is the subject of the income property assessment data. The "confidentiality interest" of the County is no longer a consideration; section 278.05, subdivision 3, says that the County no longer has such a confidentiality interest as it relates to discovery. This means that if an owner of the property that is the subject of or identified in the income property assessment data does not object, then the tax court must allow discovery of the data that the tax court has determined is discoverable. Once again, this is not a watertight reading of this agglomeration of statutes, but it is one that seems to best reconcile what would otherwise be conflicting statutory directives.

The tax court here followed the process just described in assessing 1300 Nicollet's motion to compel discovery of income property assessment data for 10 properties. The tax court determined that the income property assessment data for six of the properties (the ones that the County did not rely on in making its valuation of the hotel) were not discoverable under Minn. R. Civ. P. 26.02(b) because the burdens that the discovery

request imposed on the County outweighed 1300 Nicollet's need for the information. That decision is subject to deferential review for abuse of discretion. *See In re Polaris, Inc.*, 967 N.W.2d 397, 406 (Minn. 2021) ("[W]e review a district court's [discovery] order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law." (citation omitted) (internal quotation marks omitted)). Although I may have weighed those interests differently, I cannot conclude the tax court abused its discretion.[5] Consequently, the section 13.03, subdivision 6, balancing inquiry ends for those six properties.

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[5] The tax court concluded that the information sought by 1300 Nicollet for the six hotels was relevant (particularly for purposes of the income capitalization approach to valuation), non-privileged, and proportional "considering the importance of the issues at stake in the action and the amount in controversy." But the tax court nonetheless denied discovery for two reasons.

First, 1300 Nicollet's expert had access to other sources of information that are ordinarily and customarily relied upon in the performance of hotel appraisals under generally accepted appraisal practices (as, notably, did the County), and the expert testified that he had sufficient information upon which to perform his appraisal analysis (of course, what else could he say at that point and retain credibility?). This is not a wholly comforting rationale. As the tax court noted, the information that 1300 Nicollet's expert had access to was relevant but not the same information, and the expert testified that the actual income property assessment data for the six hotels in downtown Minneapolis "would have been useful and considered . . . for purposes of confirming [his] opinions." *See also infra* at n.8. Nonetheless, the tax court concluded that the information was on balance "relatively unimportant."

Second, the tax court concluded that the fact that producing the requested information for the six hotels would require 6 to 12 hours of work (1 to 2 hours per hotel) by County employees imposed too great a burden on the County. In my experience, 6 to 12 hours of work in a case does not seem particularly onerous where millions of dollars are potentially at stake. Moreover, the County's concern that allowing discovery in this case would open the door to "excessive and unnecessary discovery in the future" does not strike me as compelling or even relevant.

The tax court, however, found that 1300 Nicollet had a greater need to review the income property assessment data for the four remaining properties upon which the County's expert relied in developing his valuation appraisal in order to effectively prepare for the litigation and cross-examine the County's expert. Therefore, the tax court ruled that the Rule 26.02(b) balancing favored discovery. Accordingly, the tax court properly moved on to the section 13.03, subdivision 6, balancing inquiry and considered the privacy interests of the owners of the hotels that were the subject of the income property assessment data. The tax court determined that the benefit of disclosure of information the County gave its valuation expert to 1300 Nicollet outweighed the privacy interests of the property owners who are the subjects of the data.[6] Accordingly, the tax court ordered the County to

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[6] In conducting the section 13.03, subdivision 6, balancing inquiry, the tax court also considered (extensively) "the separate (and misprized) confidentiality interests of the County." That was legal error. While it is true that disclosure of income property assessment data may undermine the smooth operation of the property tax system the County administers by providing disincentives for property owners to submit such information for assessment purposes, the plain language of section 278.05, subdivision 3, as interpreted in *G&I*, mandates that the County, as a party to the case, allow discovery of the data without regard to its confidential nature. The clear directive of section 278.05, subdivision 3, cannot be reconciled with consideration of the County's confidentiality interests under the section 13.03, subdivision 6, balancing test. To allow consideration of the County's confidentiality interests would render the language of section 278.05, subdivision 3, meaningless. To the extent that *EOP-Nicollet Mall, L.L.C. v. County of Hennepin*, 723 N.W.2d 270 (Minn. 2006), suggests otherwise, I believe that our decision in *G&I* necessarily overruled it by implication.

Moreover, there is something odd about wringing our hands over the threat that disclosure may have on the County's interest in encouraging property tax owners to turn over income property assessment data when the County feels entirely free to use that same information and disclose it itself to experts and opposing parties (and perhaps the broader public) when it suits its needs in litigation. The County's asserted concern for maintaining the smoothness of the tax system rings hollow. Furthermore, under section 278.05, subdivision 6, property owners are required by law to turn over categories of income property assessment data or face dismissal of their legal challenge to an assessment, so the

"provide 1300 Nicollet with any information—including third-party assessor's data—concerning downtown Minneapolis hotel properties which it gave [its appraiser], on which [its appraiser] relied in preparing his appraisal report for the County." The tax court did not abuse its discretion in this ruling and the County does not challenge it.

For those reasons, the tax court did not abuse its discretion when it allowed discovery of income property assessment data for the four properties upon which the County's appraiser relied in preparing the appraisal report and denying discovery of the data related to the other six properties.

I do want to highlight, however, the problematic and potentially unfair practical outcomes—one noted by the tax court—of the statutory scheme created by the Legislature. First, when a property owner in litigation challenging a tax assessment seeks discovery of income property assessment data for other similar properties in the County's possession, the statute provides significant protections to the privacy interests of the owner of the property that is the subject of the data. The owner must be notified about the discovery request, Minn. Stat. § 13.51, subd. 4, and the tax court is expressly required to consider the privacy interests of the owner before allowing the discovery, Minn. Stat. § 13.03, subd. 6. In contrast, when the County intends to use a property owner's income property assessment data to support its own valuation (including to outside experts who are not county

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County's concern that it will not get the data seems overstated. Minn. Stat. § 278.05, subd. 6 (2022). Of course, the fact that disclosure of the data to the County is a mandatory condition of a challenge to a tax assessment may heighten the privacy interests of property owners. Because the tax court allowed discovery notwithstanding its consideration of the County's interest in confidentiality, the legal error does not matter.

assessors), there is no requirement that the property owner be notified of the County's plan to disclose the information,[7] and there is no statutory mechanism or requirement that the tax court consider the property owner's privacy interests in determining whether to admit the evidence.

Second, under the current state of law, a county may pick and choose property assessment files that are most supportive of its position. A property owner challenging an assessment is not treated in the same way. Although property owners *may* get information (subject to the tax court's balancing of interests under section 13.03, subdivision 6) on the properties that support the county's valuation case, they may be (and typically have been) denied access to other similar files that may support the property owner's valuation case. And although it is true that a property owner's expert (like 1300 Nicollet's expert) may have access to other broadly available sources of information, it is equally true that the county has access to those same sources of information. The playing field is not even.[8]

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[7] To the extent that a property owner may seek to intervene under Minn. R. Civ. P. 24.01 to stop the County from disclosing, as evidence to support the County's valuation at trial, the property owner's income property assessment data (an issue we have not confronted), the lack of mandatory notice to the property owner practically means that it may be difficult for the property owner to protect its privacy interests. Further, the standard that the tax court would apply to weigh those interests is much less clear; there is no statutory requirement that the tax court weigh those privacy interests. And under section 278.05, subdivision 3, and our *G&I* decision, it is not clear that the tax court could refuse to admit the evidence based on confidentiality concerns in any event. 979 N.W.2d at 58–59.

[8] This is not merely an issue of potential cherry-picking gamesmanship. A taxing entity and a property owner may use different methods or emphasize different factors when developing their valuation determinations. For instance, in this case, the County's expert used a management fee approach to reach his income capitalization valuation, and 1300 Nicollet's expert used the parsing income/rent proxy method in his income

In short, litigation challenging an assessor's valuation of a property often involves the interests of the property owner challenging a government assessment of the value of the property; the government entity that conducted the assessment and will collect taxes on the property; and other property owners whose income property assessment data may be relevant to determining the taxable value of the property that is the subject of the litigation. The property owner challenging the assessment has an interest in obtaining as much information as possible to ensure the property is fairly and uniformly valued. There is no question that information about other comparable properties, including income property assessment data, is relevant and useful to that inquiry. The taxing entity has dual interests. As the custodian of sensitive information of property owners necessitated by its duty to fairly assess taxes, it has some interest in preserving the confidentiality of that information in order to encourage cooperation by property owners in the assessment process. As a party to litigation challenging the assessments and other decisions made in individual cases, the taxing entity has an interest that parallels the interest of the property owner challenging

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capitalization valuation. Consequently, the County's expert would have no interest in information related to the actual rent paid by the independent operator of a hotel restaurant (like the restaurant in the W Minneapolis—the Foshay hotel ("W Foshay")) while 1300 Nicollet's expert would find that information useful and, in some cases, necessary to prepare an appraisal that the tax court would find reliable. *See Bloomington Hotel Invs., LLC v. County of Hennepin*, No. 27-CV-19-6973, 2022 WL 2347868, at *24–25 (Minn. T.C. June 27, 2022) (finding expert appraiser valuation of hotel using parsing income method and the proxy rent technique unreliable in part because the expert relied specifically on materials concerning appraisal of stand-alone food service facilities, not hotels that contain stand-alone restaurants). The tax court in this case ordered that income property assessment data for the W Foshay hotel be provided to 1300 Nicollet as one of the four properties that the County's expert relied upon for his sales comparison valuation. But apparently the County provided no information about the lease between the W Foshay and the restaurant.

the assessment to use all information available to support its position on the proper valuation of the property. And the other property owners whose income property assessment data may be used in the litigation have competitive and proprietary interests in keeping their information private.

The balance struck under current law is that income property assessment data are not available through discovery to the property owner challenging an assessment if (1) producing the information imposes too great a burden on the taxing entity relative to the help that the data may provide to the property owner challenging the assessment, or (2) the privacy interests of the owners of the property that are the subject of the data are significant. In practice (as in this case), this seems to mean that a property owner challenging an assessment will not get access to all relevant and useful information, but only that (presumably helpful to the taxing entity) information that the taxing entity chooses to rely upon at trial. *See EOP-Nicollet Mall, L.L.C. v. County of Hennepin*, 723 N.W.2d 270, 279 (Minn. 2006). The taxing entity will get to use any information in its files that supports its valuation appraisal while keeping all other information from its adversary, the property owner challenging the assessment. Finally, some of the income property assessment data that the owners of the property that are the subject of the data want to keep private will remain private. But if the taxing entity finds the information helpful in responding to a challenge to its assessment, the property owners have little or no recourse to keep that sensitive data private.

In other words, the interests of the property owner challenging the assessment and the owner of the property which is the subject of the income property assessment data are

only partially protected. Neither property owner has much control over what information it has access to or which information will be disclosed. In contrast, the preferences of the taxing entity will almost always be honored—typically favoring disclosure when information is helpful in litigation and favoring non-disclosure when information is not needed in litigation. Perhaps this is the balance the Legislature intended to strike through the operation of four different statutes agglomerated over the course of 20 years. If not, it is up to the Legislature to engage with the stakeholders and devise a different solution. *G&I*, 979 N.W.2d at 64–66 (Thissen, J., concurring); *see EOP-Nicollet Mall*, 723 N.W.2d at 286 (Hanson, J., concurring in part, dissenting in part).

ANDERSON, Justice (concurring).

I join in the concurrence of Justice Thissen.