

STATE OF MINNESOTA

IN SUPREME COURT

A21-1493

Tax Court

Chutich, J.

Concurring, Thissen, Anderson, JJ.

G&I IX OIC LLC,

Respondent,

vs.

Filed: August 24, 2022
Office of Appellate Courts

County of Hennepin,

Appellant.

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S Y L L A B U S

Minnesota Statutes section 278.05, subdivision 3 (2020), permits “assessor’s records” that contain nonpublic data about comparable income-producing properties to be admitted in full at trial in a property tax dispute.

Reversed.

O P I N I O N

CHUTICH, Justice.

The question posed here is whether appellant Hennepin County, in a property tax trial involving respondent G&I IX OIC LLC (“G&I”), may use an expert report containing nonpublic data about comparable rental properties to establish the market value of G&I’s office tower. Specifically, we must determine whether “income property assessment data,” which are classified as nonpublic by the Minnesota Government Data Practices Act (“Data Practices Act”), may be used at trial when they are contained within an “assessor’s record”—e.g., an expert appraiser’s report prepared for litigation. This question is an issue of statutory interpretation, and its answer turns on how statutes under two separate statutory schemes interact: (1) the Data Practices Act, Minnesota Statutes sections 13.01–.90

(2020); and (2) the statutes in the tax code governing property tax litigation, particularly Minnesota Statutes section 278.05 (2020).

The Minnesota Tax Court interpreted these statutes and found that the Data Practices Act prohibits the County from disclosing the nonpublic data contained within its expert appraisal report. It determined instead that the County could not use the data at trial without first securing the court’s approval through the balancing test for discovery of not public government data dictated by the Data Practices Act under Minnesota Statutes section 13.03, subdivision 6. The tax court ordered portions of the County’s expert report containing those data to be excluded at trial. We hold that the tax-code provision of section 278.05, subdivision 3, governs and permits the County to use nonpublic data in “assessor’s records” at trial, including its expert appraisal report. Because the tax court therefore erred in its order to exclude at trial portions of the expert report containing those data, we reverse.

FACTS

Respondent G&I filed a property tax petition contending that Hennepin County’s valuation for 2019 property taxes for 900 Second Avenue South, Minneapolis (“the Oracle Building”) was too high. This pretrial dispute concerns the County’s use of nonpublic data¹ in its expert opinion assessing the value of comparable properties owned by third parties and the market value of the Oracle Building. The nonpublic data at issue include

¹ The Data Practices Act defines “nonpublic data” as data that are “not on individuals” and “not accessible to the public” but “accessible to the subject, if any, of the data.” Minn. Stat. § 13.02, subd. 9.

data on eight office buildings in downtown Minneapolis, including office rent and retail comparables for those buildings, and six restaurant rent comparables.

Discovery in the tax court case ended on March 15, 2021. Notably, during this period, G&I never formally requested disclosure of any nonpublic third-party data concerning comparable buildings, and the County never formally objected to disclosure. Expert reports were required to be exchanged by April 12, 2021, and the parties were directed to object to expert competency or admissibility of expert reports by June 1, 2021. On June 1, 2021, G&I objected to the County's expert report and filed a motion in limine to exclude from trial the expert report entirely because it was irrelevant. In the alternative, G&I moved to exclude specific pages of the report because the data are nonpublic under Minnesota Statutes section 13.51 of the Data Practices Act, which addresses the classification of assessor's data.

Three months later, G&I amended its motion in limine and filed a supplemental memorandum. G&I contended that because Hennepin County failed to produce data in discovery that are nonpublic under the Data Practices Act, disclosure of the nonpublic evidence at trial would violate the Act. G&I therefore argued that the confidential, nonpublic portions of the County's expert report should be excluded, as the previously undisclosed data are nonpublic assessor's data under the Data Practices Act.

On November 1, 2021, the tax court granted G&I's motion in limine to preclude the County from using at trial the nonpublic data in its expert appraisal report. In its order, the tax court turned to two of our prior property-tax-dispute cases considering the applicability of the Data Practices Act balancing test under Minnesota Statutes section 13.03,

subdivision 6, which courts use to determine when nonpublic government data may be disclosed.²

First, in *Montgomery Ward & Co. v. County of Hennepin*, we held that the Data Practices Act balancing test was mandatory after the taxpayer had moved to compel *discovery* of nonpublic data from the County, in accordance with the plain language of section 13.03, subdivision 6.³ 450 N.W.2d 299, 306 (Minn. 1990). Sixteen years later, in *EOP-Nicollet Mall, LLC v. County of Hennepin*, we concluded that, given the leeway afforded the tax court in deciding pretrial motions, it was not an abuse of discretion for the tax court to use the Data Practices Act balancing test in response to the taxpayer’s motion

² The Data Practices Act includes a balancing test governing the disclosure of “not public data,” Minn. Stat. § 13.03, subd. 6, which are “any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic,” Minn. Stat. § 13.02, subd. 8a. After a government entity has opposed discovery of not public data and the party seeking access to the data has brought an action compelling discovery, section 13.03, subdivision 6, *requires* a “presiding officer”—here, the tax court judge—to “first decide whether the data are discoverable . . . pursuant to the rules of evidence” and relevant rules of procedure.

If the data are discoverable, the presiding officer must then “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.” *Id.* The subdivision also authorizes the presiding officer to provide for notice to the subject of the data if warranted and to craft “any protective orders necessary” to ensure proper handling of the data. *Id.* Section 13.03, subdivision 6, does not expressly address the use of not public data at trial.

³ Although section 13.03 of the Data Practices Act has been amended since we decided *Montgomery Ward*, there have been no substantive changes to subdivision 6 relevant to our analysis in this dispute.

in limine—rather than a motion to compel discovery—to determine whether the County should be prevented from using the data at *trial*. 723 N.W.2d 270, 279 (Minn. 2006).

In a footnote, we commented that we had not yet had the opportunity to definitively interpret the interaction between the Data Practices Act and the section of the tax code addressing the use of nonpublic data at a property tax trial, section 278.05:

We also note that the legislature has addressed—albeit in a very broad, general way—*the use of nonpublic data at trial*. See Minn. Stat. § 13.03, subd. 4(a) (2004) (providing that “[t]he classification of data in the possession of an agency shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions”); see also Minn. Stat. § 13.4965, subd. 4 (2004) (providing that “[d]isclosure of assessor’s real estate tax records for litigation purposes is governed under section 278.05”). Minnesota Statutes § 278.05, subd. 3 (2004), provides that “[a]ssessor’s records . . . may be offered at the trial subject to the applicable rules of evidence.” Nonetheless, *the interpretation of these statutes has not been briefed and is not properly before us* in this case.

723 N.W.2d at 280 n.14 (emphasis added). Accordingly, whether assessor’s records containing nonpublic data may be used at trial during property tax litigation, when no previous Data Practices Act balancing test had been undertaken by the tax court, remained an open question.

Finding that G&I’s motion in limine presented this unresolved issue, the tax court conducted its own statutory interpretation of the Data Practices Act statutes and section 278.05 of the tax code. The tax court found that the Data Practices Act requires that portions of the expert assessor’s report containing nonpublic data must be excluded at trial, because the court had not undertaken the Data Practices Act balancing test to allow those data to be disseminated. See Minn. Stat. § 13.03, subd. 6. The tax court also concluded

that nothing in section 278.05 of the tax code or the Data Practices Act “authorizes a government entity to provide public access to not public data, at its sole discretion.” The tax court further reasoned that although *EOP-Nicollet Mall* held that the Data Practices Act required the government entity to first object to discovery before the court could apply the balancing test of the Data Practices Act, that holding cannot reasonably be read to permit disclosure when there is no objection.

Instead, the tax court found that the “plain language of the [Data Practices Act] provides that nonpublic data is not accessible to the public.” It therefore reasoned that “the only reasonable reading” of section 278.05 of the tax code forbids the County from disclosing the data “unless a court has undertaken the balancing test in section 13.03, subdivision 6,” of the Data Practices Act. The tax court also expressed concern that it would participate in a violation of the Data Practices Act if it permitted the County to introduce nonpublic data at trial. Accordingly, the tax court found that the Data Practices Act prohibits the County from using nonpublic data in its expert appraisal report at trial and ordered portions of that report containing nonpublic data to be excluded.

The County asked us to reverse the tax court’s order, and we granted discretionary review under Minnesota Rule of Civil Appellate Procedure 105. Minn. R. Civ. App. P. 105.01 (“Upon the petition of a party, in the interests of justice . . . the Supreme Court may allow an appeal from an order of the Tax Court . . . not otherwise appealable pursuant to Rule 116 or governing statute except an order made during trial.”).

ANALYSIS

We typically review tax court evidentiary rulings for legal error or abuse of discretion. *Gale v. County of Hennepin*, 609 N.W.2d 887, 890 (Minn. 2000). When an evidentiary ruling relies on the court’s interpretation of a statute, however, we have applied de novo review. *See, e.g., State v. Zais*, 805 N.W.2d 32, 36 (Minn. 2011) (reviewing de novo a question of statutory interpretation arising from the district court’s evidentiary ruling in a criminal case); *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (holding that we review questions of statutory interpretation de novo). The tax court’s November 1, 2021 evidentiary order relied heavily on its extensive interpretation of several provisions of the Data Practices Act and the statute mandating disclosure of assessor’s data in property tax disputes, Minnesota Statutes section 278.05, subdivision 3. Accordingly, we conclude that de novo review is most appropriate here.

Whether nonpublic income property assessment data may be used at trial in a property tax dispute when they are contained within an assessor’s record 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. *Christianson v. Henke*, 831 N.W.2d 532, 536–37 (Minn. 2013). We interpret statutes “so as to give effect to each word and phrase,” and we may consult dictionary definitions to determine a word’s plain meaning. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). We also interpret “each section in light of the surrounding sections to avoid conflicting interpretations.” *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). We will not engage in

any further construction if we conclude that the statute is plain and unambiguous. *Mittelstaedt v. Henney*, 969 N.W.2d 634, 639 (Minn. 2022).

The Data Practices Act itself is explicit that disclosure of assessor’s records at trial is “governed” by tax-code provision section 278.05 and not the Data Practices Act: “Disclosure of assessor’s real estate tax records for litigation purposes is governed under section 278.05.”⁴ Minn. Stat. § 13.4965, subd. 4; *cf. Cilek v. Off. of Minn. Sec’y of State*, 941 N.W.2d 411, 415–16 (Minn. 2020) (reading together an analogous referral statute in the Data Practices Act to conclude that the Act created an exception to its “general regime” and that the more specific election law statute governed the disclosure of certain campaign and election data).

In turn, section 278.05, subdivision 3—part of the tax-code provisions on property tax litigation—mandates that “assessor’s records” be disclosed to the petitioner and permits those records to be offered at trial. It reads 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*

⁴ Section 13.4965 of the Data Practices Act provides in pertinent part:

Subdivision 1. **Scope.** The sections referred to in subdivisions 2 to 4 are codified outside this chapter. Those sections classify tax data as other than public, place restrictions on access to government data, or involve data sharing.

....

Subd. 4. **Assessor’s records.** Disclosure of assessor’s real estate tax records for litigation purposes is governed under section 278.05.

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 (emphasis added). Subdivision 3 makes clear that relevant assessor's records may be admitted at trial, even when they contain information that is "confidential or classified as private data on individuals." *Id.*

In fact, the parties here do not dispute that an assessor's expert report is a type of assessor's record. We agree. The statute specifically defines "assessor's records" as "including certificates of real estate value, assessor's field cards and property appraisal cards." Minn. Stat. § 278.05, subd. 3. Given subdivision 3's use of the term "including," that list is best read as a nonexhaustive list, meaning that it could also include an assessor's expert report prepared for trial. *See, e.g., LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 19 (Minn. 2012) ("The word 'includes' is not exhaustive or exclusive."); *see also Garner's Dictionary of Legal Usage* 439 (3d ed. 2011) (observing that "including" "should not be used to introduce an exhaustive list, for it implies that the list is only partial").

The parties also do not dispute that assessor's records regularly contain income property assessment data,⁵ as is the case here. By statute, assessors can prepare appraisals

⁵ Section 13.51 of the Data Practices Act classifies as private or nonpublic "income property assessment data":

The following [income property assessment] data collected by political subdivisions and the state from individuals or business entities concerning income properties are classified as private or nonpublic data pursuant to section 13.02, subdivisions 9 and 12:

- (a) detailed income and expense figures;

and testify as experts at trial. Minn. Stat. § 273.061, subd. 8 (2020). Assessors frequently rely upon income property assessment data in their property valuations and assessments, including reports prepared for property tax litigation. These data are particularly critical for the income approach for determining market value, which capitalizes the anticipated income that the property will generate. *Guardian Energy, LLC v. County of Waseca*, 868 N.W.2d 253, 261 (Minn. 2015).

The parties do dispute, however, whether the assessor’s records containing nonpublic data may be admitted in full at trial. They both offer a reasonable interpretation of section 278.05, subdivision 3, supporting their respective positions.

The County argues that the statute permits assessor’s records to be admitted regardless of what those records contain, including nonpublic data that may otherwise qualify for special protections under the Data Practices Act. The County points to the statute’s directive that records containing information that is “confidential or classified as

(b) average vacancy factors;

(c) verified net rentable areas or net usable areas, whichever is appropriate;

(d) anticipated income and expenses;

(e) projected vacancy factors; and

(f) lease information.

Minn. Stat. § 13.51, subd. 2. Although these data often concern rental properties, “ ‘the term [income-producing property] is not necessarily limited to rental property.’ ” *Wal-Mart Real Est. Bus. Tr. v. County of Anoka*, 931 N.W.2d 382, 388 (Minn. 2019) (quoting *Nw. Airlines, Inc. v. County of Hennepin*, 632 N.W.2d 216, 219 (Minn. 2001)).

private data on individuals” is not grounds for inadmissibility under the governing tax-code provision. Minn. Stat. § 278.05, subd. 3. “Private data on individuals” is a defined term under the Data Practices Act. Minn. Stat. § 13.02, subd. 12. By contrast, the Data Practices Act does not have a standalone definition of “confidential.” The primary reference to “confidential” in the Data Practices Act is part of a defined phrase providing that data may be classified as “confidential data on individuals.” Minn. Stat. § 13.02, subd. 3 (“ ‘Confidential data on individuals’ are data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.”). Other references to “confidential” in the Act serve as a shorthand to that definition. *See, e.g.*, Minn. Stat. § 13.02, subd. 8a; Minn. Stat. § 13.03, subd. 1.

The County further notes that section 278.05, subdivision 3, uses only the word “confidential”; the full defined term, “confidential data on individuals,” is absent. Minn. Stat. § 278.05, subd. 3. And unlike “private data on individuals,” “confidential” is not preceded by the qualifying phrase “classified as,” which references the specific protections data are given by the Data Practices Act. *Id.* Accordingly, the County argues that “confidential” must be given its ordinary and colloquial meaning, which would include not public data on individuals or business entities. *Confidential*, *Merriam-Webster’s Collegiate Dictionary* 261 (11th ed. 2014) (defining “confidential” as “marked by intimacy or willingness to confide,” “private, secret,” and “entrusted with confidences”).

By contrast, G&I adopts the tax court’s reasoning and argues that because section 278.05, subdivision 3, “does not address, discuss or even mention ‘nonpublic assessor’s data,’ ” the Data Practices Act must therefore control whether those data are admissible. It

argues that the nonpublic “income property assessment data” under Data Practices Act section 13.51 are distinct from the admissible information that is “confidential or classified as private data on individuals” under tax-code provision section 278.05. Specifically, G&I disagrees with the County’s interpretation of “confidential,” contending that “confidential” is better interpreted within the context of the statute as the Data Practices Act term of art “confidential data on individuals,” Minn. Stat. § 13.02, subd. 3. G&I further argues that the Legislature made a specific policy choice not to protect *individuals’* confidential and private data in section 278.05, subdivision 3, and that the County’s broad interpretation of “confidential” counters that intent. Additionally, G&I maintains that interpreting “confidential” broadly could incorporate “private data on individuals,” and therefore make the latter term’s inclusion superfluous. *See Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020) (“When possible, we interpret statutes to give effect to all parts and ‘no word, phrase, or sentence will be held superfluous, void, or insignificant.’ ” (quoting *Rushton v. State*, 889 N.W.2d 561, 564 (Minn. 2017))).

Because each suggested interpretation of “confidential” is reasonable, we conclude that section 278.05, subdivision 3, is ambiguous. When statutes are ambiguous, we will consider relevant statutory factors to determine the Legislature’s intent, including the consequences of different interpretations and other policy rationales. *See Minn. Stat. § 645.16(1)–(8)* (2020). Here, four persuasive indicia of legislative intent most support the County’s interpretation that section 278.05, subdivision 3, permits the County to use nonpublic data in assessor’s records at trial.

First, G&I’s proposed interpretation ignores the role of the referral by Data Practices Act section 13.4965 to tax-code provision section 278.05. Data Practices Act section 13.4965, subdivision 4, specifically says that tax-code provision section 278.05, not the Data Practices Act, governs disclosure of “assessor’s real estate tax records” in the tax litigation context. In *Cilek*, we concluded that a similar referral statute in the Data Practices Act essentially incorporated “statutory sections codified outside of the Act” and created an exception to its “general regime”; accordingly, the more specific election law statute governed the disclosure of certain campaign and election data. 941 N.W.2d at 415–16. The same rationale—of following the specific statute rather than the general—controls here. By contrast, G&I’s interpretation gives primacy to the Data Practices Act to define the terms in section 278.05 and, consequently, to determine whether and how assessor’s records can be disclosed at trial.

Second, G&I’s interpretation would also result in individuals’ data about income-producing properties being disclosed during property tax litigation, but not information on the income-producing properties of business entities. If “confidential” is interpreted narrowly, as G&I proposes, tax-code provision section 278.05 would prohibit assessor’s records containing nonpublic data on *business entities* from being admitted at trial, but records containing “confidential data on individuals,” that is, not public data that are inaccessible to the natural person who is the subject of those data, section 13.02, subd. 3, could still be admitted. *See* Minn. Stat. § 278.05. Protecting data from business entities more stringently than data provided by natural persons makes little sense, particularly when business entities frequently participate in property tax litigation. We see

nothing in the language of the statute or legislative history to suggest that the Legislature *intended* to protect the data of business entities more stringently than data from natural persons about income-producing properties.

Third, other statutes and our case law governing real property tax assessment support the County’s position that nonpublic data in its expert’s appraisal report is admissible at trial. Real property is taxable based on its *market value*, Minn. Stat. § 273.11, subd. 1 (2020), and we have approved only three methods for establishing market value: (1) the sales approach (using the prices paid in transactions for comparable properties); (2) the income approach (capitalizing the income the property is expected to generate); and (3) the cost approach (estimating the current cost to reconstruct the property). *Guardian Energy*, 868 N.W.2d at 261.

Each approach—especially the income approach—relies to some extent on comparisons to “comparable properties in market transactions.” *Inland Edinburgh Festival, LLC v. County of Hennepin*, 938 N.W.2d 821, 826 (Minn. 2020) (sales approach); *see Archway Mktg. Servs. v. County of Hennepin*, 882 N.W.2d 890, 897 (Minn. 2016) (income approach); *Menard, Inc. v. County of Clay*, 886 N.W.2d 804, 813 (Minn. 2016) (cost approach). Making comparisons to comparable properties will require using data on those properties, like “income property assessment data,” which are protected under the Data Practices Act. *See* Minn. Stat. § 13.51, subdivision 2.

Likewise, assessors are required by statute to “consider and give due weight to every element and factor affecting the market value” of the property. Minn. Stat. § 273.12 (2020). Prominent among “every element and factor” are comparable market data, which

will require income property assessment data when the subject property is an income-generating property. To sever nonpublic income property assessment data from the assessor's records they reside within—like an expert report for trial—would frustrate assessors' responsibility to make fair and uniform assessments.⁶

Fourth and finally, other fairness considerations support the County's interpretation. G&I seeks to block the County from using data about comparable income-producing properties in its expert report because those data presumably support the County's valuation of the Oracle Building. Because the County and its assessors rely heavily on these data for their assessments for property tax valuations—in accordance with our case law on accepted assessment methodologies—preventing them from relying on the data at trial gives taxpayer-litigants like G&I a strategic advantage. Yet, as the County points out, taxpayer-litigants like G&I retain expert appraisers who prepare their own reports. And the parties must share their expert reports in advance of trial, *see* Minn. Stat. § 278.05, subdivision 3, leaving time for depositions and preparation for cross-examinations.

Holding that assessor's records cannot contain any income property assessment data at trial without use of the Data Practices Act balancing test could lead to additional unfairness. Under the specific language of section 13.03, subdivision 6, if the taxpayer

⁶ Illustratively, the mandatory-disclosure rule in section 278.05, subdivision 6, located within the same section of the tax code as the subdivision governing the use of assessor's records at trial, requires petitioning taxpayers to submit income property assessment data to assessors. If taxpayer-litigants fail to comply with the rule, their "petition shall be dismissed." *Id.* Dismissal is a strong sanction, and the Legislature's choice to use it to ensure assessors have access to these data underscores the data's importance for assessors to accurately and uniformly assess similar properties.

does not move to compel discovery, the County has no way to trigger the court to undertake the balancing test. Minn. Stat. § 13.03, subd. 6 (requiring the County to oppose discovery *and* the taxpayer to move to compel discovery before the two-step balancing test occurs). Taxpayer-litigants could therefore preclude government entities from using nonpublic data at trial—no matter how critical for the government’s defense of its assessment—simply by declining to seek access to those data in discovery, so that the tax court would not conduct the balancing test.

In fact, we cautioned in *EOP-Nicollet Mall* that “nothing in the plain language of the statute or our case law supports the . . . 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.” 723 N.W.2d at 280 (emphasis added). We reasoned that the Data Practices Act balancing test, which is designed to determine whether to grant *public access* to not public data held by the government, is ill-suited to evaluate situations in which the County seeks to *use* data it already possesses. 723 N.W.2d at 280 (noting that the statutory “balancing test applies only when a government entity ‘opposes discovery of government data’ ” (quoting Minn. Stat. § 13.03, subd. 6)). Accordingly, we declined in *EOP-Nicollet Mall* to mandate the use of the balancing test to decide a motion in limine to exclude nonpublic data at trial. 723 N.W.2d at 278, 280. Instead, we held only that it was not an abuse of discretion for the tax court to use the balancing test under the specific circumstances presented there, when the taxpayer had already moved twice to compel discovery of nonpublic records. *Id.* at 279.

G&I also contends that the County unfairly seeks to use the Data Practices Act as a “shield” in discovery by objecting to disclosure of the data and as a “sword” at trial by offering the data. Yet as guardian of those nonpublic income property assessment data, the County is *required* by section 13.51 to object to their disclosure.⁷ G&I, however, 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. Minn. Stat. § 13.03, subd. 6. And if the property tax dispute proceeds, tax-code provision section 278.05, subdivision 3, requires the County to disclose the assessor’s records to the taxpayer for “inspection and copying” before trial. Minn. Stat. § 278.05, subd. 3. Here, the tax court set the date for the exchange of expert reports on April 12, 2021, and gave the parties until June 1, 2021, to object to those reports, providing ample time to review, conduct depositions, and engage in other trial preparations necessary in a “battle of the experts.”

In addition, the tax court has the power to protect the not public information of the taxpayer and third parties by entering protective orders for the data at the discovery stage

⁷ Section 13.51 classifies “income property assessment data” collected from “individuals or business entities” as “private or nonpublic.” Minn. Stat. § 13.51, subd. 2. “Nonpublic data” are “data not on individuals” and may only be disclosed to the subject of the data. Minn. Stat. § 13.02, subd. 9. “Private data on individuals” may only be disclosed to the natural person who is the subject of the data. *Id.*, subds. 8, 12. Accordingly, the County, as the responsible authority holding the income property assessment data, must object to disclosure of the third parties’ data in discovery. *See* Minn. Stat. § 13.03, subd. 3(f) (“If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination . . . and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.”). The Data Practices Act balancing test then provides the mechanism for the litigating party to seek access to the data. Minn. Stat. § 13.03, subd. 6.

and at trial. *Cf.* Minn. Stat. § 13.03, subd. 6 (authorizing the tax court to “fashion and issue any protective orders necessary to assure proper handling of the data by the parties”); *see also EOP-Nicollet Mall*, 723 N.W.2d at 281 n.14 (noting that the tax court ordered that any nonpublic information relied upon by the appraiser or used at trial be subject to a “strict protective order” that required “ ‘[a]ll specific income, expense and lease information’ be coded”); *Macy’s Retail Holdings, Inc. v. County of Hennepin*, Nos. 27-CV-13-6683, 27-CV-14-6579, 2017 WL 3271602, at *6 (Minn. T.C. July 28, 2017) (granting a protective order to protect third-party nonpublic data).

In sum, our decision is grounded in the language of the statutes and our prior decisions in *Montgomery Ward* and *EOP-Nicollet Mall*, which require the County to protect nonpublic data when responding to discovery requests, but still permit the County to use that information to defend its tax assessments at trial. The complex statutes at play here attempt to balance the competing interests between owners of income-generating property and government entities that collect data *and* assess taxes on income-generating properties. These 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—all key and complex objectives. The Legislature could strike a different balance among these interests if it chooses, but we are bound by the current statutes and the policy rationales supporting them.

Consequently, we conclude that the term “confidential” in section 278.05, subdivision 3, has its ordinary meaning and not the specific meaning of “confidential data on individuals” under the Data Practices Act in section 13.02, subdivision 3. We further

conclude that the ordinary meaning of “confidential” encompasses nonpublic data, including “income property assessment data” under section 13.51, subdivision 2. Because the inclusion of “confidential” information is not grounds for a record’s inadmissibility under tax-code provision section 278.05, subdivision 3, we hold that the statute permits assessor’s records, such as an expert appraisal report, to be admitted at trial inclusive of any nonpublic data that they may contain. As noted above, the parties and the tax court may take necessary measures to ensure that the nonpublic information concerning income-producing properties that is admitted at trial is protected and not broadly disseminated to the public. Accordingly, we reverse the tax court’s decision.

CONCLUSION

For the foregoing reasons, we reverse the order of the tax court.

Reversed.

CONCURRENCE

THISSEN, Justice (concurring).

This case is about the application of the Minnesota Government Data Practices Act (the Data Practices Act), Minn. Stat. §§ 13.01–.90 (2020), in the context of a property owner’s petition challenging its county property taxes.¹ The court holds that Minn. Stat. § 278.05, subd. 3 (2020), and not the Data Practices Act, governs disclosure of assessor’s records in the tax litigation context. I agree with the court’s interpretation of the language of Minn. Stat. §§ 13.4965, subd. 4, and 278.05, subd. 3. I write separately because the court’s decision calls our prior decision in *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299 (Minn. 1990), and our follow-up decision in *EOP-Nicollet Mall, LLC v. County of Hennepin*, 723 N.W.2d 270 (Minn. 2006), into serious doubt.

Section 278.05, subdivision 3, provides:

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.

Minn. Stat. § 278.05, subd. 3 (emphasis added). As the court notes, the definition of “assessor’s records” is nonexclusive; it includes things like “certificates of real estate value, assessor’s field cards and property appraisal cards,” *id.*, but also includes much more. And

¹ Minnesota Statutes section 278.01 (2020) sets forth the types of objections that property owners may make to property taxes assessed against their property.

if, as the court concludes, “assessor’s records” includes an expert report that incorporates the categories of information included in section 13.51, subdivision 2, then the term must also cover the actual information identified in section 13.51, subdivision 2.

The court reads section 278.05, subdivision 3, to mean that an assessor’s record cannot be excluded from admissibility at trial on the ground that the evidence is confidential—a term that the court applies according to its broad, ordinary meaning.² The court relies on the language of subdivision 3, which provides that assessor’s records “shall not be excluded from . . . admissible evidence on the grounds that the documents and the information recorded thereon are confidential or classified as private data on individuals.”³ Minn. Stat. § 278.05, subd. 3.

The same conclusion, however, must also be reached on the question of the *discoverability* of assessor’s records in property tax litigation. Assessor’s records “shall not be excluded from *discovery* . . . on the grounds that the documents and the information recorded thereon are confidential or classified as private data on individuals.” *Id.* (emphasis

² Notably, the court expressly rejects the argument that “confidential,” as used in section 278.05, subdivision 3, should be read as incorporating the definition of “confidential data on individuals” set forth in the Data Practices Act, Minn. Stat. § 13.02, subd. 3. One reason the court gives for this conclusion—that the argument that the data practices definition is incorporated ignores section 13.4965—dictates the conclusion that the Data Practices Act simply does not govern disclosure of assessor’s records in the property tax litigation context.

³ Based on the court’s broad reading of “confidential,” it is difficult to imagine what information would be classified as “private data on individuals” under section 13.02, subdivision 12, but would not be considered confidential under section 278.05, subdivision 3. But sometimes the Legislature takes a belt-and-suspenders approach; we do not require purity or superfluity in all cases.

added). Moreover, subdivision 3 states that a county cannot withhold assessor's records from discovery because the information is not public. The statute directs that "[a]ssessor's records . . . shall be made available to the [petitioning property owner] for inspection and copying." *Id.* (emphasis added).

Yet, under *Montgomery Ward* and its progeny, a county can object to the disclosure of assessor's records because those records contain private data on individuals or nonpublic data. In *Montgomery Ward*, we implicitly held that, under section 13.03, subdivision 6, a county may oppose discovery on the grounds that the data are classified as "not public" (i.e., private data on individuals, confidential data on individuals, nonpublic data, or protected nonpublic data, Minn. Stat. § 13.02, subd. 8a). 450 N.W.2d at 306 (holding that when a party seeks discovery of not public data the court must analyze the request under the Data Practices Act).

Further, under those cases, assessor's records may be excluded from discovery under section 13.51 of the Data Practices Act precisely because those records are private or nonpublic data.⁴ See *Montgomery Ward*, 450 N.W.2d at 306–08. In *Montgomery Ward*, we held that when a county withholds assessor's records and the property owner moves to compel discovery, the court may decline to allow discovery after it (1) engages in the

⁴ Although the Data Practices Act does not define "private" data, it defines "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." Minn. Stat. § 13.02, subd. 12. Private data as used in Minn. Stat. § 13.51, subd. 2, presumably refers to private data on individuals. "Nonpublic data" is defined in the Data Practices Act 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. 9.

general balancing test for disclosure of not public data in discovery set forth in section 13.03, subdivision 6, and (2) determines that the benefit to the property owner seeking discovery does not outweigh “ ‘any harm to the confidentiality interests of the agency 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.’ ” *Id.* at 306 (quoting Minn. Stat. § 13.03, subd. 6 (1988)).

In fairness to our court, we were not asked in either *Montgomery Ward* or *EOP-Nicollet Mall* to determine the significance of section 278.05, subdivision 3, on discovery in tax litigation. Indeed, we explicitly stated in *EOP-Nicollet Mall*:

[T]he legislature has addressed—albeit in a very broad, general way—*the use of nonpublic data at trial*. See Minn. Stat. § 13.03, subd. 4(a) (2004) (providing that “[t]he classification of data in the possession of an agency shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions”); *see also* Minn. Stat. § 13.4965, subd. 4 (2004) (providing that “[d]isclosure of assessor’s real estate tax records for litigation purposes is governed under section 278.05”). Minnesota Statutes § 278.05, subd. 3 (2004), provides that “[a]ssessor’s records . . . may be offered at the trial subject to the applicable rules of evidence.” Nonetheless, *the interpretation of these statutes has not been briefed and is not properly before us* in this case.

723 N.W.2d at 280 n.14 (emphasis added).

We now have those statutes squarely before us and hold that, when analyzing how to handle assessor’s records in tax litigation, the court should look to section 278.05, subdivision 3, rather than the Data Practices Act. Section 278.05, subdivision 3, explicitly covers both discovery and admissibility of evidence at trial. There is no way to read the statute to apply in one way to admissibility of evidence (the status of assessor’s records as confidential or private data on individuals provides no basis for excluding evidence at trial)

and in a different way to discovery (a county may withhold assessor's records from discovery, and a court may affirm that decision, solely on the basis that they contain confidential or private data on individuals).

Moreover, the general balancing test under section 13.03, subdivision 6, which governs when discovery of not public records is sought in litigation, is a test that applies only when the Data Practices Act applies. Under our holding in this case, the Data Practices Act, which necessarily includes section 13.03, subdivision 6, does not apply to the disclosure of assessor's records relating to tax litigation. *Cf. Cilek v. Off. of Minn. Sec'y of State*, 941 N.W.2d 411, 415–16 (Minn. 2020) (applying more specific election law statute governing disclosure of campaign and election data rather than the Data Practices Act where the Data Practices Act expressly provided that the election law statute established the rules for disclosure of the data); *see also Koehnen v. Flagship Marine Co.*, 947 N.W.2d 448, 454 (Minn. 2020) (stating that “when a conflict exists between two or more statutory provisions, the specific provisions control”).

Perhaps there is more to say about the implication in the court's opinion that county governments are somehow institutionally disadvantaged compared with property owners in property tax litigation. What is clear is that the government prevailed over the taxpayer in *Montgomery Ward*, *EOP-Nicollet Mall*, and now here. In the final analysis, however, figuring out the proper balance between what Justice Hanson characterized as the conflict of interest created by a county's dual roles as (1) the custodian of sensitive information of property owners necessitated by its duty to fairly assess taxes and (2) a party to litigation over the assessments and other decisions it makes in individual cases, *EOP-Nicollet Mall*,

723 N.W.2d at 286 (Hanson, J., concurring in part, dissenting in part), is better left to the Legislature. This conflict has been percolating for over 3 decades. Our decision today does not settle the issue; if anything, it adds to the confusion. It is time for the Legislature to step up, engage with all the stakeholders, and devise a more nuanced solution to the conflict.

ANDERSON, Justice (concurring).

I join in the concurrence of Justice Thissen.