

NO. A12-0252

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State of Minnesota  
**In Supreme Court**

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John and Carrie Beck,

*Relators,*

vs.

County of Todd,

*Respondent.*

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**RESPONDENT'S BRIEF**

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John Beck and  
Carrie Beck  
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## ISSUES RAISED

- 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 parties primarily relied on the sales approach, and the Tax Court determined the cost and income approach to be less reliable. The Tax Court therefore relied on the sales approach. Relators' expert made no adjustments to the comparable's. The Tax Court adopted an approach more similar to that of Respondent's expert who utilized adjustments to the comparable's. The Tax Court applied its own expertise and judgment which resulted in a market value concluded by Respondent's expert.

**Most Apposite Authority:** Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995).

- 2. DID THE TAX COURT ERR BY ENTIRELY REJECTING GIMBEL'S EXPERT TESTIMONY BECAUSE HE WAS NOT A LICENSED APPRAISER?**

Mr. Gimbel's testimony was allowed and considered. The Tax Court, however, did not place any weight on his testimony. The Tax Court is to determine the sufficiency of foundation for expert testimony and the weight to be given it.

**Most Apposite Authority:** Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995); Northwest Airlines, Inc. v. Commissioner of Revenue, 265 N.W.2d 825, 831 (Minn. 1978).

- 3. DID THE TAX COURT ERR BY CONCLUDING THAT THE ASSESSOR AND BARKALOW WERE UNABLE TO GAIN ACCESS TO THE SUBJECT PROPERTY?**

Ms. Barkalow is not an officer or employee of the Todd County Assessor's Office authorized by law to assess property for taxation purposes. Ms.

Barkalow was an expert hired by Todd County to appraise the Beck property for litigation purposes. The Beck's failed to respond to Ms. Barkalow's second request for entry to the Beck Property.

**Most Apposite Authority:** Minnesota Statutes Section 273.20

**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?**

The parties primarily relied on the sales approach, and the Tax Court determined the cost and income approach to be less reliable. The Tax Court therefore relied on the sales approach. Relators' expert made no adjustments to the comparable's. The Tax Court adopted an approach more similar to that of Respondent's expert who utilized adjustments to the comparable's. The Tax Court applied its own expertise and judgment which resulted in a market value concluded by Respondent's expert.

**Most Apposite Authority:** Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995).

**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?**

The parties primarily relied on the sales approach, and the Tax Court determined the cost and income approach to be less reliable. The Tax Court therefore relied on the sales approach. Relators' expert made no adjustments to the comparable's. The Tax Court adopted an approach more similar to that of Respondent's expert who utilized adjustments to the comparable's. The Tax Court applied its own expertise and judgment which resulted in a market value concluded by Respondent's expert.

**Most Apposite Authority:** Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995).

**6. DID THE TAX COURT ERR BY ENTIRELY REJECTING BOTH OF THE OWNER'S TESTIMONY REGARDING COMPARABLE PROPERTIES AND MARKET VALUE?**

Mr. and Mrs. Beck's testimony was allowed and heard by the Tax Court. Relators indicated value using the sales comparison approach for the subject property. However, Relators did not utilize similar comparable's to the subject property, or adequately explain what type of transactions were involved. The Tax Court adopted an approach more similar to that of Respondent's expert who utilized adjustments to the comparable's. The Tax Court applied its own expertise and judgment which resulted in a market value concluded by Respondent's expert. The Beck's testimony was allowed and heard. The Tax Court, however, did not place any weight on their testimony. The Tax Court is to determine the sufficiency of foundation for testimony and the weight to be given it.

**Most Apposite Authority:** Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995); Northwest Airlines, Inc. v. Commissioner of Revenue, 265 N.W.2d 825, 831 (Minn. 1978).

**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?**

The parties primarily relied on the sales approach, and the Tax Court determined the cost and income approach to be less reliable. The Tax Court therefore relied on the sales approach. Relators' expert made no adjustments to the comparable's. The Tax Court adopted an approach more similar to that of Respondent's expert who utilized adjustments to the comparable's. The Tax Court applied its own expertise and judgment which resulted in a market value concluded by Respondent's expert.

**Most Apposite Authority:** Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785, 791 (Minn. 1992); Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 59 (Minn. 1995).

**8. DID THE TAX COURT ERR BY NOT CONCLUDING TO A SEPARATE IMPROVEMENT AND LAND VALUE?**

The 2012 assessment is not relevant to this matter. The Tax Court's Order under Conclusions of Law indicate that the Todd County Assessor's estimated market value for the subject property be reduced. Further, the 2010 real estate taxes be recomputed by the Todd County Assessor pursuant to the Court's order.

### **STATEMENT OF THE CASE**

This case involves a tax petition filed by John K. and Carrie L. Beck challenging the market value of their property for the assessment date of January 2, 2009.

The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard this matter on October 21, 2011, at the Todd County Courthouse in the City of Long Prairie, Minnesota. Relators presented no appraisal report regarding the market value of their property as of January 2, 2009. Relators introduced the testimony of Dale Gimbel, a retired licensed appraiser. Respondent introduced the expert testimony and appraisal report of Susanne L. Barkalow, IFA.

The Tax Court issued its decision on December 14, 2011. Relator appealed the Tax Court decision by Petition for Writ of Certiorari on February 13, 2012.

### **STATEMENT OF FACTS**

Petitioners own the subject property located at Browerville, MN 56438. The subject property is located on Pine Island Lake in Turtle Creek Township. The subject property was purchased by Petitioners on

June 26, 2001, for consideration of less than \$500. (Respondent's Appraisal Exhibit A "Ex. A" 3-4.)

The subject property consists of Lot 1, Block 1, Brechner Subdivision, First Addition, located on the south side of Pine Island Lake. The subject site consists of one parcel at the cul-de-sac end of Lone Pine Drive, containing 49,000 square feet (1.12 acres). The site has 245 feet of lake front property. There appears to be a yard around the house with boulders used as retaining walls for landscaping and a gentle slope from the house to the lake. (Ex. A 8.) Todd County Assessor, Chuck Pelzer, also testified that there was a gentle slope from the house to the lake. (T 11.) The pictures in Respondent's Exhibit A, and Petitioners' own Exhibit 10 depict a gentle slope to the lake. Ms. Barkalow testified that this gentle slope is a desirable feature for this property. (T 181.) The west side of the house is heavily treed, with additional mature trees between the house and part of the lakeshore, as well as along the eastern lot line. The view from the site includes a couple small islands on Pine Island Lake. The size of this lot affords additional privacy. (Ex. A 8.)

The subject property contains a one and one-half-story house with approximately 1,965 square feet of gross living area, and 1,310 square feet of an unfinished basement. Attached to the house is a two-car garage with additional space above the garage. There is also a screen porch on the lakeside of the house, and a covered porch on the front side. There is an asphalt driveway leading from the cul-de-sac to the house. The house was built in 2001. (Ex. A 10.)

Ms. Barkalow did email Mr. Beck asking if she could walk on the property to take photos and measure the exterior in order to have the information as accurate as possible for the appraisal. Mr. Beck did not respond. (T 158.)

Therefore, Ms. Barkalow used extraordinary assumptions in her appraisal. (Ex. A 11.)

The assessment date for the property is January 2, 2009. The Todd County Assessor had originally placed the market value of the property at \$397,400. (Ex. A Addenda.) The Tax Court accepted the value conclusions of Respondent's expert. As a result, the Tax Court found the market value for the Beck property to be \$395,000. (Relators' Appendix "RA" 3.)

## ARGUMENT

### I. STANDARD OF REVIEW

This Court reviews a final order of the Tax Court to determine whether the Tax Court lacked jurisdiction, whether the order is supported by the evidence and is in conformity with the law, and whether the Tax Court committed any other error of law. Southern Minnesota Beet Sugar Coop v. County of Renville, ("SMBSC") 737 N.W.2d 545, 551 (Minn. 2007), *citing* Hutchinson Tech., Inc. v. Comm'r of Revenue, 698 N.W.2d 1, 6 (Minn. 2005); Jefferson v. Comm'r of Revenue, 631 N.W.2d 391, 394 (Minn. 2001). Legal determinations are subject to de novo review while factual findings are subject to a "clearly erroneous" standard. SMBSC, 737 N.W.2d at 551, *citing* Hutchinson Tech., 698 N.W.2d at 6; 200 Levee Drive Ass'n v. County of Scott, 532 N.W.2d 574, 576 (Minn. 1995). In Equitable Life Assurance Society of the United States v. County of Ramsey, 530 N.W.2d 544, 552 (Minn. 1995), this Court set forth the clearly erroneous standard

as: when the Tax Court's decision is "not reasonably supported by the evidence as a whole." In State v. Evans, 756 N.W.2d 854 (Minn. 2008) *citing* Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999) this Court held that "on appeal, a trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous.... If there is reasonable evidence to support the trial court's finding of fact, a reviewing court should not disturb those findings" and that "if we find 'reasonable evidence to support the [district] court's findings of fact,' we will no disturb those findings." Additionally, this Court has held that it defers to the decision of the Tax Court, due to the "inexact nature of property assessment," unless the Tax Court either clearly over valued or undervalued the subject property, or completely failed to explain its reasoning. Equitable Life Assurance Society of the United States, 530 N.W.2d at 552, *citing* Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54, 58 (Minn. 1995).

**II. THE TAX COURT DID NOT ERR BY ACCEPTING BARKALOW'S APPRAISAL, AND THEN BASING ITS FINDINGS ON THAT APPRAISAL BECAUSE THERE WAS EVIDENCE IN THE RECORD TO SUPPORT SUCH A CONCLUSION**

**THE TAX COURT DID NOT 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**

**THE TAX COURT DID NOT ERR BY ACCEPTING AN APPRAISAL BASED ON ONLY TWO PROPERTIES WHEN THE PRIMARY TRANSACTION IS AN OUTLIER AND THERE WAS EVIDENCE TO CORROBORATE SUCH A VALUE**

**THE TAX COURT DID NOT ERR BY ACCEPTING AN APPRAISAL  
BASED ON A RULE OF THUMB WHEN THERE IS A  
CONNECTION TO FACTS IN THE CASE**

The above four issues raised by Relators are really one claim that information in Respondent's expert appraisal should not have been accepted by the Tax Court because it was not supported by the evidence and was flawed. This Court has emphasized that real estate appraisal is an inexact value determination. Harold Chevrolet v. County of Hennepin, 526 N.W.2d 54,59 (Minn. 1995). The weight given to any of the three traditional approaches to value will depend on the reliability of the data and the nature of the property being valued. This will depend on the facts of each case. Id. Moreover, "[t]he Tax Court brings its own expertise and judgment to the hearing, and its valuation need not be the same as that of any particular expert as long as it is within permissible limits and has meaningful and adequate evidentiary support." Montgomery Ward & Co., Inc. v. County of Hennepin, 482 N.W.2d 785,791 (Minn. 1992).

**A. VALUATION**

The purpose of a Tax Court proceeding is to determine the market value of the subject property. Southern Minnesota Beet Sugar Coop v. County of Renville, 737 N.W.2d 545,551 (Minn. 2007). The three traditional approaches of valuation (cost, income, and sales) are considered by the Court in determining

market value. Equitable Life Assurance Soc'y v. Ramsey County, 530 N.W.2d 544, 552 (Minn. 1995).

### **B. COST APPROACH**

The Petitioners did not address the cost approach. Respondent's appraiser, Susanne Barkalow analyzed the land value using the cost approach, focusing on an opinion of land value. (T 161.) Ms. Barkalow utilized the sales comparison extraction methods in developing her opinion of land value. She based her analysis on three properties, two consisting of actual sales, one being on Pine Island Lake, one on Lake Beauty, and a current listing on Pine Island Lake. Ms. Barkalow determined that a higher per front foot value was placed on the first 150 feet of water frontage, with less value on the additional footage. This is based on her analysis of the two sales, as well as her general analysis of waterfront sales over the years. Using the sale and extraction method in her cost approach, Ms. Barkalow's opinion of the land value for the subject property is \$252,800, which is well analyzed and supported. (T 161-164; Ex. A.)

### **C. INCOME APPROACH**

The income approach measures the value of property by determining a property's earning potential based on capitalization of income. The Appraisal of Real Estate, 50 (12<sup>th</sup> Ed. 2001). Petitioners' and Respondent's discounted the income approach because the property is not income producing.

### **D. SALES APPROACH**

The sales approach is relied on heavily in this case. A standard sales comparison approach analysis involves use of comparable properties selected on

the basis of similar size, use and sale data near the assessment date. The comparable's are adjusted for differences from the subject property to arrive at a net sale price for the comparable's, and as indicated a range of value for the subject property. Industrial Equities Group, LLC v. County of Anoka, C5-99-1752 (Minn. Tax Ct. November 30, 1999). An appraiser should use the best and most comparable properties available. Id.

Relators indicated value similarities for their Subject Property using the sales comparison approach of several other properties. However, Relators utilized comparable's on superior lakes to Pine Island Lake, some in other counties as far as 70 miles from the subject property. (Relators' Exhibit 7.) Furthermore, the comparable's relied on by Relators did not adequately explain what type of transactions were involved—arms length, foreclosure sale etc. Relators' exhibit 14, "Comparative Market Analysis" does not contain explanation of age, quality, construction, shoreline frontage or how they compared in general to the subject property. Relatos' Exhibit 13 contains comparable's with inferior improvements, environmental lakes, and smaller shorelines.

Ms. Barkalow, Respondent's expert, utilized sales of four properties concentrated in the subjects north and eastern areas of Todd County. Particularly for lakes also classified as recreational development like the subject property. Larger superior lakes, as Osakis, Big Birch, Little Birch, and Sauk Lake, were not researched since they are different, particularly in terms of size of the subject property. The four sales used by Ms. Barkalow occurred between 2006 and 2008 that are prior to the January 2, 2009 assessment date. The sales used in Ms. Barkalow's appraisal were all located in Todd County. (T 169-174; Ex.A-19-33.)

Ms. Barkalow properly identifies factors or considerations for the sales comparison approach which should be utilized in reviewing sales of lakefront properties (i.e., time, site size, age, improvement design/size, quality of construction, condition, basement finish, and garage size, etc.) in order to reflect the reaction of a typical buyer in the market place. (Exhibit A.) Respondent's expert appropriately makes adjustments to the comparable sales, analyzing whether a factor in a comparable sale is superior or inferior to the subject property. In doing so, Ms. Barkalow notes that it is common to have large adjustments when valuing lake front properties due to the large variety of designs and features in such homes, differences in land size and topography, and due to the limited number of such sales as they are often destination properties or transferred between family members.

To more fully evaluate the market as of the effective date, Ms. Barkalow researched active and recently expired listings. Several of them bracket various aspects of the subject property, including a bonus room above the garage, the size of the house, and the amount of water frontage. As a result, a grid was created for these active/expired listings, which are regarded as indicative of the upper limit of market value as of the effective date. (T 169-174; Ex. A 19-33.) This additional analysis further supports Ms. Barkalow's opinion of value.

In this case, Ms. Barkalow determined that after appropriate adjustments were made, her opinion as to the subject's value, land and improvements, as of the effective date of the January 2, 2009 appraisal is \$395,000. (Ex. A 33.) This is \$2,400 less than the valuation assigned by the Todd County Assessor. Ms. Barkalow's appraisal is appropriately supported and is persuasive. The evidence shows that Petitioners' have a beautiful lake home with privacy and 245 feet of

lake shoreline. The walkout is nestled into a gentle slope towards the lake which provides for a spectacular view of two smaller islands on the lake.

### **III. THE TAX COURT DID NOT ERR BY REJECTING GIMBEL'S EXPERT TESTIMONY BECAUSE HE WAS NOT A LICENSED APPRAISER**

Mr. Gimbel's testimony was allowed and considered. Mr. Gimbel opined that the value of the Subject Property as of January 2, 2009 was \$300,000. (T 147.) Mr. Gimbel offered four lake home comparable's, none of which were in Todd County. (T 148-153.) The Tax Court found that Mr. Gimbel made no adjustments to the comparable's in relation to the Subject Property. (RA 8.) Therefore, the Tax Court placed less weight on his testimony. (RA 11.) The Tax Court is to determine the sufficiency of foundation for expert testimony, and the weight to be given to the testimony. Northwest airlines, Inc., v. Commissioner of Revenue, 265 N.W.2d 825, 831 ((Minn. 1978). Indeed, the Tax Court is in the best position to evaluate the credibility of witnesses. Lewis v. County of Hennepin, 623 N.W.2d 258,262 (Minn. 2001). "As in any civil action, this court does not substitute its judgment for that of the tax court on questions of fact, leaving the factual findings undisturbed where the evidence, as a whole, supports the decision. Manthey v. Commissioner of Revenue, 468 N.W.2d 548, 550 (Minn.1991). The Tax Court sits in a better position to judge credibility and sincerity, and its decision in this case is supported by the evidence as a whole. See Commissioner of Revenue v. Stamp, 296 N.W.2d 867,870 (Minn. 1980).

### **IV. THE TAX COURT DID NOT ERR BY CONCLUDING THAT THE ASSESSOR AND BARKALOW WERE UNABLE TO GAIN ACCESS TO THE SUBJECT PROPERTY**

Minnesota Statute Section 273.20 allows any officer authorized by law to assess property for ad valorem tax purposes. The officer shall have reasonable access to land and structures as necessary for the proper performance of their duties. Minn. Stat. Sec. 273.20 (Minn. 2011). Ms. Barkalow is not an officer or employee of the Todd County Assessor's Office authorized by law to assess property for taxation purposes. Ms. Barkalow was an expert hired by Todd County to appraise the Beck property for litigation purposes.

When Ms. Barkalow contacted Mr. Beck to access the property, he suggested that Ms. Barkalow come to the Subject Property sometime over the Memorial Day weekend. Ms. Barkalow testified that this would be the first weekend she had off in a number of weeks, and this would not work for her. Ms. Barkalow then e-mailed Mr. Beck asking permission to go onto the property without him being there. Mr. Beck failed to respond to Ms. Barkalow's second request for entry onto the Subject Property. (T 158.) Ms. Barkalow was concerned about lack of permission and trespassing on the Subject Property. (T 158.) Given Mr. Beck's suggestion that Ms. Barkalow give up time on a holiday weekend, and not responding to her second request for permission to enter onto the property, the Tax Court could reasonable conclude that Ms. Barkalow was unable to gain access.

**V. THE TAX COURT DID NOT ERR BY REJECTING BOTH OF THE OWNER'S TESTIMONY REGARDING COMPARABLE PROPERTIES AND MARKET VALUE**

Mr. and Mrs. Beck's testimony was allowed and heard by the Tax Court. Relators indicated value similarities for their Subject Property using the sales comparison approach of several other properties. However, Relators utilized

comparable's on superior lakes to Pine Island Lake, some in other counties as far as 70 miles from the subject property. (Relators' Exhibit 17.) Furthermore, the comparable's relied on by Relators did not adequately explain what type of transactions were involved—arms length, foreclosure sale etc. Relators' exhibit 14, "Comparative Market Analysis," does not contain explanations of age, quality, construction, shoreline frontage or how they compared in general to the subject property. Relatos' Exhibit 13 contains comparable's with inferior improvements, environmental lakes, and smaller shorelines.

The Tax Court is to determine the sufficiency of foundation for expert testimony, and the weight to be given to the testimony. Northwest Airlines, Inc., v. Commissioner of Revenue, 265 N.W.2d 825, 831 ((Minn. 1978). Indeed, the Tax Court is in the best position to evaluate the credibility of witnesses. Lewis v. County of Hennepin, 623 N.W.2d 258,262 (Minn. 2001). "As in any civil action, this court does not substitute its judgment for that of the tax court on questions of fact, leaving the factual findings undisturbed where the evidence, as a whole, supports the decision. Manthey v. Commissioner of Revenue, 468 N.W.2d 548, 550 (Minn.1991). The Tax Court sits in a better position to judge credibility and sincerity, and its decision in this case is supported by the evidence as a whole. See Commissioner of Revenue v. Stamp, 296 N.W.2d 867,870 (Minn. 1980).

## **VI. THE TAX COURT DID NOT ERR BY NOT CONCLUDING TO A SEPARATE IMPROVEMENT AND LAND VALUE**

The 2012 assessment is not relevant to this matter. The Tax Court's Order under Conclusions of Law indicate that the Todd County Assessor's estimated market value for the subject property be reduced. Further, the 2010 real estate taxes be recomputed by the Todd County Assessor pursuant to the Court's order. (RA 3.) The adjustment was to be made by the County Assessor, not the Tax Court.

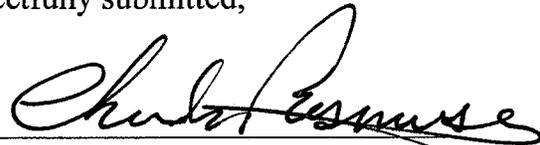
### CONCLUSION

The Tax Court's decision should be affirmed in all respects.

Dated: 5-9, 2012

Respectfully submitted,

By:



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## **CERTIFICATE OF COMPLIANCE**

The undersigned certifies that Respondent's Brief submitted herein contains 3,953 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 2000, the word processing system used to prepare this Brief.