

ORIGINAL

1 STATE OF MINNESOTA  
2  
3 COUNTY OF HUBBARD  
4

IN DISTRICT COURT  
NINTH JUDICIAL DISTRICT

5  
6 **DUANE E. ARNDT,**  
7 **Petitioner,**  
8

**FILE NO.:29-CV-09-511**

9 **vs.**

10  
11 **HUBBARD COUNTY DEPARTMENT - AUDITOR**  
12 **COUNTY OF HUBBARD**  
13 **Respondent.**

**COURT TRIAL**  
**Hearing Dated 09-13-2010**

14  
15  
16 The above-entitled matter came on for hearing before the  
17 Honorable Robert D. Tiffany, one of the judges of the above-named  
18 court, on September 13, 2010, in the courtroom of the Hubbard  
19 County Courthouse, in the City of Park Rapids, County of Hubbard  
20 and State of Minnesota.

21 **APPEARANCES**

22 The Petitioner, Duane E. Arndt appeared personally and  
23 proceeded *pro se*.

24 The County appeared through its attorney, Donovan  
25 Dearstyne, County Attorney for Hubbard County, 301 Court  
26 Avenue, Park Rapids, Minnesota 56470.

27  
28  
29  
30 Mary Anderson, District Court Reporter  
31

1 (WHEREUPON, the following proceedings took place in  
2 court commencing at approximately 2:31 p.m.)

3 **TRANSCRIPT OF THE TESTIMONY OF CARSTEN BURROS**

4 MR. ARNDT: Petitioner would call Carsten Burros.

5 THE COURT: Please come forward and be sworn.

6 (Carsten Burros is sworn in.)

7 THE COURT: Short step up there. Mr. Arndt, you  
8 may inquire.

9 MR. ARNDT: May I approach?

10 THE COURT: You may.

11 **Carsten Burros**, called as witness on behalf of the  
12 petitioner, being duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. ARNDT:**

15 Q I'm showing you what has been marked as Exhibit number 1.  
16 Would you tell us what it is?

17 A I believe this is a copy of an appraisal I made ah back in  
18 February of 2010.

19 Q Is this on the property known as Lots 2 and 3, Section 28,  
20 Mantrap Township?

21 A Yes.

22 MR. ARNDT: Move the admission of Exhibit 1.

23 THE COURT: Mr. Dearstyne?

24 MR. DEARSTYNE: May I just briefly inquire, Judge?

25 THE COURT: You may.

1 MR. DEARSTYNE: Ah Mr. Burros, on page 2 of your  
2 exhibit, ah you indicate that the value you have established  
3 as of February 5, 2010? On the bottom of the page.

4 MR. BURROS: Probably my date of inspection. Yes.

5 MR. DEARSTYNE: Okay. And that was--that was your date  
6 of inspection of the property?

7 MR. BURROS: Yes.

8 MR. DEARSTYNE: And as it goes on, it--it says which is  
9 the date of inspection and the effective date of this  
10 appraisal?

11 MR. BURROS: Yes.

12 MR. DEARSTYNE: So, you're indicating that this  
13 appraisal is ah for February 5, 2010?

14 MR. BURROS: That was my date of insp--excuse me, that  
15 was my date of inspection, yes.

16 MR. DEARSTYNE: I would object to the exhibit as ah  
17 outside the ah scope of the petition. This petition is for  
18 Jan--January 2<sup>nd</sup> of 2010, Judge, not February.

19 THE COURT: I'll allow the exhibit to be received. How  
20 many pages is it?

21 MR. ARNDT: Twenty-one.

22 THE COURT: You may explore that issue on your cross  
23 examination Mr. Dearstyne. Please continue Mr. Arndt.

24 **BY MR. ARNDT:**

25 Q For the record, would you tell us your full name, please?

1 A Carsten Burros.

2 Q Where do you live Mr. Burros?

3 A I live on south shore of Lake Belle Taine?

4 Q How long have you lived at that ah address?

5 A Since ah 1997.

6 Q What is your business or profession?

7 A I'm currently a ah Certified Minnesota Real Estate Appraiser  
8 and I appraise ah residences and land.

9 Q How long have you been in the business of appraising ah real  
10 estate in the State of Minnesota?

11 A It's been so long, I-I think it started when I started  
12 working for the Department of Natural Resources in Marshall,  
13 Minnesota back in 1965.

14 Q What kind of work did you do for the Department of Natural  
15 Resources at that time period?

16 A Main object at that time was to purchase ah wetlands. That  
17 was when the ah Wetland Act came into being and money was  
18 provided to the Department of Natural Resources to purchase  
19 and develop existing wetlands before they were drained for  
20 public hunting and production of ah wildlife.

21 Q Were you acting on behalf of the State of Minnesota in  
22 essentially land acquisition?

23 A Yes.

24 Q How long did you continue to do that work?

25 A I worked for the DNR out of Marshall office for four and a

1 half years till sometime in '71.

2 Q What did you begin to do in 1971?

3 A I was hired by a gentleman in Luverne, Minnesota to assist in  
4 making appraisals.

5 Q As a part of that process, did you become a Certified Real  
6 Estate Appraiser?

7 A Yes, I think there was a period of time where anybody could  
8 be an appraiser. Hang up a shingle. But it--sometime in that  
9 area, they required person, people to be licensed and I don't  
10 remember the exact dates of those.

11 Q Ah, at some point you became a licensed Real Estate Appraiser  
12 in the State of Minnesota?

13 A Yes.

14 Q Is that licensing handled through the Department of Commerce?

15 A Yes.

16 Q And, do you have that license as of right now?

17 A I do.

18 Q Ah, just as a shorthand, would it be a fair statement that  
19 from approximately sometime in the early 1970's to the  
20 present you've been engaged in the business of doing real  
21 estate appraisal?

22 A In addition to being a--selling real estate in Marshall during  
23 the--from 1971 to 1997.

24 Q Do you differentiate ah the buying and selling of real  
25 estate, is this something known as ah being a real estate

1 broker?

2 A Yes.

3 Q And do you differentiate that type of work from ah work that  
4 you would do as an appraiser?

5 A Yes.

6 Q Did you continue as a ah individual involved in the buying  
7 and selling of real estate or in other words, a sales broker  
8 ah until ah sometime in the 1990's?

9 A Till 1997, yes.

10 Q And, do you have experience then in making assessments about  
11 what perspective sellers should sell real estate for?

12 A I believe I do.

13 Q And ah have you counseled buyers about what they should  
14 consider potentially in paying for real estate?

15 A I have over the years.

16 Q Now, were you requested to do an appraisal of Lots 2 & 3,  
17 Section 28, Mantrap Township?

18 A Yes.

19 Q And, ah, what did you do as a part of your process of doing  
20 an appraisal?

21 A Well I-I determined-I'm not sure how this order was, but,  
22 determined the scope of the property. Maybe--maybe got some  
23 information from the assessor's office as to parcel number,  
24 the number of acres they had. Probably checked with the  
25 county. Registered deeds to maybe ah determine the acres or

1 get a copy of the deed. Um, inspect the property as  
2 thoroughly as I can ah with you evidently it was on February  
3 5<sup>th</sup>. And then I walked over a lot of the property in December  
4 ah 5<sup>th</sup> of 2010. *Feb?*

5 Q Is this the standard approach that appraisers use in ah  
6 approaching an appraisal?

7 A It's the standard I use and I believe is generally accepted.

8 Q What's the purpose of the various things you do as a part of  
9 an appraisal? What are you trying to do?

10 A First of all, I try to establish what the subject property  
11 consists of. Size of the buildings, age of the buildings,  
12 type of land that it is associated with and then ah I search  
13 the records of sales history to try to determine—to try and  
14 find properties of similar size, similar size building,  
15 similar property types.

16 Q Are there a number of approaches that you as an appraiser can  
17 use in arriving at an appraisal?

18 A There are three generally accepted approaches are the ah  
19 comparable sales method, the cost approach and the income  
20 approach.

21 Q Did you use the income approach?

22 A I did not.

23 Q Why?

24 A Generally if I'm—I've—generally I've come across the fact  
25 that income appeared on especially lake properties is not

1 sufficient to generate the type of money that people are  
2 selling their property for.

3 Q Have you ah ascertained that essentially the income approach  
4 to appraising property such as the one you looked at was  
5 completely inappropriate?

6 A It would be considerably lower than ah than the market value.

7 Q Okay. Did you use replacement cost?

8 A I considered it, um...

9 Q Did you ultimately decide to use it?

10 A I did not decide to use it.

11 Q Why didn't you ah think replacement cost was the appropriate  
12 method to appraisal?

13 A Replacement cost is subject to ah ah particular-particular  
14 items that a homeowner or constructing contractor would  
15 decide to put into that property and ah I can spend a lot of  
16 hours getting estimates from local builders or from Marshall  
17 Swift ah program and not be able to charge the individual who  
18 I'm appraising enough money to justify that but mainly it's-  
19 it's-it's a subjective in some ways cause you have to  
20 determine land value, then you have to determine the building  
21 value.

22 Q Is the use of cost replacement also particularly difficult if  
23 you're dealing with a property that has been in existence for  
24 a considerable time period?

25 A Well you have to consider physical and and depreciation on

1 that ah ah and ah I'm not sure that I'm that good that I can  
2 come in and say this is depreciated by 30%. It's very  
3 subjective.

4 Q Did you ultimately conclude that the only way you could  
5 approach an appraisal would be comparable properties?

6 MR. DEARSTYNE: Object. Leading.

7 THE COURT: Sustained. Rephrase please.

8 **BY MR. ARNDT:**

9 Q Ah, tell us what was your ultimate method of appraisal in  
10 this matter?

11 A I attempted to find comparable sales of similar, like  
12 properties which ah in in searching the records, there were  
13 hardly any that I could come and say this is a true  
14 comparable property to the subject property. So I searched  
15 other avenues to see what I could come up with.

16 Q When you looked at the records, ah what kind of records did  
17 you look at? What is it that you searched?

18 A Well, I have ah been made available to me comparable sales  
19 from Jessie Clack's office where Rachel works. Ah, I have  
20 gone to broker--individual brokers to look at their sales  
21 books. I've checked the county records to see if--might  
22 possible be something that had been missed.

23 Q And when you say, check the county records, are you talking  
24 about referring to or are you referring to these log of  
25 Certified Real Estate Values that are submitted as part of

1 real estate transactions?

2 A That's what I look at is the CRVs, yes.

3 Q Did you do that in this case?

4 A I did.

5 Q What were the results of your searches?

6 A Well as I indicated earlier, ah I couldn't find any similar  
7 type properties that had sold in the past twelve months which  
8 is generally what--what appraisers look for. You can extend  
9 those but...

10 Q Did you ah search records for earlier sales ah such as 2007,  
11 2008, 2009?

12 A Well I did 2009 for sure. Um, I may have done some in the  
13 latter part of 2008 but I can't say that I did any for six or  
14 seven.

15 Q When you searched the records for 2008 and 2009, did you find  
16 anything that was comparable?

17 A Not really. I mean there were some sales out there. Ah a  
18 lot of sales on superior lakes. Lot of newer type  
19 properties, newer homes but really not relevant to the  
20 subject property.

21 Q Now in looking at the records in 2009, would those be the  
22 records that ah ah are essentially serve the basis for your  
23 comparable studies--even--I understand your study is dated in  
24 February of 2010?

25 A Yes.

1 Q Do those studies however really reflect sales and  
2 transactions that are in 2008 2009 time period?

3 MR. DEARSTYNE: I'm going to object. Leading.

4 MR. BURROS: I...

5 THE COURT: Just a minute. Yeah, sustained. Rephrase  
6 please. Rephrase please.

7 **BY MR. ARNDT:**

8 Q Tell us ah your-your actual appraisal is in February of 2010.  
9 Does your assessment and appraisal reflect your assess-your  
10 searching of records in 2008 and 2009?

11 A I'd say primarily 2009. A twelve month period that...

12 Q And could your appraisal, even though it's dated in February  
13 of 2010, could it have been dated for practical assessment  
14 purposes as though it was January 1 , 2010?

15 MR. DEARSTYNE: I'm going to object, leading, Judge.

16 THE COURT: I'll allow it.

17 **BY MR. ARNDT:**

18 A I don't have my sales book with me but I would assume that  
19 that would be ah realistic statement since the number of  
20 properties sold from January 1<sup>st</sup> to say May--April 1<sup>st</sup> is  
21 pretty minimal as a rule.

22 Q Do-Did your search of the records, um, give you any sales  
23 that in your opinion were identical with the subject  
24 property?

25 A Nothing identical. What...

1 Q Now, did you find anything that was on a lake similar to Crow  
2 Wing or Spider?

3 A I did find one sale, south of Park Rapids, that I believe had  
4 a sale occurred in—let me look at that and see here.  
5 Afterwards—ah in—in ah after receiving a copy of the Rachel  
6 Creager's last appraisal in 2010, there was a sale south of  
7 Park Rapids on a lake called Moran Lake which is a inferior  
8 lake to ah—to ah Crow Wing Lake but it had similar acreage.  
9 55 acres compared to the 50.5 acres on the subject property.  
10 It had a good dwelling. An attached two-car garage. A  
11 detached two-car garage with a shop and a detached metal um  
12 shop or garage.

13 Q Was that ah property that was a part of the ah second  
14 appraisal you received from Ms. Creager?

15 A No. No.

16 Q How did you find that property?

17 A Ah probably found it from the ah maybe Clack Appraisals or  
18 maybe the ah broker. I don't remember.

19 Q What was the valuation on that property?

20 A Ah valuation, selling price, or estimated market value, what  
21 are we talking about?

22 Q Estimated market value.

23 A The assessor had an estimated market value for that year of  
24 \$265,200.00.

25 Q Is that property denominated in your appraisal?

1 A Yes, it-it-it's ah an addition.

2 Q An addendum to your?

3 A Yes.

4 Q Okay. And did you make any determination as to the ways in  
5 which that property was similar to the subject property?

6 A I did. It was most of them were in-in ah acreage size. And  
7 ah-go ahead.

8 Q Did you make any determination as to the quality of the  
9 building and or dwelling on the property?

10 A I did not inspect the interior of the property but the  
11 exterior looked ah well taken care of. And ah the out  
12 buildings were adequate. The property was ah-ah had numerous  
13 trails through it. It was nicely-nicely ahm kept up, green,  
14 lawn mowed, that type of thing.

15 Q What was the-did that prop-property sell?

16 A It did. It sold on January 29<sup>th</sup> of 2010 for \$172,000.00.  
17 Which I verified from the selling agent.

18 Q Did you ah-ah, let me show you what has been marked as  
19 Exhibit 48. Can you identify this for us?

20 A Ah, this is ah-this is the ah other property.

21 Q Okay. I'm showing you what has been marked as Exhibit 44.

22 A There should be photo of that too. Yes, this is-this is a  
23 property that sold in January of 2010 and it had originally  
24 been listed at \$319,500.00. It was on the market for 888  
25 days and it sold for-sold for ah \$172 ah \$172,000.00. Now

1 this is on the back of this there's a air photo.

2 MR. DEARSTYNE: Your Honor, I'm going to object to the  
3 court testify from the exhibit, it hasn't been offered or  
4 received.

5 MR. ARNDT: I'll offer Exhibit-what's the number?

6 MR. BURROS: 44.

7 THE COURT: Mr. Dearstyne?

8 MR. DEARSTYNE: I would object if the sale date was  
9 January 29<sup>th</sup> of 2010. It's outside the scope of this  
10 petition, Judge.

11 THE COURT: I'll allow the exhibit but um, I understand  
12 your concern and it is part of Exhibit 1's addendum, I  
13 believe.

14 MR. DEARSTYNE: I-I'm going to want to look at Exhibit  
15 1, Your Honor, because my apprais...

16 THE COURT: At least that's the testimony.

17 MR. DEARSTYNE: I believe that was the testimony. I was  
18 going to cover that in cross. I do not show this in the  
19 signed appraisal that I have as an addendum.

20 THE COURT: And I obviously haven't read through the  
21 exhibit. Can you direct me to it Mr. Arndt?

22 MR. ARNDT: I don't believe it's there.

23 THE COURT: All right. Then I will sustain the  
24 objection.

25 **BY MR. ARNDT:**

1 Q I'm showing you what has been marked as Exhibit 58. Is this  
2 the addendum you were referring to?

3 A I-I don't think I'm referring to that in this letter to you  
4 but it's not uncommon.

5 Q The question is, is that the addendum?

6 A No. Ah...

7 THE COURT: That's all. Wait for the next question.

8 **BY MR. ARNDT:**

9 Q Put that down please. Would you look at Exhibit number 1  
10 which is your appraisal.

11 THE COURT: Here is Exhibit 1.

12 **BY MR. ARNDT:**

13 Q You used comparable sales as a basis for appraisal?

14 A Yes.

15 Q Did you arrive at an opinion as to the value of this  
16 property?

17 A I did.

18 Q What is your opinion?

19 A My opinion as of February 5th, 2010 is \$300,000.00.

20 Q Would that opinion as to the value be the same if this report  
21 was dated January 1, 2010?

22 MR. DEARSTYNE: I'm going to object. Leading.

23 THE COURT: Counsel approach.

24 (Counsel approached bench.)

25 THE COURT: We'll take a short break. Ten minutes

1 sufficient?

2 MR. ARNDT: I think so.

3 THE COURT: You can step down.

4 (Short break taken.)

5 THE COURT: All right. We're back on the record. Mr.  
6 Arndt, you may inquire.

7 **BY MR. ARNDT:**

8 Q Mr. Burros, before we took our break, um, I asked you a  
9 question. Do you have an opinion as to the value of this  
10 property as of January 2, 2010?

11 A Yes.

12 Q What is that opinion?

13 A \$300,000.00.

14 Q Mr. Burros, you testified earlier that you've been in the  
15 appraisal business since 1971?

16 A Yes.

17 Q Based on your search of records and examination of materials  
18 regarding your appraisal in this matter, do you have an  
19 opinion as to the value of this property as of January 2,  
20 2008?

21 MR. DEARSTYNE: I'm going to object. Lack of  
22 foundation, Judge.

23 THE COURT: Sustained.

24 **BY MR. ARNDT:**

25 Q Did you examine records relating to the value of this

1 property in 2008?

2 A Yes, I did.

3 Q Do you--have you been working in the Park Rapids, ah, Hubbard  
4 County area since 1997?

5 A Yes.

6 Q Have you become familiar with the value of properties in  
7 Hubbard County and in particular Mantrap Township since you  
8 ah began working here in 1997?

9 A I have looked at the entire Hubbard County properties.

10 Q Do you believe that your examination of sales records  
11 including CRVs allows you to reach an opinion as to the value  
12 of this property as of January 2, 2008?

13 A Yes.

14 Q And, what is your opinion?

15 MR. DEARSTYNE: Your Honor, I'm going to object and I'd  
16 like to *voir dire* as to--object as to foundation and so forth.

17 THE COURT: You may *voir dire*.

18 MR. DEARSTYNE: Okay. Um, Mr. Burros, did you do a--any  
19 appraisal work for Mr. Arndt or anyone else concerning this  
20 property ah for January 2<sup>nd</sup> of 2008?

21 MR. BURROS: I did not. Although I should--I should've  
22 used...

23 MR. DEARSTYNE: Did you--in--in your appraisal dated  
24 February 5<sup>th</sup> of 2010, the comparables that you used were for  
25 sales dated in 2009, correct?

1 MR. BURROS: Did that, um...

2 MR. DEARSTYNE: Do you need Exhibit number 1?

3 MR. BURROS: Pardon?

4 MR. DEARSTYNE: Do you need Exhibit number 1?

5 MR. BURROS: Yes.

6 MR. DEARSTYNE: Does the Court have Exhibit number 1?

7 THE COURT: I gave it to you when we went on the break.

8 MR. BURROS: You gave it to me.

9 MR. DEARSTYNE: Hopefully he has it.

10 THE COURT: We'll go off the record.

11 (Short break taken while locating Exhibit 1.)

12 THE COURT: We'll go back on the record. Exhibit 1, the  
13 appraisal from Mr. Burros has been located. Mr. Dearstyne,  
14 you were *voir diring*?

15 MR. DEARSTYNE: I believe my question was ah something  
16 to the effect of that your comparables in that appraisal are  
17 for the year 2009, correct?

18 MR. BURROS: Yes.

19 MR. DEARSTYNE: And, you based your evaluation on those  
20 comparables, correct?

21 MR. BURROS: Yes, there were very few comparables...

22 MR. DEARSTYNE: Okay.

23 MR. BURROS: ...however.

24 MR. DEARSTYNE: Um...

25 MR. BURROS: And-and-and I should add also on a-on a

1 listing for land.

2 MR. DEARSTYNE: Mr. Burros, um, any estimate that you  
3 make relative to the ah tax years 2008, payable 2009, and  
4 2009, payable 2010 would simply be a guesstimate, correct?  
5 Isn't that true?

6 MR. BURROS: To some extent. Probably could be based  
7 on-on...

8 MR. DEARSTYNE: But you would be guessing as to what..

9 MR. BURROS: What-what I've seen as a percentage drops  
10 in-in value.

11 MR. DEARSTYNE: Right, but you-you have not performed  
12 any...

13 MR. BURROS: No.

14 MR. DEARSTYNE: ...any appraisal relative to those years  
15 and these-and these properties..

16 MR. BURROS: For 2008-for 2008 and 2009?

17 MR. DEARSTYNE: Yes.

18 MR. BURROS: I did not.

19 MR. DEARSTYNE: Okay. I would object to any ah-any  
20 questioning concerning tax values as of January 2<sup>nd</sup>, 2008 and  
21 January 2<sup>nd</sup>, 2009, Judge.

22 THE COURT: I'll allow it. You can inquire as to how  
23 you would come up with it given the fact of his earlier  
24 response. The fact that he didn't do an actual appraisal  
25 doesn't mean he can't give testimony about that issue, but

1 I'll let you inquire obviously as to his basis for those  
2 opinions if he has one. Do you understand the question that  
3 was before you from Mr. Arndt?

4 MR. ARNDT: Or should I rephrase it?

5 MR. BURROS: Why don't ya.

6 THE COURT: You may.

7 **BY MR. ARNDT:**

8 Q The question I asked you was, do you have an opinion as to  
9 the value of this parcel of property as of January 2, 2008?

10 A Yes, I believe I do, yes.

11 Q And what is your opinion?

12 A I would think that in 2008, my-my value probably would be in  
13 the ah-let me-can I make some notes here? It would be my  
14 opinion that the ah value ah as of January 1, 2008...

15 MR. DEARSTYNE: Again, which date are we dealing with?

16 MR. BURROS: Pardon?

17 MR. DEARSTYNE: January 1st, 2008?

18 MR. BURROS: Is that what you-the question you asked me?

19 **BY MR. ARNDT:**

20 Q January 2, 2008.

21 A January 2, 2008. Okay. January 2, 2008 would be  
22 \$335,000.00.

23 Q Do you have an opinion as to the value of the property as of  
24 January 2, 2009?

25 A That would be a value of \$315,000.00.

1 Q Mr. Burros, um, have real estate values been decreasing in  
2 Hubbard County in 2007, 2008, 2009, and 2010?

3 A Yes.

4 Q Um, are you engaged in the active business of doing  
5 appraisals?

6 A Yes.

7 Q Have you in the appraisals that you have done, seen decreases  
8 in property values in Hubbard County in 2007, '8, '9, and  
9 '10?

10 A Yes.

11 Q Have you looked at real estate in Mantrap Township to  
12 ascertain whether there are ah sales of property in either  
13 2008, 2009, or 2010 that are similar to the property that we  
14 are concerned with?

15 A I probably looked at sales in-in 2008, 2009 for sales I  
16 should say especially the last half of 2008 and all of 2009  
17 but I didn't find any sales that I could call comparing  
18 apples for apples in-in those years in Mantrap Township.

19 Q Is the concept of comparable sale an important one in the  
20 appraisal business?

21 A Yes, it is.

22 Q What it is that makes a sale comparable?

23 A Characteristics of the property, age of the dwellings,  
24 acreage, type of lakeshore.

25 Q Did you have occasion to review the appraisals that were

1 provided to you um by Hubbard County in the context of this  
2 litigation. In other words, the appraisals of Rachel  
3 Creager?

4 A Yes.

5 Q Did you review those appraisals?

6 A I did.

7 Q And, um, did you go to some of the properties to ascertain  
8 their similarities to the subject property?

9 A Yes, I did.

10 Q What did you—when you went to physically inspect the  
11 properties, go to look for?

12 A What the property consisted of, how are the improvements,  
13 what did the land look like, what did the lakeshore look  
14 like.

15 Q Did you find any of the properties that were identified in  
16 Ms. Creager's appraisals comparable to the property we're  
17 concerned about?

18 A Can I review those a little bit?

19 Q Certainly.

20 A Can we start with the last appraisal I received..

21 Q Certainly.

22 A ...which was a value..

23 Q January, 2010?

24 A Her date of report here was September 3<sup>rd</sup>, 2010 and her date  
25 of inspection—I'm not sure that I see the date of valuation,

1 here, maybe I'm... missing something, but, um, her last  
2 appraisal report there were three comparable sales that she  
3 used. One was on Rockwell Lake. One was on Crystal Lake and  
4 one was on the easterly edge of Spider Lake.

5 Q Did you go and visit several of these properties?

6 A I visited the ah Rockwell Lake property and I ah, let me see  
7 did I, I think I did the Great Pines Lake one too or Great  
8 Pines Drive on Spider Lake. I'd driven by the one on Great  
9 Pines Drive prior to this—receiving this but I did inspect  
10 her <sup>Comp</sup> count number one which is the one on Rockwell Lake quite  
11 extensively.

12 Q Do you have an opinion as to whether those properties that  
13 are identified as comparables are comparable to the subject  
14 property?

15 A Ah, if we're comparing apples for apples, I would say no.  
16 They are all on superior lakes. They all have superior  
17 shoreline and probably are all superior finished inside with-  
18 with ahm one or two bathrooms, running water, a well, deep  
19 well, ah maybe and ah but ah good running water and ah, ah,  
20 better finish interiorly with a kitchen, bathrooms, yes.

21 Q Based on your experience in the real estate business, ah, are  
22 transactions of the type ah that would potentially involve  
23 the buying and selling of property like the subject property,  
24 ah, usually purchased by individuals ah as secondary housing?

25 MR. DEARSTYNE: I'm going to object. Leading question.

1 THE COURT: I don't understand the question, could you  
2 rephrase. Objection is sustained.

3 **BY MR. ARNDT:**

4 Q The question I asked you, Mr. Burros, is ah, the property  
5 that we are concerned with, is that being occupied as a  
6 primary residence?

7 A No.

8 Q If you were to act as a real estate broker, either  
9 representing a buyer or a seller, would you ah market this as  
10 a primary residence?

11 A No.

12 MR. DEARSTYNE: Which property are we talking about  
13 here?

14 MR. ARNDT: The subject property.

15 MR. BURROS: Subject property.

16 MR. DEARSTYNE: Okay. And I'm going to object as to  
17 real estate, Mr. Burros appraised the property, he's not a-  
18 he's not a real estate broker here, Judge, so it's not  
19 relevant.

20 THE COURT: Well, the form of the question is if he were  
21 serving as a broker, so, it's a-it's an appropriate question.  
22 It doesn't give me a lot of information to make a decision on  
23 the ultimate issue, but I'll allow the question.

24 **BY MR. ARNDT:**

25 Q Have you acted as the buyer's broker or seller's broker on

1 real estate?

2 THE COURT: Ah, we've already covered that. Let's move  
3 on.

4 **BY MR. ARNDT:**

5 Q In your capacity as an appraiser, ah, strike that. In your  
6 appraisal of this property, does it differ from properties  
7 that are marketed as primary residences?

8 MR. DEARSTYNE: I'm going to object. Relevancy, Judge.

9 THE COURT: I'll allow it if it goes to what the market  
10 value is. You may--do you understand the question?

11 MR. BURROS: Yes.

12 THE COURT: You may answer.

13 **BY MR. ARNDT:**

14 A Well, it's--it's my opinion that ah that properties ah such  
15 as this, do not, ah, appeal to people as a full time  
16 residence. It would have to be substantial improvements made  
17 to ah make this attractive to ah many of the wives that are  
18 looking at lake property. Some of the gentlemen could live  
19 there with minimal ah facilities such as included in your--in  
20 the subject property but, to--to ah--to ah make the property  
21 appealing you'd have to put in new kitchen cabinets. You'd  
22 have to put in a couple of bathrooms...

23 MR. DEARSTYNE: I'm going to object. It's outside the  
24 scope of the question.

25 THE COURT: It' ah...

1 MR. DEARSTYNE: Non-responsive.

2 THE COURT: Non-responsive. Sustained.

3 **BY MR. ARNDT:**

4 Q What types of improvements do you believe the property would  
5 need to ah be readily marketed as a primary residence?

6 MR. DEARSTYNE: I'm going to object as to relevancy,  
7 Judge. We're not talking about whether it's primary  
8 residence or-or secondary. We're talking about what is the  
9 market value of this property.

10 THE COURT: Sustained.

11 **BY MR. ARNDT:**

12 Q Does the absence of a bathroom with plumbing affect the  
13 market value of this property?

14 A Yes.

15 Q Does the absence of a septic system affect the value of this  
16 property?

17 A Yes.

18 Q Does the absence of a ah kitchen facility that has  
19 essentially only a cook stove-wood fire cook stove ah affect  
20 the value of this property?

21 A Yes.

22 Q Does the absence of ah any lakeshore that ah could be used by  
23 small children ah for beaches affect the value of this  
24 property?

25 A Definitely, yes.

1 Q Does the ah significant amount of bog and um low lying  
2 shoreline affect the value of this property?

3 MR. DEARSTYNE: I'm going to object. These are all  
4 leading questions, Judge. I've given a little latitude, but,  
5 they are leading. I think Mr. Burros has already given his  
6 estimate of the value of the property. I don't know why-  
7 where we're going here.

8 THE COURT: Where do you want to go with this?

9 MR. ARNDT: I believe-let me preface the question by  
10 another question.

11 **BY MR. ARNDT:**

12 Q Mr. Burros, ah, are--the question of comparable values  
13 related to the presence of the various factors that I've just  
14 asked you a series of questions about?

15 A Would you rephrase that again please.

16 Q Does the comparison of values in properties, ah, is it  
17 related to the various factors I've just asked you a series  
18 of questions about..

19 A Yes.

20 Q ...in part?

21 A Yes.

22 Q So, all of these various factors ah in your opinion have an  
23 impact on value?

24 A As it relates to ah especially lakeshore property. Yes, I  
25 believe it does. Yes.

1 Q Does the absence of um any beach area or sand area on a-on  
2 this lake, on this particular property, in your opinion  
3 diminish its value?

4 A It does, yes.

5 Q Does the presence of or the need to access this lake or Crow  
6 Wing Lake exclusively through the use of the catwalk, in your  
7 opinion, affect this value—the value of this property?

8 A I believe it limits, yes, and the reason I'm saying that is  
9 cause it limits the usage of the property ah where its um if  
10 someone buys a lake property and they want their guests or  
11 grandchildren or relatives to come up and enjoy that and show  
12 that property off to them..

13 MR. DEARSTYNE: I'm going to object. Nonresponsive,  
14 Judge.

15 THE COURT: Sustained.

16 **BY MR. ARNDT:**

17 Q Does ah—do you have an opinion as to whether ah the bay of  
18 Spider Lake ah that this property abuts ah can be readily  
19 used to ah--for waterskiing?

20 A Ah, not useable.

21 Q Basically for anything?

22 A Well you can't use it for ah waterskiing. You can't use it  
23 for tubing. Ah, maybe you could use a jet ski. I'm not  
24 sure. Ahm, but ah to have your grandkids come up and show  
25 off their abilities..

1 MR. DEARSTYNE: Objection. Nonresponsive.

2 THE COURT: Counsel approach.

3 (Counsel approached bench.)

4 THE COURT: Mr. Arndt, you may proceed.

5 MR. ARNDT: I have no further questions at this time.

6 THE COURT: Mr. Dearstyne?

7 MR. DEARSTYNE: Thank you, Judge.

8 CROSS EXAMINATION

9 **BY MR. DEARSTYNE:**

10 Q Mr. Burros, you ah, you prepared Exhibit number 1 using the  
11 ah Uniform Standards of Professional Appraisal Practice?

12 A Yes.

13 Q And that is something that is ah required when you're giving  
14 an appraisal?

15 A Yes.

16 Q To follow those—those standards?

17 A Or—or give deviations and deviations from those standards and  
18 why you gave—why you did those deviations.

19 Q If you deviate from the standards, you need to give some  
20 justification?

21 A Yes. Yes.

22 Q Um, in the ah—in the Uniform Standards of Professional  
23 Appraisal Practice, is um, is, so to speak, the bible for  
24 appraisers, correct?

25 A Generally, ah considered as—as ah necessary for financial

1 transactions.

2 Q Okay. And, that's ah interesting. The ah appraisal report  
3 that you did ah which is Exhibit number 1, I don't know if  
4 the Court has that ah exhibit or if you have that? You have?

5 THE COURT: Do you want him to refer to Exhibit 1?

6 MR. DEARSTYNE: Yes, please, Judge.

7 THE COURT: Oh, I'm sorry.

8 **BY MR. DEARSTYNE:**

9 Q On page four of that ah document, towards the top of the  
10 page, it indicates that the intended use of this appraisal  
11 report is for the lender client to evaluate the property that  
12 is the subject of this appraisal for a mortgage finance  
13 transaction? Were you retained by Mr. Arndt for the purposes  
14 of a mortgage finance transaction?

15 A No, I was not.

16 Q But that's what the report ah is intended for, is it not, is  
17 that correct?

18 A This is a boiler type thing that is ah recommended by the  
19 appraisal society to use in identifying your scope of work  
20 here.

21 Q Sure. And, in the industry, isn't it true that they  
22 generally require three appra-three comparable ah-comparable  
23 properties, isn't that true?

24 A If they're available.

25 Q Okay. And those three comparable ah properties, ah, well let

1 me back up. In your history as an appraiser, have you um,  
2 had appraisals that you've done where you can't find you know  
3 50% of the comparables are not necessarily comparable and you  
4 have to make adjustments for them?

5 A Well, you don't find many of those. In other words, there's  
6 all...

7 Q What I'm saying is ah—you've talked about apples to apples.

8 A Yes.

9 Q Isn't it true sir that you very seldom ever find apples to  
10 apples?

11 A True, but—but you're pretty...

12 Q And so you utilize...

13 MR. ARNDT: Well, um, I'm going to object to counsel let  
14 the witness answer the question, I'm not sure he's been done.

15 THE COURT: You may. Did you have anything else to say?

16 **BY MR. DEARSTYNE:**

17 A Well, ah, what I intended to say was that when you're doing  
18 ah properties and probably 95% of the time you're finding  
19 properties that you're appraising are—have typical, typical,  
20 unique ah typical, what am I word—word am I saying, typical  
21 ah, typical ah items that you will find on many other  
22 properties that had been sold. In other words, I can  
23 appraise a 40 acre tract and I can find a number of sales  
24 that would—would maybe be in that area of for hunting land or  
25 whatever and--and cabins that I can find..

1 Q Are—are those properties always apples to apples?

2 A No, but, you—you—you're getting a lot...

3 Q So the...

4 A ...you're getting a lot more than...

5 Q ...that's why...

6 A ...this was a very unique property out here and...

7 Q I understand that. But, what I'm talking about, is it's—it's  
8 difficult to find apples to apples, is it not in all  
9 appraisals?

10 A Um, it's ah sometimes—sometimes yes.

11 Q Okay. And in—in fact, ah, since the standard is three,  
12 isn't—isn't the standard under the Uniform Standards of  
13 Professional Appraisals, that you find one property that's  
14 superior, one property that's similar, may not be the same,  
15 may not be apples to apples, but it's at least similar and  
16 then one property that's inferior out of the three that?

17 A If they're available.

18 Q Okay.

19 A If they're not available, you don't use them.

20 Q Okay. Um, the comparable sale that you used in your Exhibit  
21 number 1, is a ah bank repossession, is it not? It's on page  
22 2 of your report.

23 A Yes.

24 Q Okay. And bank ah repossessions, do you not find, frequently  
25 sell for below what the market value is?

1 A I-I'm not su-I don't think that holds true because the market  
2 value is what somebody paid for it. What a-what a willing  
3 seller is selling it and what a willing buyer is willing to  
4 pay for it.

5 Q So, that if a bank ah wants to on a foreclosure, unload a  
6 piece of property, you're indicating that they're going to  
7 keep it at whatever the market value is? Whether they get  
8 buyers or not?

9 A If they're a willing seller, they're going to sell it right?

10 Q If they're a wi...

11 A Is the bank a willing seller?

12 Q If-if the bank is a willing seller...

13 A Yes.

14 Q But if they're-isn't it frequently the case in your  
15 appraisals, Mr. Burros, that bank repossessed property sells  
16 for less than what the market value is?

17 A Well I think the selling price establishes market value. Is  
18 that correct? Those properties have been on the market  
19 probably for a considerably period of time as a rule and they  
20 have not sold.

21 Q The ah comparable that you-well, would you describe the  
22 subject property here as a scribed or milled log home?

23 A Ah, probably a milled log home.

24 Q Okay. And would you describe compar-your comparable number 1  
25 as a scribed or milled log home?

1 A I believe it's a milled log home?

2 Q You believe it is, but you're not sure?

3 A Well...

4 Q I guess the reason I'm asking is your Exhibit number 1 does  
5 not have any photos of your comparable.

6 THE COURT: Okay. I don't want you looking at anything  
7 other than Exhibit 1 at this point. If you need to refer to  
8 other notes...

9 MR. BURROS: Okay.

10 THE COURT: ...you need to indicate that and then we'll  
11 determine where to go from there.

12 MR. BURROS: Ah...

13 THE COURT: Do you need to look at Exhibit 1?

14 **BY MR. DEARSTYNE:**

15 A Exhibit 1, I recall now that ah this was about a--about a mile  
16 ah drive in there and when I got to the ah ah gate last  
17 February, it was blocked. I mean it wasn't--snow removal had  
18 not been there and I--and I can't remember the temperature but  
19 probably a little cool on the cooler side.

20 Q Sure.

21 A Probably wasn't dressed for walking in a mile both ways to--to  
22 what the...

23 Q So you didn't do an inspection of the property then?

24 A I--I did this spring or this summer.

25 Q But not when you did your report?

1 A No, I did not.

2 Q Okay. Ah...

3 A Other than—other than the photo on the listing sheet and I  
4 had been to the property before.

5 Q The ah—and that brings up you inspected ah—back on Exhibit  
6 number 1, your date of inspection was February 5<sup>th</sup>, 2010 of  
7 the subject property, correct?

8 A Yes.

9 Q Okay. Have any difficulty getting into the property at that  
10 point?

11 A No, there wasn't a lot of snow on the ground. I think Mr.  
12 Arndt had ah—ah maybe had someone come in and plow the little  
13 snow there was. I—I had no problem getting in.

14 Q Um, and do you have Exhibit number 1 in front of you there?

15 A Yes.

16 Q Okay. You have an additional listing and—and ah it's not—  
17 there's not a page—well there is a page number at the top.  
18 It says page number 10 and it's an additional listing, um,  
19 with a—looks like a last revision date of January 4<sup>th</sup>, 2010.

20 A Oh yes.

21 Q Okay. Um, there are adjustments that you frequently make,  
22 um, for properties, correct?

23 A Yes.

24 Q Okay. Cause, for instance, the subject property that we're  
25 talking about is 50.50 acres, correct?

1 A Yes.

2 Q Okay. And, ah, this particular property that's listed there  
3 on page 10, is 9.99 acres. And you have a minus \$20,300.00  
4 for that. That's an incorrect calculation, that should  
5 actually be A positive...

6 A That should be a plus, yes.

7 Q Should be a plus so that really skews all of the numbers.  
8 I've done the math and they don't add up if you...

9 A Well, it-it-would...

10 Q The bo-I guess what I'm-what I'm getting at is the bottom  
11 figure which says adjusted list price of comparable is  
12 \$106,800.00. That number is not correct, isn't that true?

13 A That-that would be true in this case, yes. Can I add  
14 something, sir?

15 Q Mr. Arndt may ask a question of you, but, you've answered the  
16 question, thank you. Um, the...

17 MR. DEARSTYNE: One moment, Judge.

18 **BY MR. DEARSTYNE:**

19 Q A little bit ago, you indicated that, um, you had some-some  
20 estimates for, um, January 2<sup>nd</sup>, 2008 and January 2<sup>nd</sup>, 2009, how  
21 did you arrive at those figures that you came up with?

22 A Well, based on-on, um, my appraisal of 2010 and then ah,  
23 going back and looking ah...

24 Q So you based it on the appraisal from February 5<sup>th</sup> of 2010  
25 which you're indicating is-you believe is still accurate

1 January 2<sup>nd</sup> of 2010?

2 A Yes, yes.

3 Q So you're trying to extrapolate back is what you're doing?  
4 Fair statement?

5 A Not sure I'm extrapolating back but I'm taking a figure of  
6 what I felt was the market at that time.

7 Q Um, so did you just use a percentage then, is that what you-  
8 what you did?

9 A I probably did use a percentage of-of ah 5% plus or minus in  
10 that area.

11 Q Okay. Do you-do you have a file ah for your-your estimate or  
12 guestimate of those-those amounts that you gave.

13 A No, I do not.

14 Q Isn't that a requirement of the-of USPAP or Uniform Standards  
15 of Professional Appraisal for oral ah appraising?

16 A I think that would probably fall under the deviation ah-ah-  
17 ah, I mean the alternative situation where you're coming up  
18 with values that-that ah-ah you did not actually do a case  
19 study on but did ah have some knowledge based on what number  
20 you arrived at.

21 Q So what you're saying is you didn't actually do a case study  
22 to arrive at those numbers, you're just basing it on what you  
23 believe is your knowledge.

24 A Based on--on what I have ah-occurred for percentages of  
25 increases or decreases, yes.

1 Q Umhum. And, um, Mr. Burros, on the appraisal that you did  
2 with the one comp that you found, you have adjustments that  
3 are made there as well, correct?

4 A Ah...

5 Q And those are plus and minuses?

6 A What page is that?

7 Q On page 2. Your comparable 1, number 1.

8 A I'm sorry, it must be a different page. What-what page  
9 number-what page number?

10 Q Well, my-and--and-I guess I'm not sure which-which pages you  
11 have-what I was provided by Mr. Arndt it shows page 4 at the  
12 top.

13 A Okay.

14 Q At the bottom it says page 2 of 6.

15 A Page at the top is the one I'd like to refer to and that's...

16 Q Okay. It says page 4 at the top.

17 A Yes.

18 Q There's comparables and-and there are adjustments made there  
19 for ah land, ah there could also have been an adjustment made  
20 for lake if it was a superior or inferior lake, could it not?

21 A The um...

22 Q I mean there wasn't in this one but there could have been,  
23 isn't that correct?

24 A Well, yeah there could have been. Sloan Lake is-is a quite a  
25 shallow body of water.

1 Q Okay.

2 A Ah, probably has ah fish freeze out...

3 Q Sure.

4 A ...and ah in eight out of ten years or something.

5 Q Would you say Sloan Lake is comparable to Spider Lake?

6 A No. No. No.

7 Q Okay. Ah...

8 A In terms of—now, are you talking on the bay of Spider Lake or  
9 the entire Spider Lake?

10 Q I'm talking about Spider Lake.

11 A That property that adj—that abuts Mr. Arndt's property or are  
12 you talking about Spider Lake as a whole?

13 Q Well, what I'm ask—asking I guess, is on the subject property  
14 you just have Crow Wing Lake listed, you don't have Spider  
15 Lake. On the comparable, you have Sloan Lake, so.

16 A Yes.

17 Q So, you're not giving any adjustment for Spider Lake?

18 A Well, ah—you know the ah Spider Lake is a multipurpose lake.  
19 It has many different depths and many different bays and many  
20 different elevations. In fact, um, I looked at a property  
21 just last week that is owned by the Fishers and I also looked  
22 at the lots that they had for sale over there. They had lots  
23 for sale on Crow Wing Lake and they have lots for sale...

24 Q Okay.

25 A ...on Spider Lake.

1 Q But I'm not interested in what you sa-what you looked at last  
2 week.

3 A No, but I'm saying that-that if there was any change-any  
4 change in my attitude, I would have made those determinations  
5 at that time.

6 Q Okay. Um, and-so that-in fact, you could have-isn't that  
7 true that you could have found maybe a couple other  
8 comparables on superior lakes and made an adjustment for it?  
9 Couldn't you have?

10 A Well, like I say, this is such a unique property that ah  
11 there-there aren't many like it. I'm familiar with-with  
12 properties like this because about sixteen years ago a group  
13 of us bought a property similar to this...

14 Q Okay.

15 A ...in Becker County..

16 Q But...

17 A ...and it has-has the bog all the way around it, not suitable  
18 for building other than one lot.

19 Q Let me ask you then on-on ah, on your comparable number 1, is  
20 that similar to this property?

21 A It is somewhat-in-in terms of it has a...

22 Q Is it similar in its uniqueness?

23 A Well, ah, yes it was a-it was built as a bed and breakfast.

24 Q Bed and breakfast.

25 A It-it has a good sized number, probably similar acres of good

1 high ground to the subject, 28.20 acres which is almost all  
2 good ah upland ah without the bog area, marsh areas  
3 affecting. It has a superior shoreline. Um...

4 Q So it is superior is what you are saying?

5 A It-I'm saying that-that the ah 50.5 acres of the subject of  
6 which there's probably 25 acres of marsh land in it that  
7 would give you what 25 - 30 acres of fairly high ground on  
8 the subject property-you understanding what I'm saying?

9 Q Umhum.

10 A In that respect, I can compare the 28.20 acres to this  
11 comparable.

12 Q So, you're only comparing the 28 acres and not giving any  
13 value for the other 25 acres?

14 A No, I am giving value to that-not-and-and Ms. Creager, I  
15 think, ah, broke out her property as to high ground in her  
16 sales. If you want me to cite you one?

17 Q Um, you also talked about ah Ms. Creager's ah valuations in  
18 the-in the Rockwell property, but ah you indicated that they  
19 were probably superior inside but you didn't do any  
20 inspection of them so you're not sure what the inside looks  
21 like, are ya?

22 A I did not. Well, I-I got some photos of the inside yes,  
23 umhum.

24 Q But you didn't do any inspection yourself?

25 A Not of the interior.

1 Q Okay.

2 A But I did—I did from the photos of the broker and I talked to  
3 the—I talked to the sales agent—which a lot of times I will  
4 do if I don't have access to the property.

5 Q And on that comparable sale number 1, ah which is page 4 of  
6 Exhibit number 1...

7 A Umhum.

8 Q You're giving a plus 1,000 where you're listing total  
9 bedrooms and baths and that should be a negative 1,000,  
10 shouldn't it? Or it should be a negative, I don't know about  
11 1,000.

12 A No, no it shouldn't be a negative.

13 Q You don't believe it should be?

14 A There's—there's—there's ah seven and a half rooms on the  
15 subject and um, seven rooms on the comparable. Or seven  
16 total rooms, six total rooms on the comparable and there's a  
17 full bath...

18 Q But...

19 A ...full bath on the comparable. A half bath at the best on the  
20 subject.

21 Q And you're not giving any adjustment there?

22 A I gave the subject a \$1,000.00 plus for that extra room.

23 Q And for the bath then?

24 A Well, the ah, yeah I gave him a \$1,000.00 for—for the room  
25 and—and the—cause the subject is superior. Somewhat superior

1 in room numbers but inferior in bathroom facilities. And the  
2 subject is-is just a little bit larger in total, ah, GLA,  
3 Gross Living Area above ground.

4 Q Um, Mr. Burros, how many appraisals have you done for lending  
5 institutions, approximately?

6 A In-in-in a...

7 Q In your career?

8 A About 40 years of exper-forty years of appraisals. I don't  
9 know, fifteen hundred give or take, I don't know.

10 Q And would you typically use a minimum of three sales in your-  
11 in your appraisals on those?

12 A If-if I can find them.

13 Q And, if you can't find them, do you go outside the immediate  
14 area, do you not to find comps?

15 A What you-you can-you can, but, then you'd have to assume that  
16 the outside area is similar to your area that you're  
17 appraising in.

18 Q And I guess my question would be is, are you-are you saying  
19 that you've-you've worked for lending institutions that have  
20 accepted appraisals with less than three comps?

21 A I think I have-I-not many-not many. Might be one or two.

22 Q Because they want?

23 A They want three comparables..

24 Q Sure.

25 A And whether they're good or not, you use them. But, it

1 really doesn't give a true value—a true comparison of the  
2 properties. And may not give a true value of the subject  
3 property.

4 Q So you would—what you're saying is that you would do an  
5 appraisal report that wouldn't give a true value of this—of  
6 the subject property?

7 A If—well if you're using comparables outside the—outside your  
8 area. If you're using comparables that are highly different  
9 because the banks generally like you to ah restrict your  
10 deviations to I think its 15% net and ah 25% ah gross or vice  
11 a versa and if you don't stay within those guidelines, they  
12 send it back to you.

13 Q And I—and I guess along those lines, as ah Mr. Arndt earlier  
14 on asked you a question concerning the cost ah subject I  
15 believe your answer was that that's a very subjective ah—very  
16 subjective figure to try to do a cost analysis on the  
17 building and so forth.

18 A I don't recall that question I guess or my answer.

19 Q Well, isn't it true that cost analysis is ah is subjective?

20 A It can be.

21 Q Okay. And from what I'm—I'm gathering from you right here is  
22 that ah your appraisal is—is subjective under the comparable  
23 ah subjective as well isn't it?

24 A In terms of what Ms. Creager used for her ah building value,  
25 I'm probably very much in agreement with that.

1 Q Um, it...

2 A It-or pretty-you know I mean that's um I don't think I'm too  
3 far off of that. I think the problem we have here is the ah  
4 land value.

5 Q Okay. Along those same lines, I guess I would-I would ask  
6 you this question and I'd ask you to look at Exhibit number  
7 1, page 4. Where were talking about buildings, we're talking  
8 about the improvements, correct?

9 A Yes.

10 Q Okay. And-and don't you indicate there in your appraisal ah  
11 of \$300,000.00 here that the improvements value-building  
12 value's \$199,000.00?

13 A Yes.

14 MR. DEARSTYNE: One moment Judge, I think I might be  
15 done.

16 **BY MR. DEARSTYNE:**

17 Q In the other part of your analysis there, um, ah, you really  
18 didn't-well, how did you come up with the \$101,000.00 for  
19 the-for the land value? How did you come up with the  
20 \$2,000.00 per acre?

21 A Um, that was based on-on um, some ah, at least one-one  
22 listing that was very comparable to-to the property.

23 Q Which listing is that?

24 A If you look on page 20.

25 THE COURT: Upper right corner, is that where the-you're

1 looking at 20?

2 MR. BURROS: Yeah, upper right corner.

3 THE COURT: Okay.

4 MR. BURROS: Page 20.

5 THE COURT: Thank you.

6 **BY MR. DEARSTYNE:**

7 A Here's a--here's a listing that is ah very similar to ah Mr.  
8 Arndt's property. It's a smaller lake, shallower lake, has  
9 considerable bog around the exterior. Um, has some good high  
10 ground to the right, to the east and is ah primarily was -  
11 primarily--is primarily a ah hunting property similar to what  
12 Mr. Arndt's property is basically designed for waterfowl  
13 hunting is what he purchased it for and this property has  
14 many of the same attributes except it's--it's ah larger and  
15 that price was um, I believe that was \$2,000.00 um, I got it  
16 here someplace I know but, 120... But say that--that's the  
17 listing price and let's just say that it sold for \$240,000.00  
18 that's easy figures here for me right now. It sold for  
19 \$240,000.00 that would be \$2,000.00 an acre and it's probably  
20 going to sell for less than that.

21 Q And that's an assumption that you're making, isn't that  
22 correct?

23 A Well, it's--it's ah...

24 Q And what I'm saying is it's an assumption because this is  
25 simply a listing, correct?

1 A It's a listing but it hasn't sold is what I'm saying. It's  
2 been on the market for probably a year and a-little over a  
3 year, year and a half and if it was-if it was-if it was  
4 priced right, that would have been gone now. Evidentially  
5 it's overpriced.

6 Q Or they haven't found the right, willing buyer?

7 A Well, how long do you want 'em to run it, ten years?

8 Q Ah...

9 A Five years?

10 Q But you're not basing on that, that's hunting land there is  
11 what the acreage is so you're really not giving in your  
12 appraisal any ah consideration for the lakeshore? For the  
13 frontage?

14 A On-on what property are you talking about?

15 Q On the subject property?

16 A No, the lakeshore is-is ah-it's water, but, it's not good  
17 water.

18 Q Yeah, you're not giving any consideration for it? Okay.

19 A Well I'm-I'm n-comparing-comparing the subject to this  
20 comparable listing which is-was-which I consider a very good  
21 listing. It's a shallow lake that flows into Island Lake.  
22 It's ah been exposed to the market for a good period of time  
23 and ah it's still for sale by the way.

24 Q Okay. But yet on-on a-ah page 9 of Exhibit number 1, you  
25 have a comparable listing, land only, um, and you-and it's-

1           it's Lower Mud, 2,000 feet of lakeshore.

2   A       That's the one we just ah reviewed.

3   Q       Yep and they're giving—in the listing at least, you're giving  
4       a \$125.00 per frontage foot?

5   A       That would be ah \$250,000.00, right?

6   Q       I believe so.

7   A       Pardon?

8   Q       I believe so.

9   A       And that's the listing price, yes.

10   Q       Umhum. Okay.

11   A       And that would ah and ah that's probably higher than ah—than  
12       the ah assessor has. I haven't looked at the assessed  
13       figures on that but I believe he has \$66.00--\$66.00 a front  
14       foot on—on subject property, is that right, on most of it?

15   Q       One moment. And the—the comp that you have above that, on  
16       page 9, ah in that particular example, you're not giving any  
17       ah ah any consideration for the buildings, um, but yet you're  
18       giving \$500.00 per acre for the grass and scattered woodlands  
19       and I'm wondering in your experience, have you found \$500.00  
20       an acre to be a going price in the—in this area?

21   A       Ah yes, I've seen some of those, yes.

22   Q       But you are ah ah giving on that particular lake you know 5  
23       acres lake frontage but at \$275.00 per frontage foot?

24   A       Yes.

25   Q       So you are recognizing that the—that in—that—at least in that

1 example that the ah ah lake frontage has some value, isn't  
2 that correct?

3 A Ah—and that—that's pretty good lake front.

4 Q Well, I believe at the end it says that it's—this is similar  
5 to the lake frontage on Spider Lake in your notation?

6 A That's the rest of the—rest of the shoreline is low and not  
7 calling for lake fron—and is similar to the subject frontage  
8 on Spider Lake.

9 Q Yep.

10 A So I'm referring to Spider Lake and as not being a good lake  
11 and it..

12 Q But you are—you are giving some value for the—for the lake  
13 frontage?

14 A Well I—and likewise you know you're um, you're giving some  
15 value for the um, frontage on an acre basis like this one  
16 here. If you'd like to look at that..

17 MR. DEARSTYNE: No further questions, Judge.

18 THE COURT: Any redirect?

19 MR. ARNDT: None.

20 THE COURT: Thank you. You may step down...

21 (This concluded Mr. Burros' testimony at  
22 approximately 4:26 p.m.)

+ + + + +

REPORTER'S CERTIFICATE

I, Mary Anderson, District Court Reporter, certify that I, to the best of my ability, digitally recorded and thereafter transcribed the foregoing; and that the foregoing constitutes a full, true and correct transcript of the proceedings held.

Dated this 15th day of November, 2010.



Mary Anderson  
District Court Reporter  
301 Court Avenue  
Park Rapids, MN 56470  
218-732-5286