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**STATE OF MINNESOTA
IN SUPREME COURT**

John and Carrie Beck,

Relator,

vs.

County of Todd,

Respondent.

**RELATOR'S BRIEF,
ADDENDUM & APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1) Did the Tax Court err by accepting Barkalow's admittedly flawed appraisal, and then by basing its findings verbatim on that appraisal when there is no evidence in the record to support such a conclusion?

The Tax Court's conclusions of value are based verbatim on the amounts in Barkalow's appraisal report. Barkalow admitted her appraisal was flawed and overstated because she did not adequately inspect the subject property's site. No evidence was presented at trial supporting any notion that the Tax Court's conclusions are reasonable.

Most Apposite Authority:

Southern Minn. Beet v. Cnty. of Renville, 737 N.W.2d 545 (Minn. 2007)

EOP-Nicollet Mall, L.L.C. v. County of Hennepin, 723 N.W.2d 270 (Minn. 2006)

Eden Prairie Mall, LLC v. Cnty. of Hennepin, 797 N.W.2d 186 (Minn. 2011)

McNeilus Truck & Mfg., Inc. v. County of Dodge, 705 N.W.2d 410 (Minn. 2005)

2) Did the Tax Court err by entirely rejecting Gimbel's expert testimony because he was not a licensed appraiser?

Although the Tax Court recognized that Gimbel was involved in the Todd County real estate market for 34 years and that he was a licensed appraiser for approximately 30 years until just before the valuation date in this case, the Tax Court placed no weight on his opinions because he was not a licensed appraiser.

Most Apposite Authority:

Minn. R. Evid. 702

Gale v. County of Hennepin, 609 N.W.2d 887 (Minn., 2000)

Hagen v. Swenson, 236 N.W.2d 161 (Minn. 1975)

Lundgren v. Eustermann, 370 N.W.2d 877 (Minn. 1985)

3) Did the Tax Court err by concluding that the Assessor and Barkalow were unable to gain access to the subject property?

Although the County did not make any formal or informal requests to inspect the subject property, either for the Assessor or Barkalow, the Tax Court concluded that they were both unable to gain to the subject property.

Most Apposite Authority:

Minn. Stat. § 273.20

Gale v. County of Hennepin, 609 N.W.2d 887 (Minn., 2000)

Minn. R. Civ. P. 34

Minn. R. Civ. P. 37

4) Did the Tax Court err by accepting an appraisal based on only two properties when one property is not similar in either size or utility to the subject property?

One of the two comparable sales used by Barkalow is neither similar in size nor utility to the subject property, and does not meet zoning requirements to build.

Most Apposite Authority:

Minn. Stat. § 273.12

Montgomery Ward & Co., Inc. v. County of Hennepin, 450 N.W.2d 299 (Minn. 1990)

McNeilus Truck & Manufacturing, Inc. v. Cnty. of Dodge, 705 N.W.2d 410 (Minn. 2005)

Lewis v. County of Hennepin, 623 N.W.2d 258 (2001)

5) Did the Tax Court err by accepting an appraisal based on only two properties when the primary transaction is an outlier and there is not any evidence to corroborate such a value?

One of the two comparable sales used by Barkalow is admittedly an outlier that was not verified by either the Assessor or Barkalow. This sale was Barkalow's primary comparable. The County did not increase the assessed value of the comparable property based on the sale price because the County does not rely on just a single sale. Relator submitted testimony demonstrating that the transaction was not a typical market

transaction because the out-of-state buyers actively solicited properties on the subject lake.

Most Apposite Authority:

Southern Minn. Beet v. Cnty. of Renville, 737 N.W.2d 545 (Minn. 2007)

Eden Prairie Mall, LLC v. Cnty. of Hennepin, 797 N.W.2d 186 (Minn. 2011)

McNeilus Truck & Mfg., Inc. v. County of Dodge, 705 N.W.2d 410 (Minn. 2005)

Lewis v. County of Hennepin, 623 N.W.2d 258 (2001)

6) Did the Tax Court err by entirely rejecting both of the owner's testimony regarding comparable properties and market values?

The Tax Court's decision is entirely void of any analysis or discussion about either of the owner's testimony regarding other comparable properties and market values.

Most Apposite Authority:

Minn. R. Evid. 702

McNeilus Truck & Mfg., Inc. v. County of Dodge, 705 N.W.2d 410 (Minn. 2005)

Hanson v. County of Hennepin, 527 N.W.2d 89, 92 (Minn. 1995)

Lewis v. County of Hennepin, 623 N.W.2d 258 (Minn. 2001)

Eden Prairie Mall, LLC v. Cnty. of Hennepin, 797 N.W.2d 186 (Minn. 2011)

7) Did the Tax Court err by accepting an appraisal based on a rule of thumb with no connection to any facts in the case?

Barkalow's 50% rule of thumb is unrelated to the facts of this case, inconsistent with general appraisal standards, and contradictory with the methods Barkalow used in another Tax Court case.

Most Apposite Authority:

McNeilus Truck & Mfg., Inc. v. County of Dodge, 705 N.W.2d 410 (Minn. 2005)

Adelsman v. Northwest Airlines, Inc., 267 Minn. 116 (1963)

Goeb v. Tharaldson, 615 N.W.2d 800, 809-10 (Minn. 2000)

State v. Mack, 292 N.W.2d 764 (Minn. 1980)

8) Did the Tax Court err by not concluding to a separate improvement and land value?

The Tax Court accepted Barkalow's appraisal value of \$142,200 for the improvements and \$252,800 for the bare land. The assessed improvement value was \$238,600 and the assessed land value was \$158,800. The Tax Court's conclusion of law does not direct the County to increase the land value and decrease the improvement value in accordance with the determined market values. The Tax Court failed to explain its reasoning for concluding to a land valuation for the subject property that was not uniform with other similar lands.

Most Apposite Authority:

Minn. Stat. § 273.11 (2011)

Minn. Stat. § 273.12 (2011)

Article X, Section 1 of the Minnesota Constitution

STATEMENT OF THE CASE

This appeal originates from the December 14, 2011 decision of the Minnesota Tax Court, the Honorable Sheryl A. Ramstad presiding.¹ The case involves real property located in a remote area in northeastern Todd County. The home is situated on approximately 1 acre with approximately 245 feet of lakefront on Pine Island Lake.

On October 21, 2011, the Tax Court heard testimony from five witnesses and received numerous exhibits relevant to determining the taxable market value of the subject property. Relator offered substantial testimony and documentary evidence relevant to the market value of the subject property through three individuals: 1) Relator's expert, Dale Gimbel, 2) Carrie Beck, and 3) John Beck. The Tax Court's decision addressed only limited portions of Gimbel's testimony, which was entirely rejected because Gimbel was no longer a licensed appraiser, and none of either of the Beck's testimony.

The County offered Susanne Barkalow's appraisal, but Barkalow was ultimately unable to endorse it or provide testimony about the subject's market value at trial.² The County's Assessor, Chuck Pelzer, testified that he agreed with Barkalow's unendorsed appraisal.³

There was no dispute that the value of the subject's improvements was approximately \$140,000 as of January 2, 2009.⁴ Thus, there was no dispute that the

¹ Appendix, pp. A1-A11.

² e.g., Tr. pp. 176, 182-183, 200, 213.

³ Tr. p. 20.

⁴ Tr. pp. 133-134, 173.

assessed value of the subject's site and building improvements were overstated by approximately \$100,000.⁵

The ultimate issue at trial was the market value of the subject's bare land as of January 2, 2009. The ranges of market values for the subject's bare land for the Tax Court's independent evaluation were:

	Assessed Value⁶	Gimbel's Opinion⁷	Relator's Analysis⁸	Barkalow's Unendorsed Appraisal⁹
Bare Land Market Value as of January 2, 2009	\$ 158,800	\$ 160,000	\$ 123,000 to \$ 150,000	\$ 252,800

The \$252,800 land valuation in Barkalow's unendorsed appraisal is based on exclusively on two land sales.¹⁰ Barkalow admitted that the land valuation in her appraisal was overstated: "It would be less, but precisely how much less, I mean, I'd have to go back and look at the sales that I used for the land valuation and compare them."¹¹ Nevertheless, the Tax Court expressly concluded "[i]n valuing the land, Ms. Barkalow concluded that the first 150 feet of lakeshore should be valued at \$192,000, and the next 95 feet at \$60,900, for a total valuation of \$252,800."¹²

The County never made any formal or informal requests to inspect the subject, either for the County itself or for Barkalow. The Tax Court acknowledged that "Ms.

⁵ Exhibit 5.

⁶ Exhibit 5.

⁷ Tr. pp. 133-134; 147.

⁸ Exhibits 12 & 13; Tr. p. 106.

⁹ Exhibit A, p. 17.

¹⁰ Exhibit A, p. 16; Barkalow placed no weight on active listings (Tr., p. 162).

¹¹ Tr. p. 176. Emphasis added.

¹² Addendum, p. A10.

Barkalow admitted during her testimony that the appraisal she did was impacted by her inability to view and measure the interior of the subject property, as well as by the limited access she had to its exterior.”¹³ The Tax Court also recognized that “[Barkalow] also acknowledged that if the slope from Petitioners’ lake home to the lake was 40%, as they contended it was,¹⁴ her valuation would be reduced accordingly.”¹⁵

Finally, the Tax Court concluded “[t]aking into account the limitations under which Ms. Barkalow was conducting her appraisal, as well as considering that the Petitioners carry the burden of proof, we conclude to a value for the subject property of \$395,000 as of January 2, 2009.”¹⁶

ARGUMENT

I. THE TAX COURT ERRED BY ACCEPTING BARKALOW’S ADMITTEDLY FLAWED APPRAISAL, AND THEN BY BASING ITS FINDINGS VERBATIM ON THAT APPRAISAL WHEN THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT SUCH A CONCLUSION.

A. Statement of Facts

- i. Barkalow did not inspect the subject property; consequently, her appraisal relied on numerous extraordinary assumptions, including the assumption that Pelzer’s opinions of the site are accurate.**

¹³ Addendum, p. A10.

¹⁴ The Tax Court misunderstands the fundamental and undisputed testimony and documentary evidence about the slope of the subject property. The repeated testimony is that the elevation change from the road to the lake is 40 feet, not that the elevation change from the house to the lake is 40%. See e.g., Tr. pp. 95, 97, 141-142; Exhibit 1; Exhibit 10; Exhibit 12.

¹⁵ Addendum, p. A10. Emphasis added.

¹⁶ Addendum, p. A11.

Barkalow's appraisal relied on numerous extraordinary assumptions because she did not inspect the subject.¹⁷ Barkalow's written appraisal states:¹⁸

"Extraordinary assumptions made about the subject property include those listed below. If any of these assumptions are found to be untrue, the value expressed in this report may be subject to review and possible revision:

- The data provided by the assessor and others is accurate...
- Since the subject was observed only from the street, the extraordinary assumption is made that the site and all improvements on the site are as reported by the assessor..."

- ii. **The County Assessor believes the subject property has a "gentle" slope even though he does not have "any idea" about the subject's actual elevations.**

Pelzer believes the subject has a "gentle" slope throughout the lot, even though he really does not have "any idea" of the property's actual elevations:¹⁹

Q: Can you explain to us how our elevation is on that lot?

A: I observed a *gentle* slope from the road, cul-de-sac, down to the lake.

Q: Okay. Can you define gentle, please?

A: It slopes to the lake from the road.

Q: You said a gentle slope.

¹⁷ e.g., Tr. pp. 158, 169, 199, 212; Exhibit A, pp. 3, 5, 7.

¹⁸ Exhibit A, p. 7. Emphasis added.

¹⁹ Tr. pp. 11-13. Emphasis added.

A: I don't know – *Elevation-wise I don't have any idea*, but it does slope from the cul-de-sac, top of the hill, down to the lake.

Q:And you said my lot has a gentle slope?

A: *Gentle* slope from the lake to the top.

Q: Is there any difference in the lot? I mean, like is it more gentle in one area than the next?

A: [**Non-responsive**] Your lot is more treed than this lot.

Q: ...I mean in my lot, in our lot. Is there different parts of it? Is it a gentle slope all the way down? Is there a different characteristic of it?

A: [**Non-responsive**] It slopes from the cul-de-sac from the lake.

Barkalow's appraisal relied on Pelzer's opinion of the subject's site.²⁰ Pelzer believes the subject has a "gentle" slope even though he has no idea about the subject's actual elevations.

iii. Todd County defines a "steep slope" as a slope greater than 12%.

Todd County's Shoreland Ordinance Standards defines any slope greater than 12% as a "steep" slope.²¹

"Note: In steep slopes (slopes >12%), any disturbance of soil greater than 100 sq ft requires a shoreland alteration permit."

²⁰ Exhibit A, p. 7.

²¹ Exhibit A, Addendum – document titled "TODD COUNTY ENVIRONMENT & LAND RESOURCE MANAGEMENT OFFICE - MINIMUM SHORELAND ORDINANCE STANDARDS," near the bottom of the second page.

iv. Todd County maintains elevation information for every property, but Pelzer does not understand how to use it.

At trial, Relator introduced as Exhibit 1 an aerial photograph of the subject that includes both elevation data and lot dimensions. Exhibit 1 was obtained directly from Todd County.²² Pelzer testified he had seen Exhibit 1 before, but that he was “not aware of what those lines [which show the elevation changes] are for.”²³ Pelzer also admitted “I’ve heard of elevation, but I don’t work directly with elevations in our office.”²⁴

v. Barkalow did not utilize any elevation data, but she was aware it existed.

Barkalow was aware of and relied on elevation data obtained from Stearns County for the appraisal she performed in another Tax Court case.²⁵ Barkalow testified that she had used elevation maps similar to Exhibit 1 in past appraisal assignments, but she did not use one for this assignment and could not even recall if she requested one from the County.²⁶

²² This information is also publically available at <http://mapping.mytoddcounty.com/toddcounty/geomoose.html>.

²³ Tr. pp. 9-10.

²⁴ Id.

²⁵ Tr. Exhibit 18, p. 17, 2nd paragraph.

²⁶ Tr. p. 201.

vi. Trial Exhibits 1 and 10 demonstrate that the subject has a slope greater than 12%; thus, it has a “steep” slope according to the County’s definition.

What Pelzer did not understand about Exhibit 1 is that each of the non-linear lines across the document represents an elevation change of 10 feet.²⁷ Based on Exhibit 1 Gimbel testified that the subject had an overall slope of about 20% on the west side and 12.4% on the east side.²⁸ Barkalow could have drawn this same conclusion based on the lot dimensions and elevation changes contained in Exhibit 1 without personally inspecting the site. Pelzer could also have drawn the same conclusion if he was properly trained on the use of the County’s publically available elevation data.

Relator also introduced Exhibit 10 at trial to demonstrate various characteristics of the subject, including its steep slope and the challenges it presents. In order to show the Tax Court Barkalow’s vantage point of viewing the property from only the street, one of the photos in Exhibit 10 was taken by setting the camera on the ground at the top of the cul-de-sac to show there is a drop of approximately 20 feet from the road to the house.²⁹ With that knowledge, Barkalow could have used her aerial photo with lot dimensions³⁰ to reasonably estimate the slope from the road to the house and from the house to the lake.

²⁷ Tr. pp. 140-142.

²⁸ Id.

²⁹ Exhibit 10, p. 2.

³⁰ Exhibit A, Addendum.

Relator presented additional undisputed evidence that there are many areas of the subject where the slope is 20% to 30%, which is significantly steeper than the County's 12% standard.³¹

vii. Barkalow had no idea about the subject's steep slope and testified that she could not "fully evaluate" the subject without being on site.

Barkalow repeatedly admitted that her appraisal failed to take the subject property's steep slope into consideration:

- "I can't tell looking at that if it's a 40-foot drop to the water, 20-foot drop or whatever."³²
- "I can't tell how much of a slope there might be on the far side of those boulders. It looks like it continues a fairly gentle slope, but it's possible that where the boulders are there's a several--foot drop and then the slope."³³
- "Without being on the property, I have no idea about erosion or anything like that."³⁴
- "You can't fully evaluate [the slope], not without being there."³⁵
- "Based on your comments it sounds like I should have been on your property."³⁶

There is no dispute that, at the time of her appraisal, Barkalow:

- 1) personally viewed the property from the top of the hill,³⁷

³¹ Tr. pp. 87-93; Exhibit 10.

³² Tr. pp. 182-183

³³ Id.

³⁴ Tr. pp. 158-159.

³⁵ Tr. pp. 182-183.

³⁶ Tr. p. 200.

³⁷ Exhibit A, p. 7; Exhibit 10.

- 2) had an aerial photo showing the placement of the house along with lot dimensions,³⁸
- 3) was aware that elevation maps were available,³⁹
- 4) had numerous photos taken by Pelzer which depict elevation changes,⁴⁰
- 5) increased the value of one of her two comparables by 30% due to its purportedly inferior slope,⁴¹ and
- 6) made no deduction to the value of her other comparable, despite knowing it was “basically level” and “relatively flat.”⁴²

Nevertheless, Barkalow did not make any estimates of the subject’s slope. Even though the aerial used by Barkalow includes lot dimensions, Barkalow instead complained “I have no idea distances between the street and the house without having been on the property.”⁴³

viii. Barkalow repeatedly admitted she was incapable of testifying to a reliable market value of the subject’s bare land.

The record is clear that Barkalow’s appraisal is admittedly flawed and that Barkalow was incapable of testifying to the subject’s market value:

³⁸ Exhibit A – Addendum.

³⁹ Tr. Exhibit 18, p. 17, 2nd paragraph; Tr. p. 201.

⁴⁰ Exhibit A – Addendum; Tr. p. 180.

⁴¹ Exhibit A, p. 16; Tr. pp. 176-178.

⁴² Exhibit A, pp. 13, 16; Tr. pp. 12; 125; 168.

⁴³ Tr. p. 159.

- “[The subject’s bare land value] would be less, but precisely how much less, I mean, I'd have to go back and look at the sales that I used for the land valuation and compare them.”⁴⁴
- “I probably would have adjusted [the subject’s bare land value] differently. How differently, I don't know, but -- And it depends on where the slopes change....But had I been on that lot, my value might well have been different, yes. How much, I honestly can't tell you right off the top of my head.”⁴⁵
- “I don't know if my opinion of value would change without going onto the property and into it.”⁴⁶
- “You can't fully evaluate it, not without being there.”⁴⁷
- “I may change my opinion if I was on the site and in the improvement. I can't tell you anything beyond that.”⁴⁸
- “I don't know [if my conclusion is valid] without being there.”⁴⁹

ix. Based on the Tax Court’s inquiries, Barkalow testified the subject’s bare land value is less than the amount in her appraisal, but she was unable to quantify how much less.

The record is clear that Barkalow would have adjusted the market value of the subject’s bare land downward from her written appraisal had she properly considered the subject’s elevation:⁵⁰

⁴⁴ Tr. p. 176.

⁴⁵ Id.

⁴⁶ Tr. p. 201.

⁴⁷ Tr. pp. 182-183.

⁴⁸ Tr. p. 213.

⁴⁹ Tr. p. 200.

Q: [By the Court] Okay. My question is, how would you have adjusted the value of that lake lot had you been able to take that into account?

A: I probably would have adjusted it differently. How differently, I don't know, but -- And it depends on where the slopes change.... But had I been on that lot, my value might well have been different, yes. How much, I honestly can't tell you right off the top of my head.

Q: Now, you've been sitting in the courtroom throughout the description of the lot by three different individuals. Based upon their descriptions can you give some ballpark idea of how the value of the lot would be affected?

A: It would be less, but precisely how much less, I mean, I'd have to go back and look at the sales that I used for the land valuation and compare them.

Q: If you want to do that, go ahead.

After the Tax Court's open ended invitation, Barkalow made some revised calculations for her second bare land comparable at 26308 Iris Trail ("BLS #2") "as an example."⁵¹ But Barkalow could not come up with a reliable valuation during the trial "without doing more research."⁵²

⁵⁰ Tr. p. 176. Emphasis added.

⁵¹ Tr. p. 176.

⁵² Tr. pp. 176-178.

The Tax Court did not pursue the same line of questioning for Barkalow's only other bare land comparable at 33369 Loon Drive ("BLS #1"). All five witnesses, including Pelzer, agreed that BLS #1 is "flat" whereas the subject property is not.⁵³ Despite this undisputed fact, Barkalow did not make any slope adjustments to BLS #1 to account for the substantial differences in topography.⁵⁴

- x. The Tax Court understood that Barkalow testified the subject's bare land value was less than \$252,800; nevertheless, the Tax Court based its decision verbatim on Barkalow's admittedly overstated appraisal.**

The Tax Court understood that Barkalow's total appraisal value of \$395,000 included a land value of \$252,800: "[i]n valuing the land, Ms. Barkalow concluded that the first 150 feet of lakeshore should be valued at \$192,000, and the next 95 feet at \$60,900, for a total valuation of \$252,800."⁵⁵ The Tax Court expressly recognized that "[Barkalow] also acknowledged that if the slope from Petitioners' lake home [sic] to the lake was 40%⁵⁶ [sic], as they contended it was, her valuation would be reduced accordingly."⁵⁷ [The Tax Court misunderstands the fundamental and undisputed testimony and documentary evidence about the slope of the subject property. The repeated testimony is that the elevation change from the road to the lake is 40 feet, not that the elevation change from the house to the lake is 40%. See e.g., Tr. pp. 95, 97, 141-142; Exhibit 1; Exhibit 10; Exhibit 12.]

⁵³ E.g., Pelzer at pp. 11-12; J. Beck, pp. 91-92; C. Beck p. 125; Gimbel pp. 141-144; Barkalow pp. 159,168.

⁵⁴ Exhibit A, p. 16.

⁵⁵ Addendum, p. A10.

⁵⁶ See e.g., Tr. pp. 97; 106; 141-143.

⁵⁷ Addendum, p. A10. Emphasis added.

B. Standard of Review

This Court reviews Tax Court decisions to determine whether the Tax Court's decision is supported by the evidence and is in conformity with the law, and whether the Tax Court committed any other error of law. *Jefferson v. Commr. of Revenue*, 631 N.W.2d 391, 394 (Minn. 2001). The Tax Court is "required on hearing de novo to apply and use its independent judgment in its evaluation of all the testimony determinative of the issues before it." *Red Owl Stores, Inc. v. Commissioner of Taxation*, 117 N.W.2d 401, 407 (1962).

Where credible evidence is offered and the taxpayer meets its burden to show the assessment does not reflect the true market value of the property, the Tax Court must determine the market value of the property. *Southern Minn. Beet v. Cnty. of Renville*, 737 N.W.2d 545, 559 (Minn. 2007) (citing *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005)).

This Court "...will not disturb the tax court's valuation of property for tax purposes unless the tax court's decision is clearly erroneous, which means the decision is not reasonably supported by the evidence as a whole." *EOP-Nicollet Mall, L.L.C. v. County of Hennepin*, 723 N.W.2d 270, 284 (Minn. 2006); see also *Lewis v. County of Hennepin*, 623 N.W.2d 258, 261 (Minn. 2001); *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 308 (Minn. 1990); *Westling v. County of Mille Lacs*, 512 N.W.2d 863, 866 (Minn. 1994).

A Tax Court decision is considered to be clearly erroneous when this Court is left with a firm conviction that a mistake has been made, and that the subject property has

been overvalued. *Hanson v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995). This Court will not defer when the Tax Court has clearly mis-valued the property or has failed to explain its reasoning. *Nw. Nat'l Life Ins. Co. v. County of Hennepin*, 572 N.W.2d 51, 52 (Minn. 1997).

The Tax Court has an obligation to use its independent judgment in evaluating all testimony and evidence before the court. *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005), citing *Am. Express Fin. Advisors, Inc. v. County of Carver*, 573 N.W.2d 651, 658-59 (Minn. 1998) (holding that the tax court's out-of-hand rejection of certain testimony and exhibits that were part of the record was an abuse of discretion).

This Court will not defer to the tax court's valuation decision where the court has "completely fail[s] to explain its reasoning." *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 414 (Minn. 2005) (quoting *Hanson v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995)).

The Tax Court's exercise of its discretion in valuing an asset "should be supported by either clear documentary or testimonial evidence or by comprehensive findings issued by the court." *Ronkvist v. Ronkvist*, 331 N.W.2d 764, 766 (Minn.1983). This Court has characterized a valuation as generally reasonable "if it falls within the limits of credible estimates made by competent witnesses even if it does not coincide exactly with the estimate of any one of them." *Hertz v. Hertz*, 304 Minn. 229 N.W.2d 42, 44 (1975).

"When the tax court concludes that the market value of a subject property is lower or higher than the appraisal testimony, it should carefully explain its reasoning for

rejecting the appraisal testimony and the grounds for adopting a lower or higher value, and adequately describe the factual support in the record for its determination.” *Eden Prairie Mall, LLC v. Cnty. of Hennepin*, 797 N.W.2d 186, 194 (Minn. 2011).

C. Argument

The Tax Court’s decision is void of any discussion about either of Barkalow’s two land sale comparables or the methods used by Barkalow to determine 64% of the value in her written appraisal (\$252,800 divided by \$395,000).

Barkalow’s appraisal is fatally flawed because of its reliance on the extraordinary assumption that the assessor’s report of the site was accurate. Barkalow failed to adequately inspect the subject, and also failed to use other available means for objectively evaluating the subject.

The Tax Court’s conclusions of market value are based exactly on the amounts included in Barkalow’s appraisal, despite Barkalow’s admission that her land value was overstated. Barkalow repeatedly testified that she was incapable of determining a reliable market value at trial.

There was no evidence presented at trial that any other comparable lakeshore lot ever sold for as much as \$252,800 in total or \$1,280 per foot anywhere in the County. The Tax Court’s verbatim adoption of Barkalow’s methods, assumptions and calculations clearly demonstrates the Tax Court failed to exercise its own skill and independent judgment. As a result, the Tax Court erroneously increased the value of the bare land value by \$94,000, or 59% above the assessed market value.

The Tax Court's use of any of Barkalow's methods, assumptions or calculations in her appraisal constitutes reversible error because no evidence was offered at trial supporting any notion that the assumptions and resulting values were reasonable or proper.

II. THE TAX COURT ERRED BY ENTIRELY REJECTING GIMBEL'S EXPERT TESTIMONY BECAUSE HE WAS NOT A LICENSED APPRAISER.

A. Statement of Facts

i. Gimbel's Qualifications⁵⁸

Gimbel has been professionally involved in the Todd County real estate market for 34 years. Gimbel was a real estate appraiser for 30 years prior to not renewing his license just 4 months prior to the January 2, 2009 valuation date. Gimbel has been a licensed real estate broker for approximately 31 years, and has previously testified as an expert in Tax Court. Gimbel is still actively involved in the local real estate market, and his brokerage currently sells one to two properties per week.

Gimbel has lived in Todd County for the past 36 years and lives approximately 10 miles from the subject. Gimbel has actually sold lakeshore properties on Pine Island Lake and had also previously performed a certified appraisal on the subject.

Unlike Barkalow, Gimbel inspected the subject on two occasions and has also walked BLS #1. Unlike Gimbel, Barkalow could not recall performing an appraisal on any other lakeshore in Todd County, and had never been to Pine Island Lake before.⁵⁹

⁵⁸ Tr. pp. 128-132.

ii. The Tax Court entirely rejected Gimbel’s testimony and documentary evidence, and erroneously concluded that Gimbel was retired.

The Tax Court recognized Gimbel “...was involved in the Todd County real estate market for 34 years...He was a licensed appraiser for approximately 30 years until his license lapsed in August of 2008.”⁶⁰ Despite these acknowledgments, and without any citation to any authority, including the Minnesota Rules of Evidence of the District Courts or precedent from the Minnesota Supreme Court, the Tax Court summarily held: “We place no weight on Mr. Gimbel’s valuation since he was not a licensed appraiser.”⁶¹ The Tax Court also erroneously concluded that Gimbel retired in August of 2008.⁶²

By inference, the Tax Court also rejected Gimbel’s testimony concerning numerous other facts relevant to the market value of the subject as the Tax Court’s decision is void of any discussion or analysis about them:

- Gimbel concurs with Barkalow’s opinion that the subject property’s improvements have a market value of approximately \$140,000 as of January 2, 2009.⁶³
- Gimbel, with over 30 years of experience in the local real estate market, has never seen a comparable sized lot sell for as much as \$250,000 anywhere in Todd County, not even on the better lakes.⁶⁴

⁵⁹ Tr. p. 189.

⁶⁰ p. 7

⁶¹ Addendum, p. A11.

⁶² Id.

⁶³ Tr. pp. 133-134.

⁶⁴ Tr., pp. 133; 136.

- Gimbel testified parts of the west side of the subject lot were “unusable” due its steep slope.⁶⁵
- Gimbel spoke directly with the seller of BLS #1 and confirmed that the property was never on the market.⁶⁶
- Gimbel testified the buyers of BLS #1 were not typical buyers for the local real estate market.⁶⁷
- Gimbel testified at least half of the subject property’s lakeshore was covered with rushes and lily pads, but that the BLS #1 did not have those inferior qualities.⁶⁸
- Gimbel testified the subject property was directly adjacent to a swamp, but the BLS #1 was not.⁶⁹
- Gimbel testified the subject property’s elevation drops 40 feet from the road to the lake.⁷⁰
- Gimbel testified the average slope of the subject property was over 12% on the east side and 20% on the west side.⁷¹
- Gimbel testified that Barkalow’s slope adjustments on BLS #1 and BLS #2 were not representative of the actual slopes.⁷²

⁶⁵ Tr. p. 135.

⁶⁶ Tr. p. 137.

⁶⁷ Tr. pp. 139-140.

⁶⁸ Tr. pp. 135-136.

⁶⁹ Id.

⁷⁰ Tr. p. 141; Exhibit 1.

⁷¹ Tr. pp. 141-143.

⁷² Tr. pp. 142-146.

Gimbel's perspectives benefited from: 1) performing two personal inspections of the subject, 2) previously performing a certified appraisal of the subject, and 3) have over 30 years of experience in the local real estate market. None of this substantial testimony offered by Gimbel was disputed by the County, nor was any of it discussed in the Tax Court's decision.

B. Standard of Review

Minnesota Statutes § 271.06 (2011) governs petitions for the appeal of tax assessments, and in subdivision 7 states that the Rules of Evidence and Civil Procedure for the district court of Minnesota shall govern the procedures in the Tax Court "where practicable." This Court held that "[a] review of Minnesota Tax Court Rules of Procedure does not reveal any special rules adopted by the tax court governing discovery or the admission of expert testimony." *Gale v. County of Hennepin*, 609 N.W.2d 887, 890 (Minn., 2000). Thus, the Minnesota Rules of Evidence, Rule 702 applies to this case:

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Minn.

R. Evid. 702. (Emphasis added.)

Citing this Court, the Tax Court previously concluded "[i]t is not necessarily a requirement to be state certified or possess formal training to qualify as an expert a

witness.” *WLPT Cliff Six L.L.C. vs. County of Dakota*, File No. C9-02-7384 (Minn. Tax Ct. August 20, 2003) (Emphasis added.), citing *Hagen v. Swenson*, 236 N.W.2d 161, 162 (Minn. 1975). “In fact, the Minnesota Supreme Court has found that, for purposes of expert qualification, experience is often more persuasive than education or certification.” *Id.*, citing *Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985).

The knowledge necessary to qualify as an expert may be “obtained casually and incidentally, yet steadily and adequately, in the course of some occupation or livelihood,” *Kastner v. Wermerskirschen*, 205 N.W.2d 336, 338 (1973).

C. Argument

The Tax Court admitted the testimony of Gimbel at trial without any objection by the County. Despite the undisputed facts that Gimbel: 1) has over 30 years of local real estate sales experience, 2) has over 30 years of local appraisal experience, and 3) continues to be actively involved in the local real estate market, the Tax Court entirely rejected Gimbel’s testimony and documentary evidence merely because he was no longer a licensed appraiser effective just 4 months prior to the January 2, 2009 valuation date.

As his experience clearly demonstrates, Gimbel possesses the knowledge, skill, experience, training, and education to offer expert testimony regarding the market value of the subject property. Rule 702 contains no requirement that an expert need apply for and maintain a license in order to be qualified as an expert. The Tax Court also failed to explain its reasoning for rejecting Gimbel’s testimony related to numerous other facts that are relevant to determining the market value of the subject. The Tax Court also erroneously concluded that Gimbel retired in August of 2008.

This Court has held that it is not necessarily a requirement to be state certified or possess formal training to qualify as an expert a witness, and that experience is often more persuasive than education or certification.

Moreover, the Tax Court's conclusion is wholly inconsistent with its previous position where it concluded that "[n]othing in Fed. R. Evid. 702 requires appraisers in Tax Court matters to be a MAI [Member of the Appraisal Institute] appraiser." *Ferche Acquisitions, Inc. v. Benton County*, File Nos. C5-94-513, CX-95-274 (Minn. Tax Ct. Sept. 21, 1995).

III. THE TAX COURT ERRED BY CONCLUDING THAT THE ASSESSOR AND BARKALOW WERE UNABLE TO GAIN ACCESS TO THE SUBJECT PROPERTY.

A. Statement of Facts

- i. Relator offered Barkalow access to the subject, but Barkalow had schedule conflicts.**

The Tax Court ordered the parties to exchange appraisals on June 23, 2011.⁷³

Barkalow did not view the subject from the road until June 10, just 13 days prior to court ordered deadline.⁷⁴

On Wednesday, May 18, 2011, at 5:00 pm, Barkalow sent an e-mail requesting to inspect the subject the following Monday, May 23, 2011.⁷⁵ Relator promptly responded the following morning stating they were not available the one day proposed, and offered

⁷³ Exhibit A – Addendum.

⁷⁴ Tr. p. 157.

⁷⁵ Exhibit A (email in Addendum).

that Barkalow could inspect the property the following weekend because that was the next time they could be present.⁷⁶ The record is clear that Relator never refused to provide access, and that it was Barkalow's personal schedule that conflicted with her personal inspection of the subject.⁷⁷

Q: Did you go on the premises of the property and walk around it at all?

A: No, I did not.

Q: Why not?

A: When I accepted the assignment I was asked to contact Mr. Beck for access to the property. I did so, and he was not available the day that I proposed. He suggested I could come over sometime the Memorial Day weekend because they would be at the house at that time. Actually, that was the first weekend I had off in a number of weeks, so that did not work into my schedule. I then e-mailed Mr. Beck [almost two weeks later on June 1, 2011] asking permission to go onto the property without him being there so that I could walk around the site and measure the house and take photos. I did not get a response to that e-mail, so I checked with the Todd County officials involved here and asked if it would be permissible for me to walk on the property without Mr. Beck's permission. I did not want to do anything that could

⁷⁶ Id.

⁷⁷ Tr. pp. 158; 199; Exhibit A (email in Addendum).

be construed as trespassing. And I was advised not to go onto the property.....

Q: Did you ever ask for any other specific dates?

A: No. After checking with the county and considering the time frame involved and my calendar involved, it was a recommendation that I contact you to see if I could go onto the property without requiring that one of you be there.

Q: ...Your schedule had something to do with the issue that you were not able to view the property. Fair? You just stated that. I'm just restating it back to make sure I understood it correctly.

A: I was gone much of the month of May, prior to the middle of May, yes. I could not contact you before that.

Q: Okay. Ms. Barkalow, did either of us ever tell you that we're not agreeable to you viewing the property?

A: No. You just didn't respond.

The Tax Court understood that Barkalow made no other attempts to gain access to the subject while Relator was present or otherwise:⁷⁸

Q: **[By the Court]** Did you make any additional inquiries of the petitioners to see if you could gain access to the property?

A: I e-mailed [on June 1, 2011] and did not get a response. I did not make any further attempts beyond that.

⁷⁸ Tr. p. 169; Exhibit A (email in Addendum).

ii. The Tax Court’s conclusion is based on multiple erroneous conclusions regarding “notices” requesting access.

The Tax Court erroneously concluded that “Petitioners failed to respond to notices left for them requesting that the assessor and appraiser be permitted to gain entry to the residence. Due to their lack of response, both the assessor and appraiser were limited in their access to the subject property and felt constrained in their ability to gain lakeshore access.”⁷⁹ First, there is no evidence indicating that Relator failed to respond to any “notice” from the County. Second, there is no evidence that Relator failed to respond to any “notice” from Barkalow requesting access to gain entry to the residence. Third, there is no evidence that Relator failed to respond to multiple “notices” of any type. Finally, Pelzer did access the entire site of the subject property and took photographs which he provided to Barkalow.⁸⁰

Finally, the Tax Court erroneously concluded “Ms. Barkalow, who was unable to gain access to the subject property due to Petitioners’ failure to respond to request (sic) for entry, explained the adjustments she made and detailed them in her report, concluding to a value for the subject property of \$395,000.”⁸¹

B. Standard of Review

Minnesota Statutes § 271.06 (2011) governs petitions for the appeal of tax assessments, and in subdivision 7 states that the Rules of Evidence and Civil Procedure for the district court of Minnesota shall govern the procedures in the Tax Court “where

⁷⁹ Addendum, p. A10. Emphasis added.

⁸⁰ Tr. pp. 10-11; Exhibit A, Addendum.

⁸¹ Addendum, p. A11.

practicable.” This Court held that “[a] review of Minnesota Tax Court Rules of Procedure does not reveal any special rules adopted by the tax court governing discovery or the admission of expert testimony.” *Gale v. County of Hennepin*, 609 N.W.2d 887 (Minn., 2000).

When a tax appeal is filed under Chapter 278, the property owner must permit the assessor reasonable access to the property to conduct an inspection pursuant to Minn. Stat. § 273.20 and Minn. R. Civ. P. 34:

“Any officer authorized by law to assess property for taxation may, when necessary to the proper performance of duties, enter any dwelling-house, building, or structure, and view the same and the property therein.” Minn. Stat. § 273.20

“Any party may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon....” Minn. R. Civ. P. 34.02(2).

If the petitioner fails to comply, the Tax Court may impose sanctions or dismiss the petition under Minn. R. Civ. P. 37.

C. Argument

The Tax Court’s decision effectively results in an ex post facto sanction against Relator for the County’s inactions. Minnesota Rules of Civil Procedure, Rule 34, allowed the County to request unrestricted access to the subject for the purpose of

inspection and measuring, surveying, and photographing the property. But the County itself failed to make any formal or informal requests, either for the County itself or for Barkalow.

Barkalow's claim of one unanswered email requesting access without Relator present clearly does not rise to the level where sanctions are appropriate. There is nothing in the record that even indicates that the email was received by Relator.

The County had multiple means to get Barkalow access; it simply failed to pursue any. Contrary to the Tax Court's decision, nothing in the record demonstrates there were multiple failures to respond to requests for access. First, there is no evidence indicating that Relator failed to respond to any "notice" from the County. Second, there is no evidence that Relator failed to respond to any "notice" from Barkalow requesting access to gain entry to the residence. Third, there is no evidence that Relator failed to respond to multiple "notices" of any type. Finally, Pelzer did in fact access the entire site of the subject property and took photographs which he provided to Barkalow.⁸²

IV. THE TAX COURT ERRED BY ACCEPTING AN APPRAISAL BASED ON ONLY TWO PROPERTIES WHEN ONE PROPERTY IS NOT SIMILAR IN EITHER SIZE OR UTILITY TO THE SUBJECT PROPERTY.

A. Statement of Facts

- i. The Tax Court failed to discuss its independent analysis of the methods and assumptions used for Barkalow's admittedly flawed \$252,800 land valuation.**

⁸² Tr. pp. 10-11.

The Tax Court's stated "[i]n valuing the land, Ms. Barkalow concluded that the first 150 feet of lakeshore should be valued at \$192,000, and the next 95 feet at \$60,900, for a total valuation of \$252,800."⁸³

Barkalow's admittedly flawed \$252,800 valuation is based exclusively on two land sales.⁸⁴ The Tax Court understood this limitation:⁸⁵

Q [By the Court] So you didn't really value the land portion of each of those [four improved comparable] sales. You relied upon your earlier two sales of land --

A Comparing them to the sites of the others you mean?

Q Right.

A Yes.

The Tax Court then questioned Barkalow about whether having only two comparable sales was sufficient to determine an accurate valuation.⁸⁶

Q [By the Court] Are two sales enough to do a sales comparison approach?

A In a small market, that may be all that you have to work with.

But there were additional comparable properties which Barkalow did not consider. Mr. Beck performed an undisputed analysis of ten comparable lakeshore properties to determine the amount the properties sold for on a per lakefront foot basis.⁸⁷

Barkalow's admittedly flawed \$252,800 valuation is based on three steps:

⁸³ Addendum, p. A10.

⁸⁴ Exhibit A, p. 16; Barkalow placed no weight on active listings (Tr., p. 162).

⁸⁵ Tr. p. 175.

⁸⁶ Tr. p. 178.

⁸⁷ Exhibits 12 & 13; Tr. pp. 97-108.

Step 1 – First, Barkalow divided the \$192,000 33369 Loon Drive (“BLS #1”) sale by its 150’ of frontage and applied the resulting \$1,280 per front foot to the subject property.⁸⁸

Barkalow did not make any slope adjustments to BLS #1, despite knowing it was “basically level” and “relatively flat,”⁸⁹ and that the subject property had “a rather steep slope from the street to where the house was located.”⁹⁰ The Tax Court understood that Barkalow did not account for these differences in slope:⁹¹

Q: [By the Court] So is it fair to say that you weren't really able to take into account the slope between the house and the waterfront on the subject property?

A: For the extraordinary assumptions that I state in the report, that I am presuming the information I have accurately reflects things, but had I been on the site I might have made some other comments.

Step 2 – Second, Barkalow “affirmed” the \$1,280 per foot from the unadjusted BLS #1 with the second property at 26308 Iris Trail (“BLS #2”), after adjusting its value upward by 30% for its purportedly inferior steep slope.⁹²

After the Tax Court’s invitation to correct her slope adjustments, Barkalow attempted to adjust BLS #2 “as an example.”⁹³ But Barkalow could not conclude to any valuation “without doing more research.”⁹⁴

⁸⁸ Tr., p. 164; Exhibit A, p. 13.

⁸⁹ Exhibit A, pp. 13, 16; Tr. p. 168.

⁹⁰ Tr. p. 159.

⁹¹ Tr. p. 169.

⁹² Tr., pp. 165-166; Exhibit A, p. 16;

⁹³ Tr. p. 176. Emphasis added.

Step 3 – Third, Barkalow then applied a 50% rule of thumb factor to the \$1,280 rate to conclude that the subject’s additional 95 feet of frontage are worth \$640 per foot. This 50% rule of thumb is not based on any analysis of the subject property’s characteristics, including the total square footage of the lot, slope to the lake, quality of lakefront, location, access to town, and other features.⁹⁵ The record is clear that Barkalow performed no additional analysis of the subject’s land value as each of the four improved comparables used by Barkalow reflect the same \$252,800 value.⁹⁶

ii. Barkalow’s Land Sale #2 does not meet zoning requirements for development because it is too small and does not have enough lakeshore footage.

The subject property is located on a Recreational Development lake.⁹⁷ The zoning ordinance for Recreational Development lakes require: 1) a minimum lot size of 40,000 square feet, and 2) a minimum lot width of 150 feet.⁹⁸ BLS #2 meets neither of these requirements.

The following table summarizes the difference between BLS #2 and the subject based on data from Barkalow’s appraisal:⁹⁹

⁹⁴ Tr. pp. 176-178.

⁹⁵ Tr., p. 164; Exhibit A, pp. 16-17.

⁹⁶ Tr. p. 175; 193.

⁹⁷ Exhibit A, Addendum – document titled “TODD COUNTY ENVIRONMENT & LAND RESOURCE MANAGEMENT OFFICE - MINIMUM SHORELAND ORDINANCE STANDARDS.”

⁹⁸ Id.

⁹⁹ Exhibit A, p. 16.

	Barkalow Land Sale #2	Subject Property	Difference
Land Value	\$69,755	\$252,800	+262%
Lot Size (sq. ft.)	26,600	49,000	+84%
Lake Frontage (ft.)	75	245	+227%

iii. Barkalow’s Land Sale #2 has only half the lakeshore frontage required to meet Barkalow’s definition of the “primary” or “principal” value.

Barkalow testified “[t]he principal value is on whatever amount of frontage you need to be able to build the house...In the subject zoning category, the minimum amount to build is 150 front feet on a lake. Therefore, that becomes the, quote, primary value, with secondary value then beyond that...”¹⁰⁰

BLS #2 has only 75 feet of lakeshore,¹⁰¹ which is only half the primary or principal value according to Barkalow’s definition.

B. Standard of Review

When utilizing the comparable sales approach to valuation, the appraiser must “consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination.” Minn. Stat. § 273.12 (2011); *see also Equitable Life Assurance Soc. v. County of Ramsey*, 530 N.W.2d 544, 554 (Minn. 1995).

This Court has made clear that "comparable sales" are limited to those that are similar in "size and utility" to the subject property. *Montgomery Ward & Co., Inc. v.*

¹⁰⁰ Tr. pp. 163-164; 176.

¹⁰¹ Exhibit A, p. 16.

County of Hennepin, 450 N.W.2d 299, 302, 303 (Minn. 1990); *American Express Financial Advisors, Inc. v. County of Carver*, 573 N.W. 2d 651, 660 (Minn. 1998).

As this Court pointed out in *McNeilus*, "fair market value for property assessment purposes is the compensation of which a willing purchaser not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use of the property." *McNeilus Truck & Manufacturing, Inc. v. County of Dodge*, 705 N.W.2d 410, 414 (Minn. 2005) (Emphasis added).

As the Tax Court pointed out in this case, highest and best use is defined as "the reasonable probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value."¹⁰²

This Court has recognized that an appraisal based on the comparable sales approach must consider more than comparable property: "The appraiser must assess the actual market a hypothetical buyer of the subject property would look at, and consider comparable sales of properties in that market." In *McNeilus Truck & Manufacturing, Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005) (Emphasis added). "The tax court noted that one sale is not necessarily conclusive of value because 'one sale does not make a market.'" *Lewis v. County of Hennepin*, 623 N.W.2d 258, 262 (Minn. 2001)

¹⁰² p. 5, citing The Appraisal of Real Estate, 277-78 (13th ed. 2008).

C. Argument

The Tax Court failed to discuss its independent analysis of the methods and assumptions used for Barkalow's admittedly flawed \$252,800 land valuation. This Court has made it clear that "comparable sales" are limited to those that are similar in both "size and utility" to the subject property. BLS #2 is not similar in size or utility. BLS #2's lot size is only half the subject and includes only one third of the subject's lakeshore frontage.¹⁰³

Moreover, BLS #2 has only half the lakeshore frontage required to build a house. BLS #2 is clearly not comparable to the subject property because it does not have a comparable highest and best use.

The Tax Court also failed to explain its reasoning for accepting the use of a "comparable" property that has only half the lake frontage required to meet the appraiser's definition of principal or primary value.

BLS #2 must be rejected as a comparable sale because it is not comparable to the subject property. This leaves Barkalow with only one comparable sale. One sale is not conclusive of value because "one sale does not make a market." Pelzer testified that even the County does not "rely on just a single sale."¹⁰⁴

¹⁰³ Exhibit A, p. 16.

¹⁰⁴ Tr. p. 62.

V. THE TAX COURT ERRED BY ACCEPTING AN APPRAISAL BASED ON ONLY TWO PROPERTIES WHEN THE PRIMARY TRANSACTION IS AN OUTLIER AND THERE IS NOT ANY EVIDENCE TO CORROBORATE SUCH A VALUE.

A. Statement of Facts

- i. Pelzer admitted the Barkalow Land Sale #1 was an outlier and did not increase the assessed value to the actual sale price because the County doesn't "rely on just a single sale."**

BLS #1 was the primary basis for Barkalow's \$252,800 land valuation.¹⁰⁵ Pelzer admitted that BLS #1 was an "outlier" according to standards established by the Minnesota Department of Revenue.¹⁰⁶ The County continued to assess the 150 feet of lakeshore frontage on BLS #1 at the same rate of \$122,500, or an average of \$817 per foot, even after it sold for \$192,000, or \$1,280 per lakeshore foot.¹⁰⁷

Pelzer testified the County did not increase the assessed value to \$1,280 per foot because "[w]e didn't rely on just a single sale."¹⁰⁸ Similarly, Pelzer testified "[t]he appraiser did not react to this one sale to value all properties on Pine Island Lake, based on this one sale."¹⁰⁹

¹⁰⁵ Tr., pp. 165-166; Exhibit A, p. 16;

¹⁰⁶ Exhibit 6; Tr. pp. 71-72; 74-75.

¹⁰⁷ Tr. p. 64; Exhibit 6.

¹⁰⁸ Tr. p. 62. Emphasis added.

¹⁰⁹ Tr. p. 63. Emphasis added.

- ii. **Despite testifying “I go farther these days to try to verify sales to make sure there's nothing unusual in the background in terms of motivation,” Barkalow made no attempt to independently verify Barkalow Land Sale #1.**

Barkalow did not know if BLS #1 was advertised on the market.¹¹⁰ Despite her testimony that she “talked to as many people as I could to verify the data about the sales,”¹¹¹ Barkalow made no attempt to contact either the buyer or the seller of BLS #1.¹¹²

Barkalow acknowledged it is important to verify sales to determine if there is any “unusual motivation,” and that she put less weight on another property in this case because of “unusual motivation”: “At this time I go farther these days to try to verify sales to make sure there's nothing unusual in the background in terms of motivation. And I do mention for one of these sales, as an example, that the owners were somewhat anxious to sell and move, I believe south, so that's one of the reasons I put less weight on that sale. Yes, it sold, and it's hard to quantify that motivation for wanting to move out of Minnesota to the southern part of the country, so I can't make that adjustment.”¹¹³

Barkalow made no attempt to contact the buyer or the seller of BLS #1.¹¹⁴

- iii. **Gimbel and Mrs. Beck testified that the Colorado buyer of Barkalow Land Sale #1 was not a typical buyer.**

Gimbel testified that the Colorado buyer of BLS #1 was not a typical buyer.¹¹⁵

Gimbel testified he contacted the seller of BLS #1 and verified that the property was not

¹¹⁰ Tr. p. 202.

¹¹¹ Tr. p. 162.

¹¹² Tr. p. 203.

¹¹³ Tr. pp. 170-171.

¹¹⁴ Tr. p. 203.

listed or promoted on the market.¹¹⁶ The seller told Gimbel that he was directly approached without advertising the property on the market.¹¹⁷ Gimbel also testified the Colorado buyer had several other family members with properties on the same side of the lake.¹¹⁸

Mrs. Beck also testified based on personal knowledge that the Colorado buyer had several other family members with cabins on Pine Island Lake, and that she was aware that the out-of-state buyer had wanted to purchase property specifically on Pine Island Lake for some time to have a cabin near relatives.¹¹⁹ Mrs. Beck testified the Colorado buyer had also approached another property owner on Pine Island Lake wanting to purchase their property that also was not on the market.¹²⁰

iv. The County did not independently verify Barkalow Land Sale #1.

Pelzer did not know if BLS #1 was listed on the market or not.¹²¹ Pelzer did not talk with the seller of BLS #1 and could not confirm if the terms of the sale.¹²²

Pelzer did not verify that BLS #1 met the Minnesota Department of Revenue's three part test criteria for characterizing a sale as a "good" sale.¹²³ Specifically, the County could not verify if: 1) the property was exposed to the market, 2) there was an

¹¹⁵ Tr. pp. 139-140.

¹¹⁶ Tr. p. 137.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Tr. pp. 124-125.

¹²⁰ Id.

¹²¹ Tr. pp. 56-57.

¹²² Id.

¹²³ Tr. pp. 65-72.

appraisal done prior to the sale to establish the sale price or used as a starting point for negotiations, and 3) the sale price was typical of the market.¹²⁴

- v. The Tax Court's Decision is not supported by either: 1) any evidence of another sale at \$1,280 per foot of lakeshore, or 2) any evidence of another comparable sale as high as \$252,800.**

Barkalow concluded that BLS #2 was worth \$69,755, or \$930 per foot.¹²⁵ This is only 36% of the \$192,000 selling price for BLS #1, and 28% of Barkalow's \$252,800 appraisal value. Barkalow did not identify any other comparable bare land lakeshore sales in either her appraisal report or her testimony.

Gimbel testified that he had never seen a comparable lot sell for \$250,000 anywhere in Todd County, not even on the better lakes.¹²⁶

Based on his 22 years of experience in Todd County, Pelzer has never seen another lot on Pine Island Lake sell for as much as \$192,000, nor could he identify any other sale that sold for that much.¹²⁷ Pelzer's testified:¹²⁸

Q: Mr. Pelzer, we talked about before whether or not you could identify any other properties on comparable lakes that sold for \$1,280 per front foot, and you couldn't identify any.

A: Not right off the top of my head. However, they may be in [Barkalow's] appraisal.

¹²⁴ Tr. pp. 64-71; pp. 74-75.

¹²⁵ Exhibit A, p. 16.

¹²⁶ Tr., pp. 133; 136.

¹²⁷ Tr. pp. 58-61.

¹²⁸ Tr. pp. 70-71. Emphasis added.

Q: ...Is it your opinion that this sale for \$1,280 a front foot is typical of the northern Todd County market?

A: [**Non-responsive**] I guess that would have to be a question for Ms. Barkalow.

Q: Actually, I'm asking you. This is one of the tests that the assessor's office, as I understand it, has to go through.

A: [**Non-responsive**] There are other sales out there.

Q: Is it typical?

A: [**Non-responsive**] There are other sales out there.

Q: Is it typical? Please just answer my question yes or no.

A: [**Non-responsive**] The typical range for lakeshore properties within that time frame ranged from \$600 a foot all the way up to \$2,700 a foot.

Q: On a comparable lake is it typical?

A: Yes.

Q: Give me an example.

A: I can't give you an example.

B. Standard of Review

The tax court's decision is clearly erroneous if, among other things, the decision is not reasonably supported by the evidence as a whole. *Lewis v. County of Hennepin*, 623 N.W.2d 258 (Minn. 2001). A Tax Court decision is considered to be clearly erroneous when this Court is left with a firm conviction that a mistake has been made, and that the

subject property has been overvalued. *Hanson v. County of Hennepin*, 527 N.W.2d 89, 92 (Minn. 1995). This Court will not defer when the Tax Court has clearly mis-valued the property or has failed to explain its reasoning. *Nw. Nat'l Life Ins. Co. v. County of Hennepin*, 572 N.W.2d 51, 52 (Minn. 1997).

The Tax Court has an obligation to use its independent judgment in evaluating all testimony and evidence before the court. *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410 (Minn. 2005), citing *Am. Express Fin. Advisors, Inc. v. County of Carver*, 573 N.W.2d 651, 658-59 (Minn. 1998) (holding that the tax court's out-of-hand rejection of certain testimony and exhibits that were part of the record was an abuse of discretion).

This Court will not defer to the tax court's valuation decision where the court has "completely fail[ed] to explain its reasoning." *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 414 (Minn. 2005) (quoting *Hanson v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995)).

Where credible evidence is offered and the taxpayer meets its burden to show the assessment does not reflect the true market value of the property, the Tax Court must determine the market value of the property. *Southern Minn. Beet v. Cnty. of Renville*, 737 N.W.2d 545, 559 (Minn. 2007) (citing *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005)).

The Tax Court's exercise of its discretion in valuing an asset "should be supported by either clear documentary or testimonial evidence or by comprehensive findings issued by the court." *Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 766 (Minn. 1983). "When the

Tax Court concludes that the market value of a subject property is lower than or higher than the appraisal testimony, it should carefully explain its reasoning for rejecting the appraisal testimony, and the grounds for adopting a lower or higher value, and adequately describe the factual support in the record for its determination.” *Eden Prairie Mall, LLC v. Cnty. of Hennepin*, 797 N.W.2d 186 (Minn. 2011).

C. Argument

The Tax Court’s decision is void of any analysis or discussion on whether or not BLS #1 was an outlier or a typical market transaction, or whether it had been appropriately verified by the County and Barkalow.

Pelzer admitted the BLS #1 was an “outlier” and that the assessed value was not increased because the County doesn’t “rely on just a single sale.” The County failed to verify the terms of BLS #1 according to the Minnesota Department of Revenue’s test criteria.

Barkalow gave BLS #1 full weight in her analysis without even making any attempt to verify the sale with either the buyer or seller. Contrary to her testimony that she goes “farther these days to try to verify sales to make sure there's nothing *unusual* in the background *in terms of motivation*,”¹²⁹ Barkalow did nothing to verify her primary comparable sale. The evidence demonstrates there was “unusual motivation” in BLS #1 from a buyer who lives out-of-state and has other family members on the lake. The evidence also demonstrates that there was “unusual motivation” from the out-of-state

¹²⁹ Tr. pp. 170-171. Emphasis added.

buyer who solicited at least two different property owners on the same lake even though neither of these property owners had advertised land for sale.

Moreover, the Tax Court's Decision is not supported by either: 1) any evidence of another sale at \$1,280 per foot of lakeshore, or 2) any evidence of another comparable sale as high as \$252,800. The Tax Court failed to explain its reasoning for accepting BLS #1 as being representative of the market value.

VI. THE TAX COURT ERRED BY ENTIRELY REJECTING BOTH OF THE OWNER'S TESTIMONY REGARDING COMPARABLE PROPERTIES AND MARKET VALUES.

A. Statement of Facts

i. Mrs. Beck is a real estate expert with experience in the Todd County real estate market.

Since 2000, Mrs. Beck has been a real estate agent licensed in both Minnesota and Wisconsin.¹³⁰ Mrs. Beck has specialized in vacant lots, new construction and pre-existing homes.¹³¹ Mrs. Beck also has direct experience with the Todd County real estate market.¹³² The County did not object to any portion of Mrs. Beck's expert testimony.

ii. Mrs. Beck performed several market analyses and opined that the market value of the subject was \$299,000 based on the most comparable sale.

¹³⁰ Tr. p. 112-113.

¹³¹ Id.

¹³² Id.

Mrs. Beck performed several undisputed market analyses to provide the Tax Court with an overview of the local real estate market. The first market analysis showed that the average sale price for all unimproved lakeshore lots in Todd County from 2006 to 2010 was only \$92,291, after adjusting for one large sub-dividable lot sale.¹³³ The second market analysis showed the average selling price was \$247,592 for all improved lakeshore lots sold in Todd County from 2006 to 2008,¹³⁴ which is similar to Barkalow's \$252,800 bare land valuation of the subject. The third market analysis showed that the average selling price of unimproved lots on only Recreational Development lakes was only \$96,440, after adjusting for one large sub-dividable lot sale.¹³⁵ All three of these market analyses include sales on lakes that are superior to the subject property,¹³⁶ and none indicate that the subject's bare land value could be \$252,800.

Mrs. Beck also performed an undisputed analysis of the 2008 \$942,000 sub-dividable land sale.¹³⁷ The property is adjacent to Grey Stone Golf Course and is also on a superior lake to Pine Island Lake.¹³⁸ The property included 73 acres and 1,800 feet of lakeshore. Mrs. Beck divided the 1,800 feet of lakeshore by the subject's 245 feet and concluded that this sale was equivalent to seven lots with similar frontage to the subject, except that the lots would be 10 acres each instead of the subject's 1 acre. The average price per 10 acre lot with equivalent lakeshore frontage to the subject, but on a superior

¹³³ Tr. pp. 113-115; Exhibit 14.

¹³⁴ Tr. p. 114; Exhibit 14.

¹³⁵ Tr. pp. 115-116.; Exhibit 14. The overall average was \$173,309 before the \$942,000 sale.

¹³⁶ Tr. pp. 60; 80-81; 124; Exhibit 14.

¹³⁷ Tr. pp. 120, 124; Exhibit 14.

¹³⁸ Tr. pp. 114, 124.

lake and adjacent to a golf course, was only \$134,571. Barkalow's \$252,800 bare land valuation is nearly double this amount.

Mrs. Beck also performed an undisputed analysis of three improved properties which she deemed to be most similar to the subject.¹³⁹ The first comparable property sold for \$265,000 and "was the one that Ms. Barkalow had in [her appraisal] as well...It has 147 feet of sandy shoreline. It's a three-bedroom, two-bath, three-car garage home... it has a flatter front yard, somewhat newer construction, and not much of a grade back to the back of the lot."¹⁴⁰

Mrs. Beck testified that the second comparable property "resembles our property the most in many ways. It's got a walkout lower level...It's got the irregular-shaped windows like we have at the back of our property...I feel like it's an accurate -- even at [\$299,000] I feel like that's an accurate picture of what our property [value] is... We thought about putting our [house] on this lake, so I know this lake fairly well...I would say the grade is probably fairly similar to our property in other aspects, so I felt that one was probably the most comparable. But then as a real estate agent you have to take, obviously, more than one property when you're coming up with a market analysis."¹⁴¹ Although this property has 2 acres instead of the subject's one acre, it has 200 feet of lakeshore, a similar foundation size with a walk-out basement, similar design and it was built within 1 year of the subject.¹⁴²

¹³⁹ Tr. p. 116; Exhibit 14.

¹⁴⁰ Id.

¹⁴¹ Tr. pp. 117-118; Exhibit 14. Emphasis added.

¹⁴² Exhibit 14.

The third comparable property also has 200 feet of lakeshore and sold for \$260,000.¹⁴³ This was another property known well by Mrs. Beck: “[w]e actually looked at this property as well when it was up for sale and had considered buying it...But this is a great property...It's a walkout property. The square footage is 1,876. It's on 1.8 acres. It's extremely flat in the front.”¹⁴⁴

None of Mrs. Beck’s testimony was disputed by the County.

iii. Mr. Beck performed an analysis of ten comparable land sales that indicates a reasonable range of value for the subject’s bare land is \$123,000 to \$150,000.

Mr. Beck performed an undisputed analysis of ten comparable lakeshore properties that were either bare land or improved in a manner where the value of the improvements could be readily extracted.¹⁴⁵ Mr. Beck’s analysis detailed numerous characteristics of each of these properties, including:¹⁴⁶

- total elevation change,
- slope from road to house,
- slope from house to lake,
- amount of lakeshore frontage,
- total lot size,
- zoning classification of lake,
- lake size, and

¹⁴³ Id.

¹⁴⁴ Id; Tr. p. 119.

¹⁴⁵ Tr. p. 97.

¹⁴⁶ Exhibits 12 & 13; Tr. pp. 97-108.

- lake water clarity.

Mr. Beck's analysis followed general appraisal practices for lakeshore valuations, as testified to by Pelzer.¹⁴⁷ Mr. Beck's analysis indicates a reasonable range of value for the subject's bare land is \$123,000 to \$150,000.

B. Standard of Review

The Tax Court has an obligation to use its independent judgment in evaluating all testimony and evidence before the court. *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410 (Minn. 2005), citing *Am. Express Fin. Advisors, Inc. v. County of Carver*, 573 N.W.2d 651, 658-59 (Minn. 1998) (holding that the tax court's out-of-hand rejection of certain testimony and exhibits that were part of the record was an abuse of discretion).

The tax court's decision is clearly erroneous if, among other things, the decision is not reasonably supported by the evidence as a whole. *Lewis v. County of Hennepin*, 623 N.W.2d 258 (Minn. 2001). A Tax Court decision is considered to be clearly erroneous when this Court is left with a firm conviction that a mistake has been made, and that the subject property has been overvalued. *Hanson v. County of Hennepin*, 527 N.W.2d 89, 92 (Minn. 1995). This Court will not defer when the Tax Court has clearly mis-valued the property or has failed to explain its reasoning. *Nw. Nat'l Life Ins. Co. v. County of Hennepin*, 572 N.W.2d 51, 52 (Minn. 1997). This Court will not defer to the tax court's valuation decision where the court has "completely fail[ed] to explain its reasoning."

¹⁴⁷ Tr., pp. 17-18.

McNeilus Truck & Mfg., Inc. v. County of Dodge, 705 N.W.2d 410, 414 (Minn. 2005) (quoting *Hanson v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995)).

Where credible evidence is offered and the taxpayer meets its burden to show the assessment does not reflect the true market value of the property, the Tax Court must determine the market value of the property. *Southern Minn. Beet v. Cnty. of Renville*, 737 N.W.2d 545, 559 (Minn. 2007) (citing *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005)).

The Tax Court's exercise of its discretion in valuing an asset "should be supported by either clear documentary or testimonial evidence or by comprehensive findings issued by the court." *Ronkvist v. Ronkvist*, 331 N.W.2d 764, 766 (Minn.1983). "When the Tax Court concludes that the market value of a subject property is lower than or higher than the appraisal testimony, it should carefully explain its reasoning for rejecting the appraisal testimony, and the grounds for adopting a lower or higher value, and adequately describe the factual support in the record for its determination." *Eden Prairie Mall, LLC v. Cnty. of Hennepin*, 797 N.W.2d 186 (Minn. 2011).

C. Argument

Mrs. Beck is a real estate expert with specialized knowledge, skill, experience, training, and education. Mrs. Beck is qualified to offer opinions of the subject's market value under the Minnesota Rules of Evidence, Rule 702.

The Tax Court's decision is entirely void of any analysis or discussion about either of the owner's testimony regarding market values based on comparable properties. The evidence provided by both Mr. Beck and Mrs. Beck was substantial, credible and,

importantly, undisputed. All of this evidence directly contradicts the Tax Court's conclusion of a market value in excess of \$300,000.

Moreover, all of the evidence presented by the owners demonstrates that the assessed value of the subject's bare land is in the "ballpark" of the actual market value, as requested by the Tax Court,¹⁴⁸ and that Barkalow's \$252,800 bare land value is "out of left field."

The Tax Court should carefully explain its reasoning for rejecting the owners' testimony, and the grounds for adopting a higher value, and comprehensively describe the factual support in the record for its determination.

VII. THE TAX COURT ERRED BY ACCEPTING AN APPRAISAL BASED ON A RULE OF THUMB WITH NO CONNECTION TO ANY FACTS IN THE CASE.

A. Statement of Facts

i. Barkalow's appraisal method is based on a rule of thumb that is not connected to any facts in the case.

Barkalow used a rule of thumb to value the subject's additional 95 feet of frontage: "Similar studies, over the years, indicate the secondary water frontage is valued at approximately 50% of the "basic" frontage."¹⁴⁹ The foundation for Barkalow's 50% rule of thumb is based on general "studies" and is not connected in any way to the subject's characteristics:¹⁵⁰

¹⁴⁸ Tr. p. 176.

¹⁴⁹ Exhibit A, pp. 16-17. Emphasis added.

¹⁵⁰ Tr., p. 210.

Q: Where did you come up with the 50 percent on the Beck property?

A: Based on the appraisal experience I have and in consultation based on studies that have been done by others.

Q: What studies by what others?

A: Many assessors conduct those kinds of studies over a period of time. I can recall talking to an assessor earlier this year. He said after his analysis last year, it's based on zoning principal as a hundred. After that it's about 50 percent.

Q: What about your personal experience?

A: Talking to other appraisers, the same thing.

Barkalow's 50% rule of thumb is not based on any analysis of the subject's characteristics, including the total square footage of the lot, slope to the lake, quality of lakefront, size of the lake, water clarity, location, or other features that affect market value.

Relator and Gimbel provided substantial testimony about the subject's characteristics that are not considered by Barkalow's 50% rule of thumb, including:

- Parts of the subject's west side are "unusable" due its steep slope.¹⁵¹
- At least half of the subject's lakeshore is covered with rushes and lily pads which BLS #1 does not have.¹⁵²
- The subject is directly adjacent to a swamp, but the BLS #1 is not.¹⁵³

¹⁵¹ Tr. pp. 135-136.

¹⁵² Id.

- The average slope is over 12% on the east side and 20% on the west side, while BLS #1 is “basically level” and “relatively flat.”¹⁵⁴
- ii. **Barkalow’s appraisal method is contrary to both general appraisal practices and another appraisal performed by Barkalow for Tax Court.**

Pelzer testified that general appraisal practices use smaller increments of lakeshore frontage and more tiers of value than used by Barkalow in this case.¹⁵⁵

Q: So the first hundred feet is assessed at I'll say a hundred percent, and the second is assessed at roughly 50 percent? Would you agree with that?

A: Yes.

Q: And then the remaining is roughly 25 percent of the first?

A: 50 percent of the second tier.

Q: Which is 25 percent of the first tier, right? Is that fair?

A: Yes.

Q: So is that pretty typical? Is that how it's done in the county? I know there is gonna be certain situations where that's not true, but is that generally the case?

A: That is the general appraisal practice.

Q: Is that the appraisal practice in other counties?

¹⁵³ Id.

¹⁵⁴ Exhibit A, pp. 13, 16; Tr. pp. 12; 125; 168; Tr. pp. 141-143.

¹⁵⁵ Tr., pp. 17-18.

A: Yes.

Barkalow followed this same general appraisal practice described by Pelzer in another Tax Court matter. However, unlike this case, Barkalow performed an analysis to connect the general appraisal practice to actual facts in the case to support her opinion that the second 100 feet had a value of 54% (versus 50%) of the first 100 feet, and that the third 100 feet had a value of 29% (versus 25%) of the first 100 feet.¹⁵⁶

In this case, Barkalow based the “principal” value on the first 150 feet based on “analysis of waterfront sales, over the years”¹⁵⁷ This definition is contradicted by Barkalow’s appraisal in the other Tax Court matter: “[a]nalysis of waterfront sales, over the years, suggests that the principal value for a waterfront site is the first 100 feet of frontage...”¹⁵⁸ Barkalow attempted to resolve this inconsistency between her methods by erroneously stating that the zoning on Big Fish Lake in Stearns County, a Recreational Development Lake, allowed a building on a 100 foot wide site.¹⁵⁹ Stearns County confirmed that Ordinance #439 also requires a minimum lot width of 150 feet, the same as the subject.¹⁶⁰

B. Standard of Review

This Court has concluded “...no rule of thumb is available that can be applied arbitrarily to the facts of all cases for the reason that the facts seldom are the same or similar.” *Adelsman v. Northwest Airlines, Inc.*, 267 Minn. 116, 124 (1963).

¹⁵⁶ Exhibit 18, p. 18.

¹⁵⁷ Tr. pp. 163-164; 210.

¹⁵⁸ Exhibit 18, p. 18. Emphasis added.

¹⁵⁹ Tr. p. 208.

¹⁶⁰ Appendix, pp. A14-A19.

Under the *Frye-Mack* standard, scientific evidence is admissible in Minnesota courts only when: 1) a novel scientific technique is generally accepted in the relevant scientific community, and 2) the particular evidence derived from that test has a foundation that is scientifically reliable. *Goeb v. Tharaldson*, 615 N.W.2d 800, 809-10 (Minn. 2000) (explaining history of test); *State v. Mack*, 292 N.W.2d 764 (Minn. 1980).

The United States Court of Appeals for the Federal Circuit recently rejected a valuation expert's analysis because it was based a rule of thumb that was not connected to the facts of the case: "In this case, it is clear that [the valuation expert's] testimony was based on the use of the 25% rule of thumb as an arbitrary, general rule, unrelated to the facts of this case....When asked the basis of his opinion that the rule of thumb would apply here, [the valuation expert] testified: '[i]t's generally accepted. I've used it. I've seen others use it. It's a widely accepted rule.'...The use of such a rule fails to pass muster under *Daubert*" *Uniloc v. Microsoft*, 632 F. Supp. 3d 1292, 1318 (2011). Emphasis added.

The Tax Court's exercise of its discretion in valuing an asset "should be supported by either clear documentary or testimonial evidence or by comprehensive findings issued by the court." *Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 766 (Minn.1983). This Court will not defer to the tax court's valuation decision where the court has "completely fail[ed] to explain its reasoning." *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 414 (Minn. 2005) (quoting *Hanson v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995)).

“When utilizing the comparable sales approach to valuation, the appraiser must ‘consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination.’” *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005)

C. Argument

Expert testimony must have a scientifically reliable foundation. Barkalow’s 50% rule of thumb is an arbitrary, general rule that is unrelated to the facts of this case. Barkalow’s methods are inconsistent with general appraisal standards. Moreover, the methods used by Barkalow are contradictory with the methods Barkalow used in another Tax Court case. The use of such a rule fails to pass muster under the *Frye-Mack* standard and therefore should be entirely rejected in this case.

The Tax Court failed to explain its reasoning for accepting Barkalow’s 50% rule of thumb given its inconsistency with general appraisal practices, its inconsistency with the method used by Barkalow in another Tax Court case, and its failure to connect the rule of thumb to the facts of this case.

VIII. THE TAX COURT ERRED BY NOT CONCLUDING TO A SEPARATE IMPROVEMENT AND LAND VALUE.

A. Statement of Facts

The Tax Court expressly concluded “[i]n valuing the land, Ms. Barkalow concluded that the first 150 feet of lakeshore should be valued at \$192,000, and the next

95 feet at \$60,900, for a total valuation of \$252,800.”¹⁶¹ Barkalow testified “...the combined value of improvements and land is 395, so that means the improvements were approximately \$140,000.”¹⁶² The Tax Court concluded “[t]aking into account the limitations under which Ms. Barkalow was conducting her appraisal, as well as considering that the Petitioners carry the burden of proof, we conclude to a value for the subject property of \$395,000 as of January 2, 2009.”¹⁶³

By all reasonable inferences, the Tax Court’s decision of \$395,000 is based on a bare land value of \$252,800 and an improvement value of \$142,200. However, the Tax Court’s conclusion of law only directs the County to reduce the total value: “The Todd County Assessor’s estimated market value for the Subject Property as of January 2, 2009, shall be reduced on the books and records of Todd County from \$397,400 to \$395,000.”¹⁶⁴

Pelzer testified “I agree with Ms. Barkalow's appraisal.”¹⁶⁵ However, despite the substantially different valuations, the County continues to assess the subject’s improvements at levels that oppose the Tax Court’s decision:

	2009 Assessment	Tax Court’s Decision (2009)	2012 Assessment ¹⁶⁶
Improvements	\$ 238,600 / 60%	\$ 142,200 / 36%	\$ 196,300 / 58%
Bare Land	<u>158,800 / 40%</u>	<u>252,800 / 64%</u>	<u>145,100 / 42%</u>
Total	\$397,400 / 100%	\$395,000 / 100%	\$341,400 / 100%

B. Standard of Review

¹⁶¹ Addendum, p. A10.

¹⁶² Tr. p. 173.

¹⁶³ Addendum, p. A11.

¹⁶⁴ Addendum, p. A3.

¹⁶⁵ Tr. pp. 20-21.

¹⁶⁶ Appendix, pp. A20-A21.

“...all property shall be valued at its market value...In estimating and determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation... the assessor shall value each article or description of property by itself, and at such sum or price as the assessor believes the same to be fairly worth in money...In assessing any tract or lot of real property, the value of the land, exclusive of structures and improvements, shall be determined, and also the value of all structures and improvements thereon, and the aggregate value of the property...” Minn. Stat. § 273.11 (2011). (Emphasis added.)

Article X, Section 1 of the Minnesota Constitution requires that “Taxes shall be uniform upon the same class of subjects.” The appraiser must “consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination.” Minn. Stat. § 273.12 (2011) (Emphasis added.)

C. Argument

Article X, Section 1 of the Minnesota Constitution requires that “Taxes shall be uniform upon the same class of subjects.” Minnesota Statute § 273.11 requires a separate valuation of the land and improvements. Minnesota Statute § 273.12 requires that similar lands be assessed on a uniform basis without discrimination.

The Tax Court accepted Barkalow’s appraisal value of \$142,200 for the improvements and \$252,800 for the bare land. The assessed improvement value was \$238,600 and the assessed land value was \$158,800. The Tax Court’s conclusion of law only directs the County to reduce the entire value of the subject; it does not direct the

County to increase the land value and decrease the improvement value in accordance with the determined market values. Accordingly, the Tax Court's conclusion of law is not in accordance with Minnesota Statute § 273.11.

Moreover, the Tax Court failed to explain its reasoning for not concluding to separate land and improvement values when its decision clearly contemplated both valuations separately.

Additionally, BLS #1 was the primary basis for Barkalow's \$252,800 land valuation.¹⁶⁷ The County continued to assess BLS #1's 150 feet of lakeshore at the same amount of \$122,500, or an average rate of \$817 per foot, after it sold for \$192,000, or \$1,280 per foot.¹⁶⁸ The Tax Court failed to explain its reasoning for concluding to a land valuation for the subject property that was not uniform with other similar lands.

CONCLUSION

Based on the foregoing, Relator respectfully requests that this Court hold that the Tax Court's decision is not supported by the evidence admitted at trial and constitutes reversible error in violation of Minnesota state law. The Tax Court's decision is based on arbitrary methods and calculations, and it distorts valuation in contravention of the Tax Court's obligation to use its independent judgment to determine fair market value and treat lands similarly situated on a uniform basis.

Accordingly, Relator respectfully requests that this Court reverse the decision of the Tax Court and remand with directions to properly determine the taxable market value

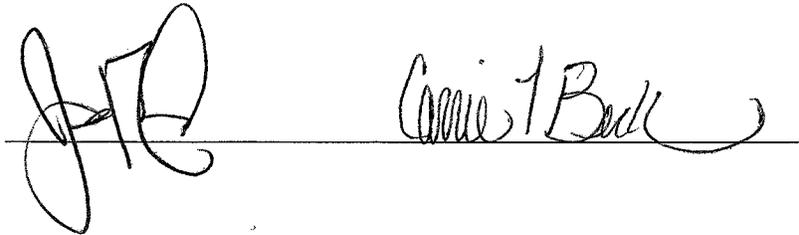
¹⁶⁷ Tr., pp. 165-166; Exhibit A, p. 16;

¹⁶⁸ Tr. p. 64; Exhibit 6.

of the land and improvements separately based on a thorough analysis of the credible and substantial evidence submitted by at trial.

Respectfully Submitted,

DATED: April 23, 2012

A horizontal line is drawn across the page. Above the line, there are two handwritten signatures. The signature on the left is stylized and appears to be 'JB'. The signature on the right is written in cursive and reads 'Carrie Beck'.

John Beck / Carrie Beck, Relator, Pro Se

8952 Hunters Circle

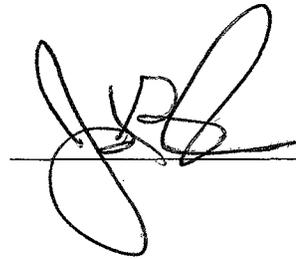
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CERTIFICATE OF COMPLIANCE

WITH MINN. R. APP.P 132.01, Subd. 3

The undersigned certifies that Relator's Brief submitted herein contains 13,799 words, exclusive of the pages containing the table of contents and table of authorities, and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a Times New Roman a proportional spaced font, size 13 pt. The word count is stated in reliance on Microsoft Word 2007, the word processing system used to prepare this Brief.

A handwritten signature in black ink, appearing to read 'John Beck', is written over a horizontal line.

John Beck