

A12-0252

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STATE OF MINNESOTA  
IN SUPREME COURT

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John and Carrie Beck,

*Relator,*

vs.

County of Todd,

*Respondent.*

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RELATOR'S REPLY BRIEF

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## INTRODUCTION

This appeal originates from the December 14, 2011 decision of the Minnesota Tax Court, the Honorable Sheryl A. Ramstad presiding.<sup>1</sup> Relator's initial brief was filed with this Court on April 23, 2012. This reply brief addresses arguments raised in Respondent's brief, which was filed with this Court on May 10, 2012.

There continues to be no dispute between the parties that the value of the subject's improvements was approximately \$140,000 as of January 2, 2009.<sup>2</sup> The ultimate issue has been and continues to be the market value of the subject's bare land as of January 2, 2009. The ranges of bare land market value presented for the Tax Court's independent evaluation were:

	<b>Assessed Value<sup>3</sup></b>	<b>Gimbel's Opinion<sup>4</sup></b>	<b>Relator's Analysis<sup>5</sup></b>	<b>Barkalow's Unendorsed Appraisal<sup>6</sup></b>
Bare Land Market Value as of January 2, 2009	\$ 158,800	\$ 160,000	\$ 123,000 to \$ 150,000	\$ 252,800

During trial, Ms. Susanne Barkalow, the County's expert, admitted that the subject's bare land value would be less than her appraisal, but she was unable to calculate how much less.<sup>7</sup> 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

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<sup>1</sup> Appendix, pp. A1-A11.

<sup>2</sup> Tr. pp. 133-134, 173; **Figure 1** on page 7 of this Reply Brief.

<sup>3</sup> Exhibit 5.

<sup>4</sup> Tr. pp. 133-134; 147.

<sup>5</sup> Exhibits 12 & 13; Tr. pp. 97-108.

<sup>6</sup> Exhibit A, p. 17.

<sup>7</sup> e.g., Tr. p. 176.

95 feet at \$60,900, for a total valuation of \$252,800.”<sup>8</sup> Nevertheless, the Tax Court based its decision verbatim on Barkalow’s admittedly overstated appraisal.

## ARGUMENT

### **A. Ms. Barkalow Did Not Perform a Separate Land Valuation**

#### **On Any of The Four Improved Comparables.**

The County ignores Ms. Barkalow’s testimony 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.”<sup>9</sup> The County then attempts to use Ms. Barkalow’s valuation of four improved property sales as its last refuge to support the Tax Court’s erroneous conclusions. In its attempt to do so, the County misleads this Court with its assertion that Ms. Barkalow thoroughly analyzed four lakeshore sales zoned as recreational development in her sales comparison approach.<sup>10</sup> The County also misleadingly asserts that Ms. Barkalow “properly identifies factors or considerations for the sales comparison approach which should be utilized in reviewing sales of lakefront properties.”<sup>11</sup> The County further misleadingly asserts that Ms. Barkalow “appropriately makes adjustments to the comparable sales.”<sup>12</sup>

The County’s assertions are misleading because Ms. Barkalow did not perform a separate land valuation on any of these four property sales. Instead, she merely adjusted the land value for each of these four comparables to be equal to \$252,800 based on her

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<sup>8</sup> Addendum, p. A10.

<sup>9</sup> Tr. p. 176. Emphasis added.

<sup>10</sup> Respondent’s Brief, pp. 10-11.

<sup>11</sup> Respondent’s Brief, p. 11.

<sup>12</sup> Respondent’s Brief, p. 11.

admittedly overstated analysis of the two land sales.<sup>13</sup> Based on Ms. Barkalow's method, it would make no difference if the four comparable sales were lakeshore properties, non-lakeshore properties, or otherwise. (Also see **Figure 1** on page 7 of this Reply Brief.)

Moreover, Ms. Barkalow's land, improvement and total adjustment amounts are not credible given their magnitude. **Figure 1** on page 7 shows the substantial adjustments made to the improvement value by Ms. Barkalow for the four comparable sales. The improvement value adjustments range from 15% to 68%, with the weighted average being 49% above the base amount. Substantial adjustments of this size should be supported with analysis of truly comparable properties.

**Figure 1** on page 7 also shows the substantial adjustments made to the land value by Ms. Barkalow for the four comparable sales. The land value adjustments range from 49% to 185%, with the weighted average being 115%, more than twice the base amount. Substantial adjustments of this size should be supported with analysis of truly comparable properties.

**Figure 1** on page 7 also shows the substantial adjustments made to the total value by Ms. Barkalow for the four comparable sales. The total value adjustments range from 38% to 125%, with the weighted average being 85%, nearly twice the base amount. Substantial adjustments of this size should be supported with analysis of truly comparable properties.

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<sup>13</sup> e.g., Tr. pp. 175-176. **Figure 1** on page on page 7 of this Reply Brief.

**B. Ms. Barkalow's Bare Land Valuation is Based on Only Two Sales**

The County asserts that Ms. Barkalow based her land analysis on three properties, not two properties, with the third property being an active listing.<sup>14</sup> This assertion is entirely without foundation, as Ms. Barkalow stated she placed no weight on the active listing.<sup>15</sup>

**C. Ms. Barkalow's 50% Rule of Thumb is Not Based on Any Facts in This Case.**

The County asserts that the 50% rule of thumb used by Ms. Barkalow to value all lakeshore frontage in excess of the first 150 feet is based on Ms. Barkalow's analysis of the two land sales, BLS #1 and BLS #2.<sup>16</sup> This assertion is illogical and without foundation because neither of Ms. Barkalow's two comparable land sales had more than 150 feet.<sup>17</sup> Any analysis comparing value for frontage in excess of 150 feet inherently must include a property with more than 150 feet. Because neither of Ms. Barkalow's land sales has more than 150 feet of frontage, neither can be used to reasonably conclude that all additional frontage over 150 feet is worth 50% of the first 150 feet.

**D. Ms. Barkalow Placed No Weight on Active and Expired Listings.**

The County asserts that Ms. Barkalow's active and expired listings "further support Ms. Barkalow's opinion of value."<sup>18</sup> Based on Ms. Barkalow's testimony that "no weight was placed on those [active and expired listings],"<sup>19</sup> Relators did not cross examine Ms. Barkalow on this issue. There is no information in the record to understand

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<sup>14</sup> Respondent's Brief, p. 9.

<sup>15</sup> Exhibit A, p. 15.

<sup>16</sup> Respondent's Brief, p. 9.

<sup>17</sup> e.g., Respondent's Exhibit A, p. 16.

<sup>18</sup> Respondent's Brief, p. 11.

<sup>19</sup> Tr. p. 162.

how “several of [the active and expired listings] bracket various aspects of the subject property.”<sup>20</sup> For these reasons, Respondent’s argument that Ms. Barkalow’s active and expired listings further support Ms. Barkalow’s opinion of value is without foundation.

**E. Relator’s Used the “Cost Approach” Method Used By Ms. Barkalow.**

The County repeatedly asserts that the Tax Court determined that the cost approach was less reliable than the sales approach.<sup>21</sup> If the County’s contention is correct, then it supports Relator’s argument that Ms. Barkalow’s \$395,000 valuation is not reliable because \$252,800, or approximately two thirds, of Ms. Barkalow’s valuation is based on the cost approach.<sup>22</sup>

The County also asserts that Relator did not address the cost approach, but that Ms. Barkalow did use the cost approach for the land value.<sup>23</sup> This assertion is unfounded, as Relator performed an analysis of the ten comparable properties using the same method as Ms. Barkalow to determine the bare land value.<sup>24</sup> The only exception is that Relator’s analysis followed general appraisal practices for lakeshore valuations, as testified to by Pelzer.<sup>25</sup> Moreover, Mr. Gimbel used the cost approach to value the improvements.<sup>26</sup>

**F. The County Mis-Characterizes Relator’s Comparables**

The County erroneously asserts “Relators utilized comparable’s (sic) on superior lakes to Pine Island, some in other counties as far as 70 miles from the subject

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<sup>20</sup> Respondent’s Brief, p. 11.

<sup>21</sup> Respondent’s Brief, pp. 1-3.

<sup>22</sup> Tr. p. 161. Also see **Figure 1** on page 7 of this Reply Brief.

<sup>23</sup> Respondent’s Brief, p. 9.

<sup>24</sup> Exhibits 12 & 13; Tr. pp. 97-108.

<sup>25</sup> Tr., pp. 17-18.

<sup>26</sup> Tr. pp. 133-134.

property.”<sup>26</sup> All of the numerous comparables utilized by Relators were in Todd County.<sup>27</sup> The County is not even 70 miles across at the farthest points, and any comparables deemed to be on superior lakes would only overstate Relator’s conclusions of fair market value.

Without citing anything in the record, Respondent asserts “the comparable’s (sic) relied on by Relators did not adequately explain what type of transactions were involved—arm’s length, foreclosure sale (sic) etc.”<sup>28</sup> In addition, Respondent asserts the Relator’s Exhibit 14 does not contain “explanations of age, quality, construction, shoreline frontage or how they compared in general to the subject property.”<sup>29</sup> Relator agrees that the summary “Comparative Market Analysis” documents do not include detailed information as they were intended only to provide an overview of the Todd County real estate market. However, the County’s assertion with regard to the specific comparables used by Mrs. Beck is unfounded. Exhibit 14 contains detailed information from the MLS records and the County’s records, and Mrs. Beck testified in detail how those properties compared to the subject property.<sup>30</sup> Finally, Respondent states “Relatos’ (sic) Exhibit 13 contains comparable’s (sic) with inferior improvements, environmental lakes, and smaller shorelines.”<sup>31</sup> Relator does not disagree. Relator explained the data in Exhibit 13 and the summary analysis performed from that data on Exhibit 12 in detail at trial.<sup>32</sup>

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<sup>26</sup> Respondent’s Brief, pp. 13-14.

<sup>27</sup> Tr. pp. 114; 97-108. Exhibits 12, 13 and 14.

<sup>28</sup> Respondent’s Brief, p. 14.

<sup>29</sup> Respondent’s Brief, p. 14.

<sup>30</sup> Tr. pp. 116-120.

<sup>31</sup> Respondent’s Brief, p. 14.

<sup>32</sup> Tr. pp. 97-109.

**FIGURE 1**

Barkalow's Closed Sales (Exhibit A, page 21)					
	35661 Morraine Dr. Big Lake Closed 9/07 5% Lake Adj.	29174 King Road Coal Lake Closed 10/08 10% Slope Adj.	35073 Moonlight Drive Big Lake Closed 8/06 5% Lake Adj.	26094 Iris Trail Lake Beauty Closed 7/06 10% Slope Adj.	Weighted Average
<i>Barkalow's Weight</i>	35%	35%	15%	15%	100%
<b>STEP 1 - Determine Unadjusted Land Value</b>					
Assumed Value Per Foot	\$ 1,280	\$ 1,280	\$ 1,280	\$ 1,280	\$ 1,280
Discount for Lake Quality or Slope	(64)	(128)	(64)	(128)	(96)
Adjusted Value Per Foot	\$ 1,216	\$ 1,152	\$ 1,216	\$ 1,152	\$ 1,184
Actual Frontage	72.80	100.00	114.32	147.02	99.68
Assumed Land Value	\$ 88,525	\$ 115,200	\$ 139,013	\$ 169,367	\$ 117,561
Rounding Differences	175	-	(13)	133	79
<b>Unadjusted Land Value</b>	<b>\$ 88,700</b>	<b>\$ 115,200</b>	<b>\$ 139,000</b>	<b>\$ 169,500</b>	<b>\$ 117,640</b>

**STEP 2 - SALES COMPARISON APPROACH**

**Determine Improvement Value**

Gross Sale Price	\$ 197,000	\$ 224,900	\$ 220,000	\$ 265,000	\$ 220,415
Personal Property	(15,000)	(2,850)	(3,000)	(9,700)	(8,153)
<b>Net Sale Price</b>	<b>\$ 182,000</b>	<b>\$ 222,050</b>	<b>\$ 217,000</b>	<b>\$ 255,300</b>	<b>\$ 212,263</b>
Unadjusted Land Value (Above)	(88,700)	(115,200)	(139,000)	(169,500)	(117,640)
<b>Unadjusted Improvement Value</b>	<b>\$ 93,300</b>	<b>\$ 106,850</b>	<b>\$ 78,000</b>	<b>\$ 85,800</b>	<b>\$ 94,623</b>
Design Adjustment	-	(1,500)	-	-	(525)
Grade Adjustment	20,700	14,500	14,700	7,700	15,680
Age Adjustment	5,500	11,500	8,000	-	7,150
Size Adjustment	22,800	28,100	19,100	9,600	22,120
Basement Adjustment	4,600	-	4,600	-	2,300
Basement Finish Adjustment	-	(8,300)	-	(2,000)	(3,205)
HVAC Adjustment	-	(1,500)	-	(1,500)	(750)
Garage 1 Adjustment	10,000	1,000	5,000	(1,000)	4,450
Fireplace Adjustment	-	(2,500)	(2,500)	-	(1,250)
<b>Adjusted Improvement Value</b>	<b>\$ 156,900</b>	<b>\$ 148,150</b>	<b>\$ 126,900</b>	<b>\$ 98,600</b>	<b>\$ 140,593</b>
<i>Improvement Adjustments</i>	68%	39%	63%	15%	49%

**STEP 3 - COST APPROACH**

**Adjust All Land Values to \$252,800**

Unadjusted Land Value (above)	\$ 88,700	\$ 115,200	\$ 139,000	\$ 169,500	\$ 117,640
Lake Adjustment	4,700	-	7,300	-	2,740
Frontage Adjustment	159,400	124,800	106,500	64,600	125,135
Slope Adjustment	-	12,800	-	18,700	7,285
<b>Adjusted Land Value</b>	<b>\$ 252,800</b>				
<i>Land Adjustments</i>	185%	119%	82%	49%	115%

<b>Total Adjusted Value</b>	<b>\$ 409,700</b>	<b>\$ 400,950</b>	<b>\$ 379,700</b>	<b>\$ 351,400</b>	<b>\$ 393,393</b>
<i>Total Adjustments</i>	125%	81%	75%	38%	85%

Rounded up to \$395,000

## CONCLUSION

The responses and non-responses in Respondent's brief validate most, if not all, of Relator's arguments. Importantly, the County does not refute that:

- The primary bare land comparable used by Ms. Barkalow ("BLS #1") is an outlier that was not verified by the County Assessor or Ms. Barkalow, and there is no evidence in the record to corroborate the sales value.
- The second (and last) bare land comparable used by Ms. Barkalow ("BLS #2") is neither similar in size nor utility to the subject property, and therefore is not comparable to the subject property.
- Ms. Barkalow's 50% rule of thumb appraisal method is contrary to both general appraisal practices and another appraisal performed by Barkalow for Tax Court.
- The County failed to make any formal or informal requests to inspect the subject property, either for the County itself or for Ms. Barkalow. Thus, the County concurs that the Tax Court erred by concluding that Petitioners failed to respond to both multiple requests for entry and any request(s) for entry by the County.

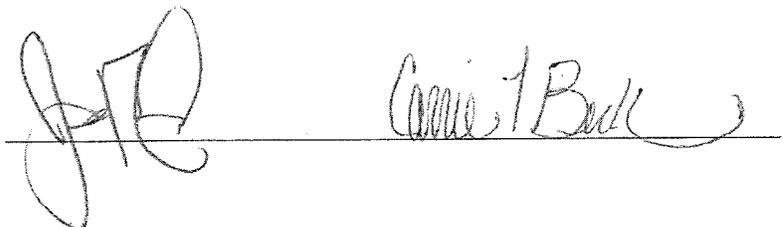
Based on the foregoing and all of the facts, issues and legal arguments contained in Relator's Brief dated April 23, 2012, Relator respectfully requests that this Court consider each presented issue independently. The Tax Court's decision is not supported by the evidence admitted at trial and constitutes reversible error in violation of Minnesota

state law. Further, 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 on each issue presented by Relator to properly determine the taxable market value of the land and improvements separately based on a thorough analysis of the credible and substantial evidence submitted by at trial. Relator also respectfully requests that this Court hold that the Tax Court must mandate that the County record the Tax Court's conclusion of the market value of the land and improvements separately in accordance with the legislative intent.

Respectfully Submitted,

DATED: May 23, 2012

A horizontal line with two handwritten signatures above it. The signature on the left is 'John Beck' and the signature on the right is 'Carrie Beck'.

John Beck / Carrie Beck, Relator, Pro Se

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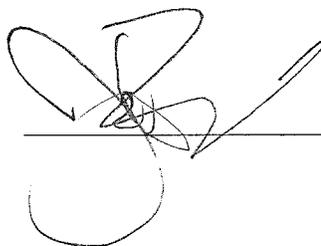
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**CERTIFICATE OF COMPLIANCE**

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

The undersigned certifies that Relator's Brief submitted herein contains 2,142 words, exclusive of the page containing the table of figures, 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, consisting of several loops and a long horizontal stroke extending to the right, positioned above a solid horizontal line.

John Beck