

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Patrick DeAlmeida
Presiding Judge

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June 28, 2016

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Re: Barnes & Noble #2664 v. Township of Evesham
Docket No. 008487-2011
Docket No. 004346-2012
Docket No. 002051-2013

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matters challenging the assessments on plaintiff's real property for tax years 2011, 2012 and 2013. For the reasons explained more fully below, the assessment for each tax year at issue is reduced.

*

I. Procedural History and Findings of Fact

The following findings of fact and conclusions of law are based on the evidence and testimony admitted at trial.

These matters concern real property in defendant Evesham Township, Burlington County. The property is designated in the records of the municipality as Block 22.01, Lot 22 and is commonly known as 200 Route 70, West. Plaintiff Barnes & Noble #2664 is a tenant at subject property responsible for paying local property taxes. The property is owned by Commercial Net Lease Realty, LLC, which elected not to participate in these matters.

The subject property is approximately 3.28 acres in a commercial zone with frontage along a State highway and a county road. The property is improved with a 23,657 square feet, one-story retail building constructed in 1995. On the relevant valuation dates, the building, which was in good condition, was occupied by a Barnes & Noble bookstore. A Starbucks coffee shop is located within the bookstore. There are approximately 159 parking spaces on the property, including handicapped parking.

The subject property is located in the Marlton section of Evesham Township along a retail corridor near the intersection of Route 70 and Route 73. Route 73 is more heavily traveled than Route 70, on which the subject is located, and has a number of high-end retailers. Although the subject property is visible from the more heavily-traveled Route 73, there is no direct access to the subject from that highway. In the immediate vicinity of the subject on Route 70 are a number of retail establishments, including a Pet Smart directly across the highway from the subject. The lease at the Pet Smart was the subject of considerable debate during the trial and will be discussed in greater detail below.

For tax years 2011, 2012 and 2013, the subject property was assessed as follows:

Land	\$1,640,000
Improvement	<u>\$2,319,600</u>
Total	<u>\$3,959,600</u>

The Chapter 123 average ratio for the municipality for tax year 2011 is 95.66%. When the average ratio is applied to the assessment, the implied equalized value of the subject property for tax year 2011 is \$4,139,243.

The Chapter 123 average ratio for the municipality for tax year 2012 is 97.08%. When the average ratio is applied to the assessment, the implied equalized value of the subject property for tax year 2012 is \$4,078,698.

The Chapter 123 average ratio for the municipality for tax year 2013 is 100%.

Plaintiff filed timely Complaints challenging the assessments on the subject property for tax years 2011, 2012 and 2013. The municipality filed timely Counterclaims for tax years 2012 and 2013. No Counterclaim was filed for tax year 2011.

During the one-day trial, each party presented an expert real estate appraiser to offer an opinion of the true market value of the subject property on the relevant valuation dates. Both experts concluded that the highest and best use of the subject property was its continued rental to a tenant engaged in retail sales. In addition, both experts relied primarily on the income approach to valuation. The parties stipulated to several factors necessary for determining value under the income approach: the amount of rentable space at the subject, market operating expenses, a market vacancy and collection rate, and a market capitalization rate. The primary area of dispute between the parties is the market rent for the subject property.

The opinions of value of the expert witnesses under the income approach are summarized as follows:

Tax Year	2011	2012	2013
Valuation Date	<u>10/1/2010</u>	<u>10/1/2011</u>	<u>10/1/2012</u>
Plaintiff's Expert Appraiser	\$1,875,000	\$2,000,000	\$2,060,000
Defendant's Expert Appraiser	\$5,619,000	\$5,619,000	\$5,619,000 ¹

II. Conclusions of Law

The court's analysis begins with the well-established principle that "[o]riginal assessments . . . are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

The presumption attaches to the quantum of the tax assessment. Based on this presumption the appealing taxpayer has the burden of proving that the assessment is erroneous. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be "definite, positive and certain in quality and quantity to overcome the presumption."

Ibid. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985)(citations omitted)).

The presumption of correctness arises from the view "that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Pantasote, supra, 100 N.J. at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, 3 N.J. Tax 439 (Tax 1981)); see also Byram Twp. v. Western World, Inc., 111 N.J. 222 (1988). The presumption

¹ Both experts initially offered different opinions of true market value based on the income approach for each tax year. In light the parties' pretrial stipulations the experts revised their opinions at trial.

remains “in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity.” Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988).

“The presumption of correctness . . . stands, until sufficient competent evidence to the contrary is adduced.” Little Egg Harbor Twp. v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998)(citation omitted); Atlantic City v. Ace Gaming, LLC, 23 N.J. Tax 70, 98 (Tax 2006). “In the absence of a R. 4:37-2(b) motion . . . the presumption of validity remains in the case through the close of all proofs.” MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 377. In making the determination of whether the presumption has been overcome, the court should weigh and analyze the evidence “as if a motion for judgment at the close of all the evidence had been made pursuant to R. 4:40-1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion.” Ibid. The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. Id. at 376 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535 (1995)). In order to overcome the presumption, the evidence “must be ‘sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.’” West Colonial Enters, LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003)(quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), certif. denied, 165 N.J. 488 (2000)), aff’d, 18 N.J. Tax 658 (App. Div. 2004).

Only after the presumption is overcome with sufficient evidence at the close of trial must the court “appraise the testimony, make a determination of true value and fix the assessment.” Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982). If the

court determines that sufficient evidence to overcome the presumption that the assessment is correct has not been produced, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992); Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-04 (App. Div. 1996).

The court finds that plaintiff produced sufficient evidence to overcome the presumption of validity attached to the assessments. If taken as true, the opinion of plaintiff's expert, and the facts upon which he relied, create a debatable question regarding the correctness of the assessments in each tax year sufficient to allow the court to make an independent determination of the value of the subject property. The expert opined that on each valuation date the subject property had a true market value more than a million dollars less than the implied equalized value reflected in the challenged assessment. If taken as true, the opinion of plaintiff's expert supports a conclusion that the property has been assessed well in excess of its true market value.

The court's inquiry, however, does not end here. Once the presumption is overcome, the "court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co., supra, 127 N.J. at 312 (quotations omitted). "[A]lthough there may have been enough evidence to overcome the presumption of correctness at the close of plaintiff's case-in-chief, the burden of proof remain[s] on the taxpayer throughout the entire case . . . to demonstrate that the judgment under review was incorrect." Id. at 314-15 (citing Pantasote, supra, 100 N.J. at 413).

A. Approach to Valuation

"There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the

comparable sales method, capitalization of income and cost.” Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div.) (citing Appraisal Institute, The Appraisal of Real Estate 81 (11th ed 2006)), certif. denied, 168 N.J. 291 (2001). “There is no single determinative approach to the valuation of real property.” 125 Monitor Street, LLC v. City of Jersey City, 21 N.J. Tax 232, 237 (Tax 2004) (citing Samuel Hird & Sons, Inc. v. City of Garfield, 87 N.J. Super. 65, 72 (App. Div. 1965); ITT Continental Baking Co. v. Township of East Brunswick, 1 N.J. Tax 244 (Tax 1980)), aff’d, 23 N.J. Tax 9 (App. Div. 2005). “The choice of the predominate approach will depend upon the facts of each case and the reaction of the experts to those facts.” Id. at 238 (citing City of New Brunswick v. Division of Tax Appeals, 39 N.J. 537 (1963); Pennwalt Corp. v. Township of Holmdel, 4 N.J. Tax 51, 61 (Tax 1982)).

Both experts relied primarily on the income approach to valuing the subject property.² The income capitalization approach is the preferred method of estimating the value of income

² Both experts also used the comparable sales approach to corroborate the values they opined under the income approach. The comparable sales approach “usually provides the primary indication of market value in appraisals of properties that are not usually purchased for their income-producing characteristics.” Appraisal Institute, The Appraisal of Real Estate, 419 (12th ed 2001). This method of valuation has been defined as “[a] set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sales prices of the comparables based on the elements of comparison.” Id. at 417. During trial, the court granted plaintiff’s motion to strike the testimony of defendant’s expert with respect to his opinion of value using the sales comparison approach. The expert’s opinion was based on comparable sales of buildings that were subject to existing leases. “When analyzing a leased fee interest, it is essential that the appraiser analyze all of the economic benefits or disadvantages created by the lease.” International Flavors & Fragrances, Inc. v. Borough of Union Beach, 21 N.J. Tax 403, 423 (Tax 2004) (quoting The Appraisal of Real Estate, supra, at 82). The expert did no analysis of the leases in place at the comparable sales or the impact that those leases had on the sales prices of the properties. Thus, the court concluded that defendant’s expert’s opinion of value under the comparable sales approach was unreliable. Because the record contains sufficient, reliable evidence to determine the value of the subject property based on the income approach for this income-producing property, the court uses that approach to determine value.

producing property. Parkway Village Apartments Co. v. Township of Cranford, 108 N.J. 266, 270 (1987); Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 79 (Tax 1996). “In the income capitalization approach, an appraiser analyzes a property’s capacity to generate future benefits and capitalizes the income into an indication of present value.” Appraisal Institute, The Appraisal of Real Estate 445 (13th ed 2008). The court finds that the income capitalization approach is the best method for determining the value of the subject property, an income-producing building used for a retail tenant in a busy shopping corridor.

B. Calculation of Value Using Income Approach

Determining the value of real property pursuant to the income approach can be summarized as follows:

$$\begin{array}{r}
 \text{Market Rent} \\
 \times \text{ Square Footage} \\
 \hline
 \text{Potential Gross Income} \\
 \\
 - \text{ Vacancy and Collection Losses} \\
 \hline
 \text{Effective Gross Income} \\
 \\
 - \text{ Operating Expenses} \\
 \hline
 \text{Net Operating Income} \\
 \\
 \div \text{ Capitalization Rate} \\
 \hline
 \text{Value of Property}
 \end{array}$$

See Spiegel v. Town of Harrison, 19 N.J. Tax 291, 295 (App. Div. 2001), aff’g, 18 N.J. Tax 416 (Tax 1999); Appraisal Institute, The Appraisal of Real Estate 466 (13th ed 2008).

1. Market Rent

“Central to an income analysis is the determination of the economic rent, also known as the ‘market rent’ or ‘fair rental value.’” Parkway Village Apartments, supra, 108 N.J. at 270. This differs from the actual rental income realized on the property, which may be below market rates.

Parkview Village Assocs. v. Borough of Collingswood, 62 N.J. 21, 29-30 (1972). However, actual income is a significant probative factor in the inquiry as to economic income. Id. at 30. “Checking actual income to determine whether it reflects economic income is a process of sound appraisal judgment applied to rentals currently being charged for comparable facilities in the competitive area.” Ibid.

The two experts provided considerably different sets of comparable leases in support of their opinions of market rent. The comparable leases of plaintiff’s expert were from the correct time periods – 2010, 2011, and 2012 – but concerned the rental of retail space, with two exceptions, from outside of Evesham Township and Burlington County. The comparable leases of defendant’s expert, on the other hand, while relating to the rental of retail properties largely in closer geographic proximity to the subject, commenced prior to the relevant valuation dates and before the well-documented economic downturn that began in late 2007.

One lease, by Pet Smart of space directly across the street from the subject property, was identified by both experts as a comparable lease. Plaintiff’s expert, while acknowledging that the property was very similar to the subject, emphatically testified that the lease commenced in 2007, before the economic downturn and remote in time from the relevant valuation dates. The expert testified that he verified the commencement date of the lease with a broker involved in the lease transaction. By contrast, defendant’s expert testified that the lease commenced in 2009, after the economic downturn and close to the October 1, 2010 valuation date for tax year 2011. Defendant’s expert, however, admitted on cross-examination that he was not certain of the commencement date of the lease and acknowledged that he had not read the lease. Neither party produced the lease or a lease abstract. The court concludes that there is insufficient evidence in the record to establish the commencement date of this lease. Given the disruption in the retail rental market in late 2007

through late 2008, the commencement date of the lease is crucial to determine its credibility as evidence of market rent on the valuation dates. The court, therefore, disregards this lease.

In addition, the lease in place at the subject property on the relevant valuation dates is not credible evidence of market value. The subject lease commenced in 1996 with periodic step ups in the rent. The rent at the subject was \$29.18 on October 1, 2010 and \$32.10 on October 1, 2011 and October 1, 2012. These rental rates are not evidence of the market rent on the valuation dates, but reflect predictions made by market participants in 1996 as to a market rent at the subject in 2010, 2011, and 2012.³

The differences in the experts' comparable leases resulted in a significant difference in their opinions of market rent for the subject property on the valuation dates. Plaintiff's expert opined an economic rent of \$10.00 per square foot as of October 1, 2010, \$10.50 per square foot as of October 1, 2011, and \$10.75 per square foot as of October 1, 2012. Defendant's expert opined a market rent for the subject of \$25.00 per square foot for all three valuation dates.

It is clear to the court that the comparable leases offered by plaintiff's expert are more credible than those offered by defendant's expert. The comparable leases of defendant's expert include the 1996 lease of the subject, the rejection of which the court explained above. The

³ Notably, defendant attempted to introduce into evidence a lease in place at the subject property as of the date of trial. The lease was executed in 2013. Although a lease on the subject would likely be credible evidence of market rent for the subject, the proffered lease commenced after the relevant valuation dates. Because the court determines true market value by examining the data that would have been available to a buyer and seller on the relevant valuation dates, the 2013 lease of the subject was not admitted into evidence. On the three valuation dates, the 2013 lease did not exist and could not have been considered by market participants. The rental rate in the 2013 lease was not revealed to the court during trial. The court is aware that its conclusions of market rent for tax years 2011, 2012 and 2013 may differ from the rent in the 2013 lease for the subject. The court, however, is constrained to make a determination of market rent from the credible evidence introduced at trial, even if the court's conclusion of market rent might be contradicted by a subsequently executed lease not admitted into evidence.

remaining leases are: (1) a 2006 lease of a Barnes and Noble bookstore on a parcel spanning Mooretown Township and Mount Laurel Township, Burlington County; (2) a 2006 lease of a retail space in Evesham Township close to the subject but without access to busy Route 70; and (3) a 2006 lease of retail space in Edgewater Park Township, Burlington County, with step ups in the rental rate to 2011. Defendant's expert offered no specific adjustments to the comparable leases, including no time adjustments despite the well-recognized change in the real estate market in the years between 2006, when the comparable leases commenced, and 2010, 2011 and 2012, the relevant valuation dates. In addition, one of the comparable leases upon which defendant's expert relied included not only a flat monthly rental rate, but also provided that the landlord would receive additional rent of 2% over the tenant's gross annual sales of \$15,000,000. The expert provided no meaningful analysis of this provision of the comparable lease and made no adjustment for the effect that this provision may have had on the monthly rental rate.

The court concludes that the comparable leases upon which defendant's expert relied lack credibility as evidence of market rents for the subject on the relevant valuation dates. In addition, the court concludes that the expert's opinion with respect to a market rent lacks credibility because of the absence of adjustments to the comparable leases in circumstances in which adjustments were surely warranted.

Plaintiff's expert, on the other hand, relied on leases with commencement dates from 2010 through 2012. The expert grouped the leases by tax year with some leases being used for more than one tax year. The comparable leases are discussed below, grouped by tax year:

(a) Tax Year 2011.

Plaintiff's expert relied on five comparable leases that commenced in 2010 to reach an opinion of market rent for tax year 2011. Only one comparable lease, which the expert identified

as Comparable Rental No. 5, is in Evesham Township. That was a twenty-year lease at \$9.00 per square foot to a discount store in the Crispin Square Shopping Center on North Maple Avenue in the Marlton section of the township, approximately three miles from the subject. Although close in physical proximity, the comparable lease is in a less desirable retail location on a less heavily traveled road. It is commonly accepted that traffic volume on a road with access to a parcel is a key component driving retail rental rates. Given the proximity of this comparable lease to the subject, the court finds it to be the most credible evidence of market rent for tax year 2011.

The expert made two adjustments to the comparable lease. With respect to location, the expert considered both the median household income of the municipality in which the comparable was located and Department of Transportation traffic statistics. For this comparable lease the municipality is the same as the subject, thus the median household income is also the same. North Maple Avenue, however, is far less traveled than Route 70, to which the subject has access. The expert made a positive 5% adjustment to the rental rate to account for the difference in the traffic count. The court finds the need for a location adjustment to be credible. The court concludes, however, that a positive 5% adjustment is insufficient. The subject is located in a busy retail corridor on Route 70 in close proximity to a second busy highway, Route 73, on which is located high-end retail establishments. While the subject does not have direct access to Route 73, it is visible from that highway. In addition, the subject has access from Old Marlton Pike, a less busy, but active, roadway. The court concludes that a positive 10% adjustment to this comparable lease is appropriate for location.⁴

⁴ Plaintiff's expert did not provide a detailed analysis of how he quantified adjustments based on differences in the traffic count. While the record contains a lack of precision with respect to the traffic count adjustments, the court is mindful of the Supreme Court's directive in Glenn Wall Assocs. v. Township of Teaneck, 99 N.J. 265, 280 (1985), to "be cognizant of the expense incurred

The expert also made a positive 5% adjustment to this comparable lease for building condition. According to plaintiff's expert, the comparable lease is in average condition, due to a leaking roof, while the subject is in good condition. The court accepts this adjustment as credible.

In light of the net positive 15% adjustment, the court concludes an adjusted rent of \$10.35 for Comparable Rental No. 5.

Two other comparable leases used by plaintiff's expert for tax year 2011, which he identified as Comparable Rentals Nos. 1 and 2, required no adjustments. Comparable Rental No. 1 is a 2010 ten-year lease to an electronic and appliance store at the recently developed Deptford Landing retail center in Deptford Township, Gloucester County, for \$8.30 per square foot. The comparable lease is on Clements Bridge Road, a busy retail corridor in close proximity to the Deptford Square Mall, a regional shopping center. Deptford Township has a median household income similar to that of Evesham Township. The expert made no adjustments to this comparable lease for location. The court concludes that a positive 10% adjustment for location is warranted. As noted above, the subject is on busy Route 70, in close proximity to, and visible from, Route 73 and its high-end retail corridor. The Deptford location, while desirable, is inferior from a retail perspective. With this adjustment, the rental rate at this comparable is \$9.13 per square foot.

by litigants" when engaging experts to prosecute tax appeals. While the court may not accept an expert's opinion that is unsubstantiated, the court may view the evidence upon which the expert relied "practically and within realistic limits" in order to reach an opinion of value and provide litigants with a principled resolution of their tax appeals. *Id.* at 280-281. Here, plaintiff's expert testified that he reviewed Department of Transportation statistics with respect to traffic counts and relied on those statistics to make location adjustments, based on his experience. The court is satisfied that there is sufficient evidence to support the expert's location adjustments. It is common sense that the market value of a parcel to be used for retail purposes is dependent, in part, on the amount of traffic on roadways to which the property has access.

Comparable Rental No. 2 is the 2010 lease of retail space in the Mantua Square shopping center in Mantua Township, Gloucester County, at \$10.60 per square foot. This property is 16 miles from the subject in a retail corridor. The comparable lease is for space in a shopping center with a Lowe's and a Pet Smart, two well-known retailers. The expert opined that median household incomes in Mantua Township and Evesham Township were similar, with the Mantua's income being slightly higher. Although the expert opined that no adjustments were necessary, the court concludes that a positive 10% location adjustment is warranted, given the subject's superior location proximate to Route 70 and Route 73. With this adjustment, the adjusted rental rate at this comparable is \$11.66 per square foot.

The court rejects the two other comparable leases upon which plaintiff's expert relied for tax year 2011, identified as Comparable Rentals Nos. 3 and 4. Those leases were for properties in Atlantic County, too distant from the subject to be credible evidence of market rental rates. In addition, the Atlantic County locations were inferior from a retail perspective. The expert offered positive 10% adjustments to these leases for location. The court concludes that the proffered adjustments are insufficient to render these leases credible as evidence of the subject's market rent.

The three adjusted rental rates found credible by the court for tax year 2011 are \$10.35 per square foot, \$9.13 per square foot and \$11.66 per square foot. Weighing these three rates, the court concludes an economic rental rate for the subject of \$11.00 per square foot for tax year 2011.

(b) Tax Year 2012.

Plaintiff's expert relied on Comparable Rental No. 5, discussed above, to reach an opinion of market rent for tax year 2012. The court found this comparable lease credible for tax year 2011 and will rely on this lease for tax year 2012 at the adjusted rental rate of \$10.35 per square foot.

Comparable Rental No. 7, upon which plaintiff's expert relied for tax year 2012, is a 2011 ten-year lease of retail space on Route 73 in Evesham Township in close proximity to the subject. The lease, for \$13.35 per square foot, is to gym. The shopping center in which this comparable rental is located has a troubled financial history despite, or perhaps because of, its location directly across from The Promenade shopping center, which was recognized by both experts as a premier, high-end retail center. Notably, the shopping center in which this comparable lease is located has a vacant space which was most recently a Borders bookstore. Plaintiff's expert applied a negative 15% adjustment to account for location. The court concludes that a negative 10% adjustment for location is more credible. With that adjustment, the adjusted rental rate for this comparable lease is \$12.00.

Comparable Rental No. 6 is a 2011 five-year lease of a "junior anchor space" in a shopping center constructed in 2007 in Gloucester Township, Camden County. The lease is at a rate of \$7.50 per square foot. The building subject to the lease is on "a moderately travelled commercial road" and is, according to plaintiff's expert, inferior to the subject in location and condition. The expert applied a positive 15% adjustment for location, based on the comparable lease's inferior traffic count and because of Gloucester Township's inferior median household income. In addition, the expert applied a positive 10% adjustment due to the poor physical condition of the comparable lease property, which has a leaking roof. Application of these adjustments results in an adjusted rental rate of \$9.38 per square foot, which the court finds credible.

The expert relied on Comparable Rentals Nos. 3 and 4 for tax year 2012. Those comparable leases were rejected by the court with respect to tax year 2011. The court also concludes that those comparable leases are not credible evidence of economic rent for tax year 2012.

The adjusted rental rates found credible by the court with respect to tax year 2012 are \$10.35 per square foot, \$12.00 per square foot, and \$9.38 per square foot. The court gives the most weight to Comparable Rentals Nos. 5 and 7, which are located in Evesham Township in close proximity to the subject. Comparable Rental No. 7, at \$12.00 per square foot, although in a shopping center that has suffered economic setbacks, is given greatest weight, given the fact that the lease is from 2011. The court concludes economic rent of \$11.25 for tax year 2012.

(c) Tax Year 2013.

Plaintiff's expert relies on Comparable Rentals Nos. 5, 6 and 7 for tax year 2013. The court concludes that those comparable leases, with the adjustments adopted by the court, are credible evidence of economic rent for tax year 2013.

The expert also relied on Comparable Rental No. 4, which was previously rejected by the court for prior tax years and is rejected for tax year 2013. In addition, the expert relied on two additional leases, Comparable Rentals Nos. 8 and 9, both of which commenced in 2012.

Comparable Rental No. 8 is a ten-year lease of retail space at a rate of \$14.33 per square foot. The comparable property is located in Cherry Hill Township, Camden County, in a "power center within a very strong market area." The expert adjusted the rent downward to \$11.33 to reflect the fact that the lease was not net of all operating expenses. The expert also made a negative 10% location adjustment to account for the superior location (higher median household income, higher traffic count) of the comparable lease property. Application of this adjustment resulted in an adjusted rental rate of \$10.76, which the court accepts as credible evidence of economic rent for the subject for tax year 2013.

The court finds that Comparable Rental No. 9 is not credible evidence of economic rent for the subject. That lease, of a retail space at the Raceway Mall in Freehold Township, Monmouth

County, concerns property too distant from the subject to be credible evidence. In addition, Comparable Rental No. 9 concerns space in a large mall with several major anchor stores, requiring a significant adjustment.

The addition of the adjusted rent from Comparable No. 8 to the evidence upon which the court relied for tax year 2012, does not change the court's conclusion with respect to economic rent. The court finds an economic rent for the subject property of \$11.25 for tax year 2013.

2. Building Size

The parties stipulated to the size of the rentable space at the subject property. The court accepts the stipulation that the subject property has 23,657 square feet of rentable space for all tax years.

3. Vacancy and Collection Rate

The parties stipulated to a market vacancy and collection rate for the subject property. The court accepts an annual economic vacancy and collection rate of 9.25% of potential gross income for the subject property for all tax years.

4. Operating Expenses

The parties stipulated to market expenses for the subject property. The court accepts annual market expenses of \$53,500 for the subject property for all tax years.

5. Capitalization Rate

The parties stipulated to a market capitalization rate for the subject property. The court accepts the market capitalization rate of 8.6% for the subject property for all tax years.

6. Calculation of Value

	10/01/2010	10/01/2011	10/01/2012
Market Rent (\$)	\$ 11.00	\$ 11.25	\$ 11.25
x <u>Square Footage (23,657)</u>	x 23,657	x 23,657	x 23,657
Potential Gross Income (PGI)	\$ 260,227	\$ 266,141	\$ 266,141
- <u>Vacancy & Collection (9.25% PGI)</u>	\$ 24,071	\$ 24,618	\$ 24,618
Effective Gross Income (EGI)	\$ 236,156	\$ 241,523	\$ 241,523
- <u>Operating Expenses (\$53,500)</u>	\$ 53,500	\$ 53,500	\$ 53,500
Net Operating Income	\$ 182,656	\$ 188,023	\$ 188,023
÷ <u>Capitalization Rate</u>	<u>.086</u>	<u>.086</u>	<u>.086</u>
Value of Property	\$2,123,907	\$2,186,314	\$2,186,314

The court will round the figures to a true market value of \$2,125,000 as of October 1, 2010, \$2,190,000 as of October 1, 2011, and \$2,190,000 as of October 1, 2012.

C. Applying Chapter 123

Pursuant to N.J.S.A. 54:51A-6a, commonly known as Chapter 123, in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range. The common level range is defined by N.J.S.A. 54:1-35a(b) as “that range which is plus or minus 15% of the average ratio” for the municipality in which the subject property is located.

The ratios of the true market values determined above to the assessments must, therefore, be compared to the common level range for Evesham Township for the relevant tax years. The formula for determining the subject property’s ratio is:

$$\text{Assessment} \div \text{True Value} = \text{Ratio}$$

1. Tax Year 2011.

$$\$3,959,600 \div \$2,125,000 = 1.86$$

The Chapter 123 average ratio for Evesham Township for tax year 2011 is .9566 with a common level range upper limit of 100% and common level range lower limit of .8131. The ratio for the subject property for this tax year is 1.86, which exceeds the upper limit of the common level range for this tax year.

Consequently, the court will determine the assessment for the subject property for tax year 2011 by multiplying the true market value by the Chapter 123 average ratio:

$$\$2,125,000 \times .9566 = \$2,032,775$$

The court will round this figure to \$2,033,000. A Judgment establishing the assessment for the subject property for tax year 2011 will be entered as follows:

Land	\$1,640,000
Improvement	<u>\$ 393,000</u>
Total	<u>\$2,033,000</u>

2. Tax Year 2012.

$$\$3,959,600 \div \$2,190,000 = 1.81$$

The Chapter 123 average ratio for Evesham Township for tax year 2012 is .9708 with a common level range upper limit of 100% and a common level range lower limit of .8252. The ratio for the subject property for this tax year exceeds the upper limit of the common level range for this tax year. Consequently, the court will determine the assessment for the subject property for tax year 2012 by multiplying the true market value by the Chapter 123 average ratio:

$$\$2,190,000 \times .9708 = \$2,126,052$$

The court will round this figure to \$2,126,000. A Judgment establishing the assessment for the subject property for tax year 2012 will be entered as follows:

Land	\$1,640,000
Improvement	<u>\$ 486,000</u>
Total	\$2,126,000

3. Tax Year 2013.

$$\$3,959,600 \div \$2,190,000 = 1.81$$

The Chapter 123 average ratio for Evesham Township for tax year 2013 exceeds 100%. The ratio for the subject property for this tax year also exceeds 100%. Pursuant to N.J.S.A. 54:51A-6c, in a non-revaluation year, when both the ratio of the assessed value of the subject property to its true value and the average ratio of the municipality exceed the county percentage level (100%), the assessment shall be revised by applying the county percentage level (100%) to the true market value of the subject property.

$$\$2,190,000 \times 1.00 = \$2,190,000$$

A Judgment establishing the assessment for the subject property for tax year 2013 will be entered as follows:

Land	\$1,640,000
Improvement	<u>\$ 550,000</u>
Total	\$2,190,000

Very truly yours,

/s/ Hon. Patrick DeAlmeida, P.J.T.C.