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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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JUDGE

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Re: Tender Care Wash, L.L.C. v. City of South Amboy
Route 35 Car Wash, L.L.C. v. City of South Amboy
Block 3, Lot 2
Docket Nos. 011036-2012; 013089-2014

Dear Counsel:

This is the court's decision following trial of the above captioned matters. Plaintiff contests the local property tax assessments on the property ("Subject") located in defendant ("City") of \$799,300 (allocated \$576,200 to land and \$223,100 to improvements) for tax years 2012 and 2014.

For each tax year the common level ratio range was as follows:

Tax Year	Average Ratio	Lower Limit	Upper Limit
2012	96.07%	81.66%	110.48%
2014	102.78%	87.36%	118.20%

Each party presented an appraisal expert witness, whose reports were admitted into evidence without objection. Both experts agreed that the Subject, a car wash, was a "special

purpose” property. Plaintiff’s expert used the cost and sales approaches to valuation but placed most emphasis on the former. The City’s expert used only the cost approach. Under the cost approach, their primary areas of disagreement were land value conclusions and applicable depreciation rate to improvements. Each expert’s value conclusions was as follows:

Tax Year	Plaintiff’s Expert	City’s Expert
2012	\$450,000	\$850,000
2014	\$430,000	\$860,000

Post-trial, each expert changed their respective value conclusions because of (1) change to the size of the car wash tunnel from 2,200 square feet (“SF”) to 3,024 SF by plaintiff’s expert; and (2) change to the depreciation rate from 70% to 10% by the City’s expert who conceded that Marshall & Swift (“M&S”) cost data for a car wash did not include equipment costs. Each expert’s revised value conclusions was as follows:

Tax Year	Plaintiff’s Expert	City’s Expert
2012	\$480,000	\$1,170,000
2014	\$505,000	\$ 860,000 ¹

For the reasons stated below, the court finds the value of the Subject for tax year 2012 as \$760,721. Application of the average ratio reduces the assessment to \$730,825. The value of the Subject for 2014 is \$759,228, which is its assessment since the average ratio is 100%.

FACTS

The Subject is a car wash located on about 0.87 acres of generally level land. It is located on Route 35 South, in the southern section of the City, amongst a mix of residential and commercial uses, with the commercial uses being mostly located on Route 35. Access to the property is average, and visibility fair.

¹ The expert nonetheless used 70% depreciation rate. At 10% depreciation, the value would be \$1,198,682.

There are two free-standing structures on the Subject built sometime in 1990: One is a 3,024 SF building configured as a tunnel and the other is a 3,262 SF self-serve car wash with eight bays. The foundation for both is concrete slabs, and the exterior walls for both are masonry and brick. There is also an asphalt-paved parking lot containing 10 spaces.

The Subject has been vacant since 2010. There was a lease supposed to commence in 2013 at \$4,000 per month, but there was no payment of rent or a security deposit. The Subject was boarded up in 2014. In 2015, it was listed for sale at an asking price of \$599,000, but per the broker's report to plaintiff's expert, the listing was going to be removed from the market.

Neither expert had access to the interior. They agreed that the car wash equipment would require considerable deferred maintenance, repair, and upkeep due to the Subject's vacant and boarded up status. The City's expert stated that the parking lot had several potholes. The pictures of the exterior also showed signs of required deferred maintenance such as cracks on the walls.

VALUATION ANALYSIS

Each expert stated that the Subject was likely a pre-existing non-conforming use under the zoning regulations, but for different reasons: plaintiff's expert's reason was the slightly undersized lot and lack of sufficient parking spaces, and defendant's reasons was that a car wash business was not explicated as a permitted use. Plaintiff's expert concluded the Subject's highest and best use as vacant for an auto service or general retail building, and as improved, its current use as a car wash by renovating and installing needed equipment. The City's expert concluded the current use as the Subject's highest and best use.

A. Plaintiff's Expert's Value Conclusion

Plaintiff's expert gave most weight to the cost approach. He used four sales to initially value the land. Sales 1 and 2 were in business zones (B2, B3), Sale 3 in a commercial/retail zone

(C/R), and Sale 4 in Manufacturing/Light Industrial (MI) zone. Sales 2 and 3 were improved but the improvements needed significant repairs/renovations. Assuming building costs at \$90 per square foot (“PSF”) and soft costs of \$5,000, the expert used a 50% depreciation rate to arrive at a depreciated cost which he extracted from the sales price. His adjustments were for (1) superior location (-10%) because the Subject is located in the southerly direction of Route 35 where properties are less valuable in contrast to Route 35 North where, due to its status as a “morning corridor,” i.e., used by New York City commuters, properties are highly valued, and, (2) corner location (-15%), which he deemed “highly coveted for retail establishments” due to high foot traffic, exposure and ease of access. His adjusted land sales prices were as follows:

	Location	Lot Size (Acres)	Sale Date	Sale Price	Reduction for Improvement	Per-Acre Price	Location Adj.	Corner Loc. Adj.	Adjusted Per-Acre Price
1	Parlin	0.50	8/23/10	\$325,000	\$0	\$650,000	-\$65,000	-97,500	\$487,500
2	South Amboy	0.26	12/6/13	\$181,000	\$96,080	\$326,615	-\$32,662	\$0	\$293,954
3	South Amboy	0.27	3/24/11	\$252,000	\$180,500	\$264,815	-\$26,481	\$0	\$238,333
4	South Amboy	2.40	1/29/14	\$750,000	\$0	\$312,500	\$0 ²	-\$46,875	\$265,625

Giving most weight to Sale 3 due to its proximity to the Subject, he concluded a land value of \$250,000 per-acre (see supra n.2), and as applied to the Subject’s size of 0.87 acres, as \$210,000 (although \$250,000 times 0.87 acres equals \$217,500).

For the value of improvements, he used the cost data as of December 2015 from M&S, a service which compiles costs at a national level. Inputting parameters of a masonry building of low quality, he used a blended base cost (i.e., for both the tunnel and the self-serve car wash buildings) at \$77.42 per SF (“PSF”) for the building and \$13.40 PSF for exterior walls totaling \$90.82 PSF. This times the total area (5,462 SF, pre-revision) provided \$496,062 as the base cost for both structures. To this, he added \$50,000 as site improvement costs, \$24,842 soft costs (at

² After cross-examination, the expert agreed that location adjustment of -10% should be removed. The adjusted per-acre price was accordingly changed. He also changed his per-acre value conclusion from \$240,000 to \$250,000.

2% of the building cost for each of engineering and architect fees, and \$5,000 for legal/permit costs), and 20% entrepreneurial profit³ for a total cost of \$685,081.

He then deducted \$343,795 representing depreciation for physical condition at 55% of the building and site costs, based on age/life method, with the actual age of the buildings being 25 years (effective age 30 years), which translates to 50 years in economic life. He deducted an additional \$119,054 representing 20% for functional obsolescence to account for the replacement of the car wash equipment since his highest and best use conclusion of the Subject, as improved, was a rehabilitated or renovated car wash. His report noted this allowance was for the “malfunctioning equipment,” and the Subject’s “need of a complete equipment overhaul” which would incur costs of “time, effort, risk and expenditure,” for which an entrepreneur would expect “a discount.” The depreciated value of improvements of \$222,233, when added to his land value conclusion of \$210,000, provided a value conclusion of \$430,000.

The expert then analyzed value under the sales comparison approach, but as limited support since some of the comparables were going concerns, thus, presenting issues of allocating value between realty and the business. He used four sales (occurring in 2011, 2012, and 2013) located in four different counties, only one of which was in Middlesex County (Sale 1). The sale prices were \$650,000; \$780,000; \$865,000; and \$797,400. Only Sale 4 (which was built in 1953, thus much older than the Subject), was vacant when sold, and which the buyer wanted to rebuild as a new car wash, although the property was also approved for residential redevelopment. Sales 1, 2, and 4 did not have self-service bays. The expert adjusted the sale prices for this factor (at \$5,000 per bay) in addition to condition (-5% to -10%); traffic count, as the Subject was located on a

³ His report explained that “typically developer’s profit runs 10% to 20%; we have computed [it] at 10% of the construction costs.” Yet he used 20% in the computation sheet.

heavily travelled highway (10% to 15%); and operating business (-20%) which he claimed was at the low end for a moderately profitable business. The adjusted sale prices of gross building area (“GBA”) were: \$145.15 PSF; \$157.86 PSF; \$172.65 PSF; and \$198.04 PSF. He chose \$185 PSF, which when multiplied with the pre-revised tunnel area of 2,200 SF provided a value of \$407,000.

He heavily emphasized the cost approach since vacant land comparables were in the City and one on the same street as the Subject, and cost data was from an objective source. He opined the Subject’s value for 2014 at his conclusion under the cost approach, i.e., \$430,000.

For tax year 2012, he added 5% to \$430,000 on grounds there was no change in the real estate market from 2011-2013, and based on his surmise that the improvements must have been in a better condition in 2011. This provided a value conclusion of \$450,000 for tax year 2012.

Post-trial, he changed his value conclusion under the cost approach based on his re-measurement of the tunnel building, which increased from 2,200 SF to 3,024 SF. He used a base cost of \$94.64 PSF (building) and \$14 PSF (exterior walls), totaling \$108.64 which, when depreciated at 75% (55% physical and 20% functional obsolescence) provided \$27.16 PSF. He applied this cost to the additional area of the tunnel building (824 SF) and added the product (\$22,500 rounded) to his prior value conclusion of \$430,000 for a revised value opinion of \$452,500. In response to the court’s query, the expert stated that he was not replacing his blended base cost in his initial report (\$90.82) with his new base cost (\$108.64 PSF) because the supplemental cost estimate was “only” for the tunnel portion, while the blended cost still applied to the self-serve car wash building.

He also decreased his value conclusion under the sales comparison approach to \$175 PSF on grounds of economies of scale as the Subject (tunnel building) was now larger than some of the comparables. This multiplied by 3,024 SF provided a value conclusion of \$530,000 (rounded).

Reconciling the values under the cost and sales comparison approach, with most weight to the cost approach, he concluded a value of \$480,000 for 2014. Since he had based his 2012 value conclusion at +5%, he revised his value opinion to \$505,000 (\$480,000 plus 5%) for 2012.

B. City's Expert's Value Conclusion

The expert used only the cost approach. He used three land sales for each tax year, all located in business/commercial zones. For 2012, his Sale 1 was a 2-story tavern with apartments, which was demolished by the buyer (and replaced with a medical office building), meriting a +\$10,000 adjustment for demolition costs. He deemed it inferior in size, and location being on a county road. Sale 2 used to be a gas station which was demolished by the seller and sold as vacant land, with the buyer obtaining approval for a 5,000 SF retail building. He deemed it inferior in size. Sale 3 was a restaurant which was demolished and sold as vacant land (the buyer had approvals to construct a retail building), meriting a +\$25,000 adjustment for demolition cost due to its larger size. He deemed it inferior location-wise but did not make a location adjustment.

For 2014, his Sale 1 was an auto repair garage which was demolished by the buyer and approved for an apartment complex. He added \$10,000 as demolition cost, and also adjusted for inferior location and lot size. His Sales 2 and 3 were the ones he used for tax year 2012.

His adjusted land sale prices for each tax year were as follows:

2012									
	Location	Lot Size (Acres)	Sale Date	Sale Price	Per-Acre Price	Addition for Demolition	Location Adj.	Size Adj.	Adjusted Per-Acre Price
1	Sayreville	0.32	10/13/11	\$600,000	\$1,879,158	\$10,000	5%	-20%	\$1,597,285
2	Sayreville	0.51	10/21/10	\$325,000	\$637,255	\$0	0%	-10%	\$ 573,530
3	Old Bridge	0.87	01/12/11	\$310,000	\$356,322	\$25,000	0%	0%	\$ 381,322

2014									
	Location	Lot Size (Acres)	Sale Date	Sale Price	Per-Acre Price	Addition for Demolition	Location Adj.	Size Adj.	Adjusted Per-Acre Price
1	Woodbridge	1.03	06/07/13	\$750,000	\$728,155	\$10,000	5%	0	\$775,063
2	Sayreville	0.51	10/21/10	\$325,000	\$637,255	\$0	0%	-10%	\$573,530
3	Old Bridge	0.87	01/12/11	\$310,000	\$356,322	\$25,000	0%	0%	\$381,322

He deemed only Sale 3 as an outlier, and less persuasive since it was in a low income area and faced a liquor store (although it had the same lot size and was located on Route 35 as was the Subject). For both tax years, he concluded a per-acre value of \$650,000 which when applied to the Subject's lot size provided for a value of \$565,500, which he rounded to \$570,000.⁴

For the value of improvements, he used the replacement method with cost data from M&S. For the tunnel building, he applied \$100.40 PSF (2012) and \$106.23 PSF (2014). For the self-serve building, he applied \$80.06 PSF (2012) and \$85.11 PSF (2014). This multiplied by the area (2,940 SF for the tunnel building and 3,050 SF for the self-serve building) provided a total building cost of \$539,359 and \$571,901.70 for each tax year. He depreciated the same by 70% being physical, "curable" depreciation for a depreciated cost of \$161,707 and \$171,570 for each tax year. The depreciation rate accounted for the non-operational status of the Subject and reflected the "actual cost to rehabilitate the systems and machinery." Such items of machinery were separately listed for each building (such as conveyor belts, soap, mitting curtains, air dryer, computer, blowers, vacuum station, coin-operated pay stations), with a cost per item, totaling \$414,895 or about 72% to 76% of the building costs. He also noted that the M&S data on replacement cost must have included more than just structural costs since replacing a concrete block column with a steel frame PSF would not cost as high as \$90 to \$110 PSF, which is why his depreciation rate was so high.

⁴ During trial, the expert (1) deleted +\$10,000 demolition estimate for Sale 2; (2) increased the adjusted price of Sale 3 by \$25,000 demolition cost which was provided for in the grid but not added to the total; (3) removed -20% lot size adjustment for Sale 1 (tax year 2014). He stated that these changes did not alter his value conclusion for either tax year.

He then added \$5,000 for the depreciated cost of site improvements (estimating the cost to build at \$50,000, and listing the site improvements as curbing, sidewalks, utility hookups, paving, landscaping), and his concluded land value of \$570,000. To this total (\$736,807.70 for 2012; \$746,570.51 for 2014), he applied a 10% entrepreneurial profit, and concluded a value (rounded) at \$850,000 and \$860,000 for each respective tax year.

During trial, an issue arose among the experts whether M&S's cost data for car washes included car wash equipment. Plaintiff's expert claimed it did not, the City's expert insisted it did. Post-trial, at the court's direction, parties clarified this issue. The City's expert agreed that M&S data did not include costs for the car wash equipment, but only for the "basic building drive-thru shell and equipment area with concrete floor, sump and basic electrical." He then modified the depreciation rate to 10% "since the structure is a simple concrete block building with a roof." This gave a value conclusion of \$1,171,000 (2012). He concluded the 2014 value at \$860,000 (which would be the number using 70% depreciation rate).

(3) Court's Findings

(A) Standard of Review

A complainant carries a twin burden: first of overcoming an assessment's presumptive correctness, and thereafter, persuading the court what the correct value of the property should be. MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373, 377 (Tax 1998); Ford Motor Co. v. Township of Edison, 127 N.J. 290, 314-15 (1992). Even if the defendant taxing district does not move to dismiss a taxpayer's appeal at the end of taxpayer's proofs on grounds the taxpayer has not overcome the assessment's presumptive correctness, the court must first decide this issue. MSGW, *supra*, 18 N.J. Tax at 378.

If the court finds that plaintiff has failed to overcome the presumptive correctness of the assessment, and the taxing district makes no claim for assessment adjustment (either as a counterclaim or through evidence), the court can affirm the assessment. *Id.* at 378-79. If the taxing district presents “evidence which, on its face, could warrant relief under N.J.S.A. 54:51A-6(a),” the court must first decide whether the presumptive correctness is overcome, and if so, “proceed to weigh and evaluate all the evidence and decide the appeal on the merits.” *Id.* at 379. To decide whether an adjustment to the assessment is “warranted under N.J.S.A. 54:51A-6(a), the court should simply compare the assessment with” the taxing district’s value conclusion, and if the assessed-to-that value conclusion “is outside the common level range, then the court” should decide whether the proffered proofs suffice to “overcome the presumption.” *Id.* at n.3.

Although the Supreme Court has expressed a preference for a value opinion based on credible data provided, Glenn Wall Assoc. v. Township of Wall, 99 N.J. 265, 280 (1985), the court’s “independent assessment” depends “on the evidence before it and the data that are properly at its disposal.” F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985). Thus, the court need not “accept an expert’s opinion that is unsubstantiated.” Glenn Wall Assoc., *supra*, 99 N.J. at 280; Greenblatt v. City of Englewood, 26 N.J. Tax 41, 56 (Tax 2010). It can adopt or reject an expert’s opinion “in whole or in part.” City of Atlantic City v. Atlantic County Bd. of Tax’n, 2 N.J. Tax 30, 43 (Tax 1980), *aff’d*, 4 N.J. Tax 685 (App. Div. 1982), *certif. denied*, 93 N.J. 250 (1983). It can arrive at a value “even if it means coming to a determination contrary to both experts.” Ford Motor, *supra*, 127 N.J. at 313.

(B) Parties’ Proofs

The court finds plaintiff did not overcome the presumptive correctness of the assessment for tax year 2012. It is reasonable to suppose that a property would likely be in a better condition

on October 1, 2011 than two years later on October 1, 2013 simply due to age. However, translating this supposition into the Subject's value requires more than just increasing a later year's value conclusion by 5%. There needs to be market-based objective support. Cf. West Colonial Enter. v. City of East Orange, 20 N.J. Tax 576, 580, 585 (Tax 2003) (disapproving the expert's use of actual rents for a particular tax year not in litigation to "get an idea of what the [potential gross income] might be" for prior tax years in litigation), aff'd, 21 N.J. Tax 590, 595 (App. Div. 2004) (agreeing that the expert's opinion was "flawed" for trying to work backwards with a future year's income information).

Further, his conclusion that the real estate market for commercial properties remained static or relatively stable for 2010-2014 is void of objective data. There was nothing to show that the replacement cost on October 1, 2011 was 5% less than on October 1, 2011 (since plaintiff's expert relied primarily on the cost approach). See, e.g., Appraisal Institute, The Appraisal of Real Estate 583-84 (14th ed. 2013) (trending may be considered to convert a "known cost as of a past date into a current cost estimate," by using cost index tables, although such an approach may suffer issues of accuracy due to unknown components in the cost index).

The City proffered proofs for a value conclusion of \$1,170,000. This shows a prima facie need for an adjustment under N.J.S.A. 54:51A-6(a) since the City's expert's value conclusion as compared to the assessment shows a ratio below the lower limit of 81.66% ($\$799,900/\$1,170,000 = 68.31\%$). The court next finds that the City's proofs suffice to overcome the assessment's presumptive correctness because its proof of value was based on an expert opinion set forth in an expert report and exemplified at trial, and further because the expert's valuation methodology and cost data is commonly accepted in the appraisal world.

For tax year 2014, the court finds both parties overcame the presumption of the assessment's correctness. Both proffered expert opinions, which employed accepted valuation methodologies, with commonly accepted cost data as a basis. The court will therefore examine all the evidence before it and decide the merits of the appeals for both tax years.

(C) Valuation

Initially, the court agrees with plaintiff's expert that the sales comparison approach is problematic because three of the four comparables sold as going concerns, and doing the required allocation of the sale price between the business and the real estate factor is difficult without accurate verification. Here, there was no such verification. Further, his -20% adjustment for this factor was not supported by objective data, as he conceded he had no access to any of the financials. This leaves one sale (Sale 4), of a much older building located in a different county, which sold in January 2011, two years before the assessment date, for \$797,500. With only one sale and the expert's primary reliance on the cost approach, the court will not consider the sales comparison approach as providing a credible indicator of the Subject's value.

Under the cost approach, plaintiff's expert is correct that to obtain the price for land, a portion of the consideration must be allocated for the operating business. However, his extraction of the value of improvements for Sales 2 and 3 was unsupported by any objective data, as was his allowance for depreciation and estimated soft costs, with no reproduction of such costs in his report. The court cannot simply use the unadjusted sale prices without consideration of this factor since that would be unrealistic. As to adjustments, the court finds unpersuasive his opinion that commercial properties on Route 35 North are more valuable being located in the "morning corridor" since it was not supported by any data such as his alleged study of sales trends or the alleged traffic volume. The expert's corner location adjustment is persuasive since car wash

businesses, as would any consumer-volume-based business, benefit from ease of ingress and egress and the attendant prominent visibility.

The court will consider all of the City's expert's land sales including Sale 3, which he rejected as an outlier, because the comparable was in the same zone (commercial) as the Subject, and sold with approvals for development of a retail building. However, the adjustment for demolition costs are rejected since they were unsupported by any objective data. Indeed, his description of land Sale 3 stated that it was sold "as vacant land," yet he testified that the demolition was made by the buyer. His allowance for demolition costs also appears to contradict his report, which explained the adjustment for "Clearing" as follows: "All of the comparable sales were sold as vacant cleared parcels," requiring no adjustments.

The court will place an overall lesser weight to the City's expert's land sales because he made no adjustment for approvals. Generally, vacant land is more valuable with finalized approval grants. The Subject (as vacant) would be considered inferior in this regard (lack of approvals), therefore, the comparable land sales should have received a negative adjustment to decrease the sale prices for this factor. This was not done. Additionally, unlike plaintiff's expert's comparables, only one of the City's expert's land sales was of property located in the City.

Considering all these factors and the modified adjustments, as well as the remoteness of the sale dates to the assessment dates, the court finds the land value to be \$425,000 per-acre for tax year 2012 (the \$1.5 million dollar sale as an outlier is given much lesser weight) and \$400,000 for tax year 2014. As applied to the Subject's area (0.87 acres) the land value conclusion is \$369,750 and \$348,000 for each respective tax year.

As to the value of improvements, the court accepts plaintiff's expert's area measurements. The court will use the City's expert's base cost because plaintiff's expert's cost data was as of

December 2015, which postdates the valuation dates of October 1, 2011 and October 1, 2013. There was no explanation why he chose this date (other than that his report was prepared at that time since it was dated December 16, 2015) and whether cost data was not compiled by, nor available through M&S service for the valuation dates.

The experts appeared to agree that the self-serve car wash structure had a somewhat lower PSF base cost than the tunnel car wash structure. However, plaintiff's expert never provided the separate PSF base cost for each structure in the initial report which contained a blended cost. The City's expert did, therefore, the court will accept it.⁵

Both experts agreed that the site improvement costs would be \$50,000. The court will use this amount as reasonable.

The court finds the plaintiff's expert's provision for soft costs reasonable. Although the City's expert did not provide the same, there was no dispute as to the provision or the percentage of the allowance (4% of the "building cost" for total professional costs and \$5,000 for permits and legal fees). The court will employ these percentages and amounts, the same being conservative and reasonable.

The court finds that the City's expert's allowance for physical depreciation at 10% is not as persuasive.⁶ It is true that the structures are made of masonry on concrete blocks. This does not automatically mean that factors such as the Subject's effective age, its below-average condition, its vacancy and non-operational status (leaving the Subject vulnerable to elements of

⁵ Plaintiff's expert's base cost for the self-serve car wash building would likely not have been widely diverse from the City's expert's base cost of \$80-\$81 for that structure. Plaintiff's expert's re-computed base cost for the tunnel building at \$108 PSF versus his blended cost of \$90 shows that his base cost for the self-serve building would have been at a number that would be lower than \$108 but not higher than \$90.

⁶ In his re-computation for tax year 2014, submitted twice to this court, he used 70% depreciation rate. This was after the court pointed out the discrepancy.

nature) should be ignored. See also John Steele, In-Depth Study of Automatic Car Wash Properties, in Readings in the Appraisal of Special Purpose Properties 239, 246 (1981) (car wash buildings “normally deteriorate faster than average buildings,” including “the interior,” which if constructed with “metal, tends to rust from steam and dampness, which also cause deterioration within the concrete blocks,” and that an “estimate of economic life in excess of 25 years would be an error” since car washes are “highly specialized,” with continual changes as to “types”). Since plaintiff’s expert’s depreciation rate considered these factors, the court finds his choice of rate to be more persuasive, especially when the condition of the buildings was not disputed. Further, plaintiff’s expert’s use of 55% was based on an economic age-life method (25 year chronological age but 30 years effective age due to lack of deferred maintenance), which is the most simple, yet widely accepted methodology. See Appraisal Institute, supra, at 610. There was no challenge to the appropriateness of this methodology.

However, the court will not use the dollar amount of the plaintiff’s expert’s physical depreciation because is unascertainable. He testified that his 55% was only for the buildings. His report stated it was for building and site. If 55% is on the total costs for building and site (\$546,059 per his estimate), the depreciation is \$300,332. If 55% is based on the building cost alone (which cost is shown on his “Calculation Information” portion of his report), the depreciation amount would be \$272,835. He however deducted an amount higher than either computation, i.e., of \$343,795. The expert notes that the M&S “depreciation total varies slightly, as their calculated depreciation does not include anything other than construction hard costs.” The difference was unexplained. \$343,795 translates to a total cost of \$625,081 ($\$343,795/55\%$), but this total cost

does not appear anywhere in the expert's report.⁷ The depreciation in the re-computation computes the 75% depreciation only against the estimated building cost plus exterior wall, whereas his initial report included estimated site costs. The court will therefore compute 55% of the building costs.

The court will accept the City's expert's conclusion of the depreciated cost of site improvements at \$5,000 based on estimated replacement site costs of \$50,000 (or 10%). This is reasonable since it is not necessarily true (unless shown otherwise) that site improvements should be depreciated at the same rate as the buildings. Indeed, even different portions of a building can have differing economic life, thus, costs, therefore, depreciation rates.

The court rejects plaintiff's expert's allowance for functional obsolescence. Functional obsolescence is where the building's design, material or structure prevents a property from achieving its highest and best use, and from being "the most cost-effective functional design." The Appraisal of Real Estate, *supra*, at 623. A building may also be obsolete because of its special physical features. Ibid.; see also In-Depth Study of Automatic Car Wash Properties, *supra*, at 246 (noting that functional obsolescence can be due to building "layout . . . placement of equipment, pumps and set-backs."). Here, there was no contention or proof that the Subject lacked design, construction, or material features which made it functionally inefficient. Simply because the Subject was vacant and non-operational for the tax years at issue does not require a conclusion that the improvements are obsolete or with design flaws such that the Subject is rendered more costly and of less value.

Both experts agreed that 10% allowance for entrepreneurial profit was appropriate. Plaintiff's use of 20% in his grid was unsupported by market evidence. Generally between 5%-

⁷ No combination of costs (site improvement, soft costs, entrepreneurial profit) add up to \$625,081. Note that the 20% functional obsolescence computation has the same problem. 20% or \$119,054 translates to a total cost of \$595,270 (\$119,054/20%), a number not reflected anywhere in the report.

10% is accepted by our courts as reasonable. See Metuchen I, L.L.C. v. Borough of Metuchen, 21 N.J. Tax 283, 293 (Tax 2004). The court finds 10% appropriate here.

With the above adjustments, the improvement cost for both structures is as follows:

Tax Year 2012

Base Cost of Construction:			
Tunnel	3,024 SF x \$100.40	\$303,609.60	
Self-Serve	3,262 SF x \$80.06	\$261,155.72	\$564,765
Site Improvements			\$ 50,000
Total Direct Costs			\$614,765
Add: Indirect Costs:			
4% of \$564,766	\$22,591		
Fees/Permits	\$ 5,000		\$ 27,591
Total Direct and Indirect costs			\$642,356
Add: Entrepreneurial Incentive (10%)			\$ 64,236
Total Costs			\$706,592
Less: Physical Depreciation (55% on building and 10% site)			\$315,621
Depreciated Cost			\$390,971
Add: Land Value: (\$425,000 x 0.87)			\$369,750
Value Conclusion			\$760,721

The assessed-to-true value ratio is 105% which exceeds the upper limit. Application of the average ratio of 96.07% is required, which reduces the assessment to \$730,825 (rounded).

Tax Year 2014

Base Cost of Construction:			
Tunnel	3,024 SF x \$106.23	\$321,239.52	
Self-Serve	3,262 SF x \$ 85.11	\$277,628.82	\$598,868
Site Improvements			\$ 50,000
Total Direct Costs			\$648,868
Add: Indirect Costs:			
4% of \$598,868	\$23,955		
Fees/Permits	\$ 5,000		\$ 28,955
Total Direct and Indirect costs			\$677,823
Add: Entrepreneurial Incentive (10%)			\$ 67,782
Total Costs			\$745,605
Less: Physical Depreciation (55% on building and 10% site)			\$334,377
Depreciated Cost			\$411,228
Add: Land Value: (\$400,000 x 0.87)			\$348,000
Value Conclusion			\$759,228

The assessed-to-true value ratio is 105%. The average ratio is 100%. There is no counterclaim. Thus, the assessment is reduced to \$759,228.

CONCLUSION

For the aforesaid reasons, the Tax Court clerk will enter a judgment reducing the assessment for each year as follows:

Tax Year 2012:

Land	\$ 369,750
Improvements	\$ 361,075
Total	\$ 730,825

Tax Year 2014:

Land	\$ 348,000
Improvements	\$ 411,228
Total	\$ 759,228

Very truly yours,

/s/ Mala Sundar, J.T.C.