

STATE OF MINNESOTA

TAX COURT

COUNTY OF WRIGHT

REGULAR DIVISION

Delano Crossing 2016, LLC,

Petitioner,

vs.

County of Wright,

Respondent.

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT**

Court File No.: 86-CV-23-2147

This matter came before the Honorable Jane N. Bowman, Chief Judge, the Honorable Bradford S. Delapena, and the Honorable Beverly J. Luther Quast, Judges of the Minnesota Tax Court, en banc, on Wright County's motion for summary judgment.

Larry D. Martin, L.D. Martin Law Office, represents Petitioner Delano Crossing 2016, LLC.

Rachel E. Pence,¹ Caroline Bachun, Brian A. Lutes, and Elizabeth M. Larson, Wright County Attorney's Office, represent Respondent Wright County.

Wright County moves for summary judgment, arguing that because Petitioner Delano Crossing 2016, LLC (Delano Crossing) failed to disclose an appraisal report on the designated date and did not timely file a Joint Statement of the Case, it cannot carry its burden of proof, and as a result, the petition must be dismissed. The motion is denied because (1) there are material facts in dispute, and (2) the County's proposed legal conclusion is not supported by law.

¹ Ms. Pence's affidavit references "previously representing the County" in this matter, but no formal Notice of Withdrawal has been filed. Affidavit of Rachel Pence ("Pence Aff.") (signed Apr. 25, 2025) ¶ 1.

ORDER

1. Wright County's Motion for Summary Judgment is DENIED.
2. As the court heard this matter en banc for purposes of this motion only, this matter now reverts to one judge, the Honorable Beverly J. Luther Quast.
3. Within 24 days of the date of this order, the parties shall contact court administration with either a proposed trial schedule or to set up a conference call to discuss a trial date.

IT IS SO ORDERED.



FILED: May 29, 2025

BY THE COURT:

Jane N. Bowman, Chief Judge
MINNESOTA TAX COURT

Bradford S. Delapena, Judge
MINNESOTA TAX COURT

Beverly J. Luther Quast, Judge
MINNESOTA TAX COURT

MEMORANDUM

I. FACTUAL & PROCEDURAL BACKGROUND

On April 26, 2023, Delano Crossing timely filed its challenge to the January 2, 2022 assessment (for taxes payable in 2023).² On December 7, 2023, the court issued its Scheduling Order, setting several standard pretrial and trial deadlines.³ Delano Crossing then notified the County that its designated appraisal expert would be Ms. Kelsey Hornig of The Appraisal Group, LLC.⁴

Pretrial filings, such as witness and exhibits lists, along with a stipulation of facts, were due on February 11, 2025.⁵ Prior to the pretrial filings' deadline, on February 4, 2025, Wright County filed the present motion for summary judgment.⁶ Trial was originally scheduled for February 25, 2025, but the court granted a joint motion by the parties to continue the trial date to allow the court to hear and decide this motion for summary judgment.⁷ After a short delay to accommodate a judicial reassignment, the court heard this matter, en banc, on April 11, 2025.⁸ We now deny the motion.

II. GOVERNING AUTHORITIES

Wright County asks us to grant summary judgment in its favor, arguing that Delano Crossing's failure to comply with the Scheduling Order results in its inability to overcome the

² Pet. (filed Apr. 26, 2023).

³ Sched. Order (Dec. 7, 2023).

⁴ Pet'r's Not. Appraiser (filed Dec. 26, 2024). The court does not require filing notices of appraiser, only serving the notices on opposing counsel.

⁵ Sched. Order ¶ 7. Neither party complied with the pretrial filing deadlines.

⁶ Not. Mot. & Mot. Summ. J. (filed Feb. 4, 2025). An updated version, containing the hearing date and time, was filed on February 6, 2025. Am. Mot. Summ. J. (filed Feb. 6, 2025).

⁷ Am. Stip. Mot. to Continue (filed Feb. 21, 2025); Order (filed Feb. 21, 2025).

⁸ Tr. (Apr. 11, 2025).

assessment’s prima facie validity, and thus the petition must be dismissed.⁹ In support, the County argues that Delano Crossing’s failure to timely serve an appraisal report and to timely file a Joint Statement of the Case “amounts to a failure to prosecute the case effectively.”¹⁰ Delano Crossing opposes the motion, arguing it disclosed a detailed value analysis (which might be construed as an appraisal) and the late-filed Joint Statement of the Case was mutually late (and, in any event, it does not affect the merits).¹¹ We, in turn, examine several governing authorities.

A. Summary Judgment

The Minnesota Rules of Civil Procedure govern tax court proceedings “where practicable,” Minn. Stat. § 271.06, subd. 7 (2024). Summary judgment under Rule 56 is used to obtain a merits-based resolution. A party is entitled to summary judgment if “the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A party asserting no genuine issue exists can do so by citing to the record, or by showing the adverse party “cannot produce admissible evidence to support the fact [at issue].” *Id.* at 56.03(a)(1)-(2). “A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented.” *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 427 (Minn. 2024) (citation omitted).

Courts view “the evidence in the light most favorable to the nonmoving party and resolving all doubts and factual inferences against the moving party.” *Staub as Tr. of Weeks v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021) (citation omitted). Likewise, the court must resolve any doubt as to whether a dispute of material fact exists in favor of trial. *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974); *Harvet v. Unity Med. Ctr., Inc.*, 428 N.W.2d 574,

⁹ See Not. Mot. & Mot. Summ. J.

¹⁰ Not. Mot. & Mot. Summ. J. 3.

¹¹ Mem. Opp’n Mot. Summ. J. (filed Feb. 26, 2025).

578 (Minn. App. 1988). Summary judgments are to be granted with caution and are not intended as a substitute for trial. *Vacura v. Haar's Equip., Inc.*, 364 N.W.2d 387, 391 (Minn. 1985); *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955).

B. Rule 41.02 – Failure to Prosecute

Rule 41.02 of the Minnesota Rules of Civil Procedure is a tool to get final resolution against a party for their procedural failings; it is *not* used to adjudicate a matter on the merits. Rule 41.02 allows courts to “dismiss an action or claim for failure to prosecute or to comply with these rules of any order of the court.” Minn. R. Civ. P. 41.02(a). However, dismissing a matter for failing to abide by procedural grounds “runs counter to the primary objective of the law to dispose of cases on the merits.” *Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967). In addition, because dismissal is the most punitive outcome, it “should therefore be granted only under exceptional circumstances.” *Id.* “Before an action should be dismissed for failure to prosecute, it must be shown: (1) that the delay prejudiced the [respondent], and (2) that the delay was unreasonable and inexcusable.” *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 394 (Minn. 2003) (citation omitted).

C. Prima Facie Validity of an Assessment

In tax matters, we are first tasked with assuming a county’s assessment, including a property’s estimated market value, is correct. The court’s analysis starts by presuming that “the order of ... the appropriate unit of government in every case shall be prima facie valid.” Minn. Stat. § 271.06, subd. 6 (2024); *see also* Minn. Stat. § 272.06 (2024) (providing that an assessment is “presumed to be legal until the contrary is affirmatively shown”). To overcome an assessment’s presumptive correctness, a property owner must introduce “‘substantial evidence’ that the government’s decision ... was incorrect.” *Vasko v. Cnty. of McLeod*, 10 N.W.3d 482, 487 (Minn.

2024) (*citing Conga Corp. v. Comm’r of Revenue*, 868 N.W.2d 41, 53 (Minn. 2015)). Although credible evidence is needed, “overcoming the prima facie validity of the County’s valuation is not a high bar.” *Id.* at 494.

This court previously held a petitioner can overcome the prima facie validity of an assessment in two different ways. “First, the petitioner can present affirmative evidence—such as a fee appraisal—demonstrating that the market value of the subject property is lower than the assessed value.” *Ford Motor Co. v. Cnty. of Ramsey*, 2014 WL 3888226, at *13 (Minn. T.C. Aug. 5, 2014), *amended*, 2014 WL 7277775 (Minn. T.C. Dec. 16, 2014) (citations omitted). “Second, a petitioner can overcome prima facie validity by attacking the assessment.” *Id.* Although this second method might not have the added benefit of also assisting the court in determining a property’s market value, a taxpayer can nonetheless carry its burden by showing, for example, that the assessor did not consider a truly comparable property when setting the assessment. *Id.*

III. ANALYSIS & CONCLUSION

Wright County’s motion for summary judgment fails for several reasons. At the outset, however, we note that Wright County’s motion asks us to make a merits-based determination using procedural failings as support. The County is trying to put a square peg in a round hole. In addition to using the wrong legal tool, the motion is factually deficient, premature, and Wright County did not show Delano Crossing failed to prosecute this matter.

A. Wright County’s Summary Judgment Motion is Premature

Wright County’s summary judgment motion is premature because it fails to demonstrate that Delano Crossing cannot produce admissible evidence to overcome the prima facie validity of the assessment. Minn. R. Civ. P. 56.03(a)(2). In property tax appeals, the annual assessment for each property is presumptively valid. *See* Minn. Stat. §§ 271.06, subd. 6, 272.06. To overcome the

presumption of correctness, *most* petitioners proffer an appraisal report showing the assessed value is too high. *See Tamarack Vill. Shopping Ctr., LP v. Cnty. of Washington*, 2023 WL 2669686, at *5 (Minn. T.C. Mar. 28, 2023), *aff'd*, 9 N.W.3d 820 (Minn. 2024) (holding the petitioner met its burden by introducing an expert appraisal). Indeed, to accommodate the most common method petitioners use to challenge assessments, the court’s standard Scheduling Order includes a deadline by which appraisals must be exchanged. *See* Sched. Order ¶ 5. Here, Wright County claims Delano Crossing failed to disclose an appraisal report.¹²

In response, Delano Crossing identified an “analytics report” for the subject property that it previously provided to the County, which offered a value conclusion and also made a settlement offer.¹³ Wright County declined to file a reply, and at the hearing argued—without identifying any authority—that the analytics report was not “considered an appraisal” because it was not authored by the appraiser previously identified by Delano Crossing.¹⁴

Even if we agreed that Delano Crossing’s analytics report is not a trial appraisal, Wright County’s motion is premature. Although offering an appraisal at trial is the most common way petitioners make their case, it is *not the only way* to do so. A petitioner need only show some credible evidence the assessment is incorrect. *See Vasko*, 10 N.W.3d at 493-494 (affirming the tax court’s conclusion that a homeowner’s non-expert testimony overcame the county’s homestead classification and noting “overcoming the prima facie validity of the County’s valuation is not a high bar.”).

¹² Affidavit of Rachel Pence in Supp. Mot. Summ. J. (signed Feb. 4, 2025) ¶¶ 3, 8.

¹³ Affidavit of L.D. Martin (signed Feb. 26, 2025), Exs, 1-2.

¹⁴ Tr. 12.

Pretrial filings in this case, such as witness and exhibits lists, along with stipulated facts, were due on February 11, 2025, with trial commencing on February 25, 2025.¹⁵ One full week before the pretrial filings’ deadline, however, on February 4, 2025, Wright County filed the present motion for summary judgment.¹⁶ The parties then jointly requested a continuance of “the existing trial date” to allow the court time to hear and decide the present motion.¹⁷

Because the County filed its summary judgment motion before Delano Crossing was required to file its witness and exhibit lists, neither the County nor court has any idea what evidence Delano Crossing might have identified as bearing upon the prima facie validity of the assessment. Even if the County had grounds to believe that the “analytics report” would not be admitted as evidence of value, Delano Crossing could have overcome prima facie validity by attacking the assessment instead. The County was not in a position—before pretrial filings were due—to demonstrate that Delano Crossing could not overcome prima facie validity. In any event, the court is not in a position to determine that Delano Crossing cannot carry its burden to overcome the prima facie validity of the assessment, and therefore cannot now decide this matter on the merits. Because, on this record, the County has not shown that Delano Crossing “cannot produce

¹⁵ Sched. Order ¶¶ 4, 7.

¹⁶ Not. Mot. & Mot. Summ. J.

¹⁷ Am. Stip. Mot. to Continue.

admissible evidence” to overcome the prima facie validity of the assessment, Minn. R. Civ. P. 56.03(a)(2), the County’s motion for summary judgment is denied as premature.¹⁸

B. Wright County’s Failure to Prosecute Argument is Meritless

Wright County’s argument in its summary judgment brief demonstrates that, in substance, it seeks dismissal for failure to prosecute (rather than a merits resolution). Specifically, the County argues that Delano Crossing’s “noncompliance with multiple deadlines in this case has caused unnecessary delay and prejudice to the Respondent, justifying the granting of summary judgment.”¹⁹ We conclude that the County’s procedural argument lacks merit.

Rule 41 of the Minnesota Rules of Civil Procedure allows for “dismiss[al of] an action or claim for failure to prosecute or to comply with these rules or any order of the court.” Minn. R. Civ. P. 41.02(a). Further, an action can be dismissed for failure to prosecute if it is shown: “(1) that the delay prejudiced the [respondent], and (2) that the delay was unreasonable and inexcusable.” *Modrow*, 656 N.W.2d at 394 (citation omitted). Even construing Wright County’s motion for summary judgement as a motion to dismiss, the County fails to demonstrate either element.

¹⁸ As described in the court’s Order Concerning Sanctions, issued in conjunction with this order, the cases cited by Wright County in its brief are problematic. At the hearing, however, the County claimed *Youngs v. Cnty. of Winona*, 2010 WL 3463504 (Minn. T.C. Aug. 23, 2010) supported the conclusion that this case must be dismissed for Delano Crossing’s failure to overcome its initial burden. Tr. 11-12 (stating *Youngs* was “the closest case” to support its position). In *Youngs*, however, this court concluded the petitioner overcame its initial burden without an expert report, and the court made its final determination based on “all of the testimony and evidence submitted.” *Id.* *5. The County does not address how the petitioner could proceed to trial without an expert report in *Youngs*, but cannot do so here.

¹⁹ Not. Mot. & Mot. Summ. J. 4.

i. Wright County Did Not Demonstrate Prejudice

Although Wright County’s brief did not contain an example of prejudice, at the hearing, the County stated: “it was not in a position to prepare for a trial within a month,” and that “we certainly would have been prejudiced had the case proceeded to trial on that date.”²⁰ *See id.* (noting a showing of prejudice is required). Neither having one month to prepare for trial, nor speculating about future, unspecified prejudice, demonstrates actual prejudice.

ii. Wright County Cannot Show Unreasonable or Inexcusable Delay

Secondly, Wright County did not show the two delays in this matter were unreasonable or inexcusable. *Id.* (requiring a showing that the delay was unreasonable and inexcusable). The first trial continuance was granted—per the parties’ *joint* request—to allow the court to hear the present motion.²¹ The court then ordered this motion hearing continued by approximately one month to accommodate a judicial reassignment.²² We conclude the two continuances were reasonable under the circumstances; the County offers no contrary reasons. Wright County failed to demonstrate the elements to show a failure to prosecute.

Because Wright County fails to demonstrate, both factually and legally, that it is entitled to summary judgment or dismissal, we deny its motion.

²⁰ Tr. 21.

²¹ Amended Stip. Mot. to Continue; Order.

²² Not. Judicial Reassignment (Feb. 28, 2025).