

**NOT FOR PUBLICATION WITHOUT THE APPROVAL  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

VBV REALTY, LLC,	:	TAX COURT OF NEW JERSEY
	:	DOCKET NOS.: 014829-2011
	:	014463-2012
Plaintiff,	:	014151-2013
	:	
v.	:	
	:	
SCOTCH PLAINS TOWNSHIP,	:	<div style="border: 2px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Approved for Publication In the New Jersey Tax Court Reports</div>
	:	
Defendant.	:	
	:	

Decided: January 3, 2017<sup>1</sup> Released for publication: February 10, 2017

Jennifer S. Manheim for plaintiff  
(Selesner & Polifron, P.A., attorneys).

Robert F. Renaud for defendant  
(Palumbo, Renaud & DeAppolonio, LLC, attorneys).

NOVIN, J.T.C.

This shall constitute the court’s opinion following trial of the local property tax appeals in the above-referenced matters. VBV Realty, LLC (“plaintiff”) challenges the 2011, 2012 and 2013 local property tax assessments on an improved parcel of property located in the Township of Scotch Plains (“defendant”), County of Union and State of New Jersey.

For the reasons stated more fully below, the court affirms the 2011, 2012 and 2013 tax year assessments and dismisses plaintiff’s Complaints.

**I. Procedural History and Findings of Fact**

As of the valuation dates, plaintiff was the owner of the real property and improvements located at 1928-1934 Route 22 East, Scotch Plains, New Jersey. The property is identified on the

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<sup>1</sup> This opinion was issued by the court as an unpublished letter opinion on January 3, 2017. The opinion was subsequently approved for publication on January 23, 2017. Minor editorial changes have been made to the original opinion.

municipal tax map of Scotch Plains Township as Block 1802, Lot 4 (the “subject property”). For the 2011, 2012 and 2013 tax years, the subject property was assessed as follows:

Land:	\$198,600
<u>Improvement:</u>	<u>\$465,400</u>
Total:	\$664,000

The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for the Township of Scotch Plains was 24.96% for the 2011 tax year, 24.85% for the 2012 tax year, and 25.68% for the 2013 tax year. See N.J.S.A. 54:1-35a(a). When the average ratio is applied to the tax assessment, the implied equalized value of the subject property is: \$2,660,256.40 for the 2011 tax year; \$2,672,032.10 for the 2012 tax year; and \$2,585,669.70 for the 2013 tax year.

The subject property is an irregular “L” shaped, 1.06-acre lot, with frontage along two intersecting roadways. Although it is not a corner lot, the subject property functions as a corner lot with visibility from both sides of Route 22. The subject property contains approximately 133 feet of frontage, with vehicular ingress access, along the southerly side of Route 22 East, and 131 feet of frontage, with vehicular ingress and egress access, along Union Avenue. As of the valuation dates the subject property was improved with a one-story, freestanding masonry and frame structure being operated as the “Scotchwood Diner.” The structure contains approximately 6,098 square feet at ground level, and has an approximately 4,466 square foot partial, unfinished basement.<sup>2</sup> The building was initially constructed in 1971 and was renovated and expanded in 2001. The diner has a seating capacity of 225 and consists of a front entrance hall, waiting area/cashier station, counter seating, two main dining rooms, men’s and women’s lavatories, a commercial kitchen, three walk-in cooler boxes, and an employee lavatory. The partial basement is utilized for dry storage, and contains a liquor storage room and two additional walk-in cooler

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<sup>2</sup> Plaintiff’s appraiser maintained that the structure contained approximately 6,002 square feet at ground level, and an approximately 4,570 square foot partial basement.

boxes. The front and side facades of the restaurant are wrapped in a reflective aluminum and steel siding.

The subject property is located in the B-3 Highway Business zoning district, wherein permitted uses include retail business and service establishments, including restaurants, banks, offices, dance studios and municipal uses. Operation of the restaurant is therefore, a legal, conforming use of the subject property.<sup>3</sup> The subject property is located in Flood Zone X, denoting an area of minimal flooding risk.<sup>4</sup>

Plaintiff filed petitions of appeal with the Union County Board of Taxation (the “Board”) challenging the 2011, 2012 and 2013 tax year local property tax assessments on the subject property. The Board entered judgments for the 2011, 2012 and 2013 tax years dismissing plaintiff’s petitions of appeal without prejudice (the “Judgments”). Thereafter, plaintiff filed timely Complaints with the Tax Court contesting the Board’s Judgments. The defendant did not file any Counterclaims. The matters were tried to conclusion over portions of a three-day period on September 8, 2015, September 11, 2015 and October 6, 2015.

During trial, plaintiff and defendant each offered the testimony of a State of New Jersey certified general real estate appraiser, who were accepted by the court, without objection, as experts in the property valuation field. Each appraiser prepared an appraisal report expressing an opinion of the true market value of the subject property as of the October 1, 2010, October 1, 2011 and October 1, 2012 valuation dates.

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<sup>3</sup> In plaintiff’s appraiser’s opinion, the structure was non-conforming because it “doesn’t have adequate frontage setback from the highway.”

<sup>4</sup> In plaintiff’s appraiser’s opinion, the subject property is principally located within Flood Zone X, however is partially impacted by Flood Zone B. Conversely, in defendant’s appraiser’s opinion, the subject property is principally located in Flood Zone X and is partially impacted by Flood Zone AE.

## **II. Conclusions of Law**

### **a. Presumption of Validity**

“Original assessments and judgments of county boards of taxation 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). “Based on this presumption, the appealing taxpayer has the burden of proving that the assessment is erroneous.” Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citing Riverview Gardens, Section One, Inc. v. Borough of North Arlington, 9 N.J. 167, 174 (1952)). “The presumption of correctness. . . stands, until sufficient competent evidence to the contrary is adduced.” Little Egg Harbor Township v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998). A taxpayer can only rebut the presumption by introducing “cogent evidence” of true value; that is, evidence “definite, positive and certain in quality and quantity to overcome the presumption.” Aetna Life Ins. Co. v. City of Newark, 10 N.J. 99, 105 (1952). Thus, at the close of plaintiff’s proofs, the court must be presented with evidence which raises a “debatable question as to the validity of the assessment.” MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 376.

In evaluating whether the evidence presented meets the “cogent evidence” standard, the court “must accept such evidence as true and accord the plaintiff all legitimate inferences which can be deduced from the evidence.” Id. at 376 (citing Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995)). The evidence presented, when viewed under the Brill standard “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), aff’d, 21 N.J. Tax 590 (App. Div. 2004) (quoting Lenal Properties, Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999),

aff'd, 18 N.J. Tax 658 (App. Div. 2000), certif. denied, 165 N.J. 488 (2000)). “Only after the presumption is overcome with sufficient evidence. . . must the court ‘appraise the testimony, make a determination of true value and fix the assessment.’” Greenblatt v. Englewood City, 26 N.J. Tax 41, 51-52 (Tax 2011) (quoting Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982)).

At the close of plaintiff’s proofs, defendant moved to dismiss these matters under R. 4:37-2(b), arguing that plaintiff failed to overcome the presumption of validity. The court denied defendant’s motion and placed a statement of reasons on the record.

However, concluding that the presumption of validity has been overcome does not equate to a finding by the court that a local property tax assessment is erroneous. Once the presumption has been 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. v. Township of Edison, 127 N.J. 290, 312 (1992) (citations omitted). Although the proofs, when measured against the liberal standards employed in evaluating a motion under R. 4:37-2(b), may be sufficient to overcome the presumption of validity at the close of plaintiff’s case-in-chief, “the burden of proof remain[s] on the taxpayer. . . to demonstrate that the judgment under review was incorrect.” Id. at 314-15 (citing Pantasote Co., supra, 100 N.J. at 413).

**b. Highest and Best Use**

An indispensable element not only to principles of property valuation, but to the determination of the true market value of property is discerning its highest and best use. Ford Motor Co., supra, 127 N.J. at 300; see also General Motors Corp. v. City of Linden, 22 N.J. Tax 95, 107 (Tax 2005). “For local property tax assessment purposes, property must be valued at its highest and best use.” Entenmann's Inc. v. Totowa Borough, 18 N.J. Tax 540, 545 (Tax 2000).

Thus, the highest and best use analysis is often referred to as “the first and most important step in the valuation process.” Ford Motor Co. v. Township of Edison, 10 N.J. Tax 153, 161 (Tax 1988).

The highest and best use analysis comprises the “sequential consideration of the following four criteria, determining whether the use of the subject property is: 1) legally permissible; 2) physically possible; 3) financially feasible; and 4) maximally productive.” Clemente v. Township of South Hackensack, 27 N.J. Tax 255, 267-269 (Tax 2013), aff’d, 28 N.J. Tax 337 (App. Div. 2015).

However, the highest and best use of a property is not a static principle. The highest and best use of a property may alter over time with a market that is in transition, or as a result of changes in the economic climate, zoning, or from the presence or lack of development. When engaging in a highest and best use analysis the appraiser must interpret “the market forces that affect the subject property and identify[] the use or uses on which the final opinion of value is based.” Appraisal Institute, The Appraisal of Real Estate, 42 (14<sup>th</sup> ed. 2013). An appraiser must closely examine the parcel being appraised “for all possible uses and that use which will yield the highest return should be selected.” Inmar Associates, Inc. v. Township of Edison, 2 N.J. Tax 59, 64 (Tax 1980). Thus, the highest and best use analysis is truly a “function of the market.” Entenmann's Inc., supra, 18 N.J. Tax at 545.

Here, although both appraisers opined that the “As Improved” highest and best use of the subject property was its current use as a restaurant, they differed in opinion with respect to the “As Vacant” highest and best use of the subject property. In plaintiff’s appraiser’s opinion, the “As Vacant” highest and best use of the subject property was “for retail development in a general sense, any specific application or selection of a use would be somewhat subjective. . . .” Thus, in plaintiff’s appraiser’s sales comparison and income capitalization approaches to value, he

considered several “generic retail” commercial buildings including a paint/wallpaper store, mattress store, cellular telephone store, and the “lease of [retail] junior anchor space” in a multi-tenanted strip mall center. Conversely, defendant’s appraiser opined that due to the subject property’s location, physical characteristics and demand in the area, redevelopment of the subject property for a general retail use would not be maximally productive. In defendant’s appraiser’s opinion, the “As Vacant” highest and best use of the subject property was its current use as a restaurant. Thus, in his income capitalization approach to derive an opinion of value for the subject property, defendant’s appraiser considered only leases for restaurants and “food oriented” establishments.

**c. Methodology**

“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, 237-238 (Tax 2004) (citing Samuel Hird & Sons, Inc. v. City of Garfield, 87 N.J. Super. 65, 72 (App. Div. 1965)); see also ITT Continental Baking Co. v. Township of East Brunswick, 1 N.J. Tax 244, 251 (Tax 1980). “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. 2001), certif. denied, 168 N.J. 291 (2001) (internal citation omitted)). The “decision as to which valuation approach should predominate depends upon the facts of the particular case and the reaction to these facts by the experts.” Coca-Cola Bottling Co. of New York v. Neptune Township, 8 N.J. Tax 169, 176 (Tax 1986) (citing City of New Brunswick v. State Div. Tax Appeals, 39 N.J. 537 (1963)); see also WCI-Westinghouse, Inc. v. Township of Edison, 7 N.J. Tax, 610, 619 (Tax 1985), aff’d, 9 N.J. Tax 86 (App. Div. 1986). However, when the proofs

submitted in support of one approach overshadow those submitted in support of any other approach, the court may conclude which approach should prevail. See ITT Continental Baking Co., supra, 1 N.J. Tax 244; Pennwalt Corp. v. Township of Holmdel, 4 N.J. Tax 51 (Tax 1982).

Plaintiff's appraiser employed the income capitalization and sales comparison approaches to derive an opinion of value for the subject property as of the respective valuation dates. Plaintiff's appraiser attributed the greatest degree of weight to the sales comparison approach and relied on the income capitalization approach as a "supportive measure." Conversely, defendant's appraiser relied upon the income capitalization approach to derive a value of the subject property as of the respective valuation dates. Nonetheless, both appraisers were accepted by the court as experts in the property valuation field, thereby permitting them to express opinion testimony. See N.J.R.E. 702.

When a property is income-producing, the preferred method for determining the estimated market value of that property is the income capitalization approach. Parkway Village Apartments Co. v. Township of Cranford, 8 N.J. Tax 430 (Tax 1985), aff'd, 9 N.J. Tax 199 (App. Div. 1986), rev'd on other grounds, 108 N.J. 266 (1987); see also Helmsley v. Borough of Fort Lee, 78 N.J. 200 (1978); Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 79 (Tax 1996). "The income capitalization approach to value consists of methods, techniques, and mathematical procedures that an appraiser uses to analyze a property's capacity to generate benefits (i.e., usually the monetary benefits of income and reversion) and convert these benefits into an indication of present value." The Appraisal of Real Estate, supra, at 439. Central to the income capitalization approach is the appraiser's scrutiny, evaluation and analysis of data, information, statistics, costs, and a property's capacity to generate future benefits in order to determine the "market rent or fair rental value" of a property. Parkway Village Apartments Co., supra, 108 N.J. at 270.



The sales comparison approach derives an opinion of market value “by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract.” The Appraisal of Real Estate, *supra*, at 377. Like the income capitalization approach, the sales comparison approach requires an appraiser to dissect and weigh market data, including trends in the marketplace, to derive a credible opinion of value. The appraiser must engage in a “comparative analysis of properties” and focus on the “similarities and differences that affect value. . . which may include variations in property rights, financing, terms, market conditions and physical characteristics.” *Id.* at 378. When credible and reliable market data is available, the sales comparison approach “is the most straight forward and simple way to explain and support an opinion of market value.” Greenblatt, *supra*, 26 N.J. Tax 41.

### **1. Plaintiff’s Appraiser**

In conducting his sales comparison approach, plaintiff’s appraiser testified that he examined “retail service type buildings” along the Route 22 corridor, focusing on five properties which sold between January 2010 and June 2012, which he identified as comparable. Four of the sales were located in Somerset County and one was located in Union County. The unadjusted sale prices of the five sales ranged from \$233.78 to \$292.52 per square foot. Plaintiff’s appraiser applied adjustments to each of the comparable sales to account for perceived differences in location, condition, size, land to building ratio and time/market conditions. After adjustments, the adjusted sale prices of the comparable sale transactions ranged from \$222.09 to \$263.27 per square foot. Ultimately, plaintiff’s appraiser concluded that a fair market value of \$240.00 per square foot of gross building area should be utilized for all of the valuation dates. The appraiser then applied that figure to the subject property’s gross building area, which he calculated at 6,002 square

feet, to arrive at a concluded value of \$1,440,000 as of the October 1, 2010, October 1, 2011 and October 1, 2012 valuation dates.

However, when employing the sales comparison approach, appraisers must adhere to “systematic procedure[s].” The Appraisal of Real Estate, *supra*, at 381. Appraisers must conduct research of the competitive marketplace for “information on properties that are similar to the subject property” and that have recently sold. *Ibid.* A crucial element of this investigation and research involves the data verification process. An appraiser must verify the integrity of the information by “confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length market considerations.” *Ibid.* During the data verification process an appraiser must “elicit additional information about the property such as buyer motivation, economic characteristics, [and] value component allocations. . . to ensure that comparisons are credible.” *Ibid.* The process demands an appraiser “verify information with a party to the transaction to ensure its accuracy and gain insight into the motivation behind each transaction.” *Id.* at 385. An appraiser must endeavor to confirm “statements of fact with the principals to the transaction. . . or with brokers, closing agents, or lenders involved.” *Ibid.*

Appraisers are similarly bound to ensure that their appraisal reports “conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date which the appraisal was prepared. . .” N.J.A.C. 13:40A-6.1. These standards require appraisers to “correctly complete research and analysis necessary to produce a credible result.” The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, Standards Rule 1 (2012-2013 ed.). In developing a real property appraisal, appraisers “must. . . reconcile the quality and quantity of data available and analyzed” with the approach to value being utilized. *Ibid.*

Moreover, our Legislature has mandated that, in Tax Court proceedings, any person being offered as a witness with respect to the review of a local property tax assessment shall possess information or knowledge regarding comparable properties acquired from owners, sellers, purchasers, lessees, brokers or attorneys who were a party to, or participated in, the transaction.

N.J.S.A. 2A:83-1. Specifically, N.J.S.A. 2A:83-1 requires that:

in any action or proceeding in the Tax Court, any person offered as a witness in any such action or proceeding shall be competent to testify as to sales of comparable land, including any improvements thereon. . . from information or knowledge of such sales, obtained from the owner, seller, purchaser, lessee or occupant of such comparable land, or from information obtained from the broker or brokers or attorney or attorneys who negotiated or who are familiar with or cognizant of such sales, which testimony when so offered, shall be competent and admissible evidence in any such action or proceeding.

[N.J.S.A. 2A:83-1.]

Here, plaintiff's appraiser's conclusions and opinions suffer from flaws that are fatal to their credibility and reliability. The facts and data about the comparable sale transactions, upon which plaintiff's appraiser's opinions of value were premised, were not verified, confirmed, or corroborated with any individuals possessing firsthand knowledge of, or a familiarity with those sale transactions. In conducting his comparable sales approach, plaintiff's appraiser relied exclusively on information he gathered from the New Jersey Association of County Tax Boards ("NJACTB") website, Garden State Multiple Listing Service ("GSMLS"), public tax records, Vitalgov.net, Costar, and discussions he had with municipal tax assessors. According to plaintiff's appraiser, his "primary source" for verification of the sales transactions data was his discussions with municipal tax assessors. Effective cross-examination revealed that plaintiff's appraiser did not contact or consult with the seller, purchaser, attorneys for the seller or purchaser, or the listing or purchasing real estate brokers who negotiated and possessed first-hand knowledge

of such sale transactions. Whether a sales transaction can be considered a reliable indicator of fair market value depends on an analysis of the following criteria: (i) whether the buyer or the seller were unusually motivated, (ii) whether the buyer and seller were well-advised and acting prudently, (iii) the length of time that the property was exposed to an open and competitive marketplace, (iv) whether the purchase price was paid in cash, and (v) whether the purchase price was affected by special or creative financing. Venture 17, LLC v. Borough of Hasbrouck Heights, 27 N.J. Tax 108, 126 (Tax 2013) (citing Hull Junction Holding Corp., supra, 16 N.J. Tax at 94). Here, plaintiff's appraiser possessed little information satisfying these fundamental criteria on which to base his analysis.

In recognizing the pitfalls which exist with information reported on public websites and real estate multiple listing service websites, the Appraisal Institute cautions appraisers that while "the service will contain fairly complete information about these properties, including descriptions and brokers' names. . . details about a property's square footage, basement area, or exact age may be inaccurate or excluded." The Appraisal of Real Estate, supra, at 119. In fact, most local residential and commercial real estate listing service websites contain express disclosures about the accuracy of the data and information contained therein. For example, the Garden State MLS, LLC website, relied upon by plaintiff's appraiser, contains an express disclaimer that the "information [is] deemed reliable but [is] not guaranteed." The rationale behind this disclosure is practical, as the information contained on the website may be reported to real estate sales professionals by unsophisticated third parties and thus, based upon erroneous data or speculation.

Moreover, the other principle source of information relied upon by the appraiser, the NJACTB website, contains an express "Disclaimer and Limitation of Liability." That disclaimer

states, in part, that the “information [is] not warranted or guaranteed in any way.” The disclaimer further provides that:

NJACTB makes no warranties, express or implied, including, without limitation, those of merchantability and fitness for a particular purpose, with respect to any data. Specifically, but not by way of limitation, NJACTB does not warrant or guarantee:

1. The accuracy, adequacy, quality, currentness, validity, completeness, or suitability of any data for any purpose; . . .

In no event shall NJACTB be liable to anyone for any . . . inaccuracies, errors or omissions with respect to the data or the transmission or delivery of all or any part thereof, . . . or for the results obtained from the use of the data. . . The entire risk as to the quality, performance, and the accuracy, adequacy, completeness, currentness, validity, and quality of any data is with the USER.

[<http://www.njactb.org/disclaimer.asp>.]

Vital to the accuracy and integrity of the sales comparison approach is the premise that information and data must be properly sourced, verified and analyzed to ensure accuracy and to “better understand the attitudes and motivations of the buyer and seller.” The Appraisal of Real Estate, supra, at 125. The obligation of an appraiser to collect “accurate, reliable data remains an essential task because the conclusions of the analyses of appraisers are only as good as the data that supports those conclusions.” Id. at 95. An appraiser must verify and analyze the data and its sources to ensure accuracy and to “better understand the attitudes and motivations of the buyer and seller.” Id. at 125.

Here, plaintiff’s appraiser plainly failed to verify the integrity of the facts and data upon which he relied, which facts and data formed the basis of his opinions of value for the subject property. The appraiser did not contact or consult with any transaction participants to confirm the sale terms, to inquire whether the seller or buyer were unusually motivated by economic factors

to dispose of or acquire the property, to ascertain the length of time that the property was exposed to the marketplace, or to inquire whether the sale was subject to satisfaction of any conditions. Simply stated, plaintiff's appraiser failed to abide by the fundamental tenets of the sales comparison approach and the requirements mandated by our Legislature under N.J.S.A. 2A:83-1. Thus, because material issues exist as to the accuracy, credibility, and reliability of plaintiff's appraiser's sales comparison approach, the court accords it no weight.

In performing his income capitalization approach, plaintiff's appraiser identified five "generic retail" buildings which were leased between February 2008 and July 2011. Four of the leased properties identified by plaintiff's appraiser were located in Union County and one was located in Somerset County. The unadjusted per square foot rental values of the five properties ranged from \$18.68 to \$35.00 per square foot. Plaintiff's appraiser applied adjustments to the comparable leases to account for perceived differences in location, condition, size, and parking. The adjusted rental values of the comparable leases ranged from \$17.60 to \$29.75 per square foot. Ultimately, plaintiff's appraiser concluded a market rent value of \$22.00 per square foot for the 2011 and 2012 tax years, and a market rent value of \$25.00 per square foot for the 2013 tax year. In order to reach a conclusion of value, plaintiff's appraiser multiplied his concluded market rent value by the subject property's gross building square footage, deducted a vacancy and collection loss, and applied stabilized expenses for management fees and capital reserves, which produced an estimated Net Operating Income as of each valuation date. Plaintiff's appraiser then employed the band of investment technique to calculate a capitalization rate, which he applied to the Net Operating Income for each tax year. Finally, the appraiser applied the capitalization rate to the Net Operating Income to reach his concluded opinions of value for the subject property:

\$1,460,000, as of October 1, 2010; \$1,450,000, as of October 1, 2011; and \$1,500,000, as of October 1, 2012.

As with the practices followed by plaintiff's appraiser in his sales comparison approach, the data verification process employed in his income comparison approach also suffers from flaws which are fatal to its credibility and reliability. Plaintiff's appraiser acknowledged during cross-examination that all of his information for comparable leases one, two, four, and five were "sourced" from Costar. The appraiser did not possess copies of any of these leases or lease abstracts, he did not review the leases, and did not verify the terms of these leases, including their inception dates, leased areas, lease terms, or rental values with the landlord, landlord's attorney, tenant, tenant's attorney, or any brokers involved in the transactions. Although plaintiff's appraiser testified that he possessed a "profile" of comparable lease two, he did nothing to verify the integrity of the information contained in the profile.<sup>5</sup>

The only comparable lease for which plaintiff's appraiser possessed any personal knowledge or information was comparable lease three.<sup>6</sup> Plaintiff's appraiser testified that he obtained information about this property after having appraised it for a mortgage lender in connection with the owner's loan refinancing. Cross-examination of the appraiser revealed that the lease information recited in the appraisal report, and upon which the appraiser's testimony was based, came from the exercise of a lease extension option by the tenant. However, the appraiser was unaware of when the original lease commenced or the initial lease term. Moreover, although in the appraiser's opinion the renewal rental rate was fair market value, his testimony revealed

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<sup>5</sup> Comparable lease 2 in plaintiff's 2011 tax year appraisal report is repeated as comparable lease 2 in plaintiff's 2012 tax year appraisal report. Similarly, comparable lease 3 in plaintiff's 2011 tax year appraisal report is repeated as comparable lease 3 in plaintiff's 2012 and 2013 tax year appraisal reports.

<sup>6</sup> Comparable lease 3 in plaintiff's 2011 tax year appraisal report is repeated as comparable lease 3 in plaintiff's 2012 and 2013 tax year appraisal reports.

that he had no recollection of how that rental rate was determined, whether the lease option contained a fixed rental price, whether the renewal rental rate was calculated using a pre-determined mathematical formula, or how the rental value for the renewal term was reached between the landlord and the tenant. Thus, plaintiff's appraiser was unable to offer the court any meaningful, tangible, and credible evidence that the rental rate was an accurate reflection of the market rent on the valuation dates, and that it did not reflect rental predictions made when the original lease was negotiated.

Further, comparable lease three was a "generic retail" stand-alone building being utilized for the sale of mattresses, and not as a restaurant. Effective cross-examination revealed that plaintiff's appraiser was unaware whether the zoning district where comparable lease three was located would permit operation of a restaurant, and that no adjustment was made to the rental rate to account for the costs associated with obtaining zoning approvals. Plaintiff's appraiser further acknowledged that he made no adjustments to comparable three's rental rate to account for the fit-up costs which would be required to convert it into a restaurant.

It is well-settled that the weight to be accorded expert testimony "depends upon the facts and reasoning which form the basis of the opinion. An expert's conclusion can rise no higher than the data providing the foundation (citation omitted). If the bases for the adjustments are not made evident the court cannot extrapolate value." Inmar Associates, *supra*, 2 N.J. Tax at 66. Thus, in order for the opinion of an expert to be of any import, the expert is required to "identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are scientifically reliable." Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992). "Without explanation as to the basis, the opinion of the expert is entitled to little weight.



. . .” Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980) (citing to City of Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)).

Because plaintiff’s appraiser declined to verify the accuracy of the market rent information upon which his income capitalization approach was premised, the court is unable to accord his income capitalization approach any weight. Although commercial real estate listing, marketing and information websites like Costar may be a valuable starting point for identifying likely comparable properties in the appraisal community, it is the process by which an appraiser verifies the accuracy of that data and information that is the hallmark of an effective appraisal report and sound opinion of value. Accordingly, when an appraiser does not properly source, verify, and analyze that data and information to ensure the integrity of the opinions of value derived therefrom, those conclusions are not credible evidence of market rents. When credible evidence has not been presented of the derivation of the market value rents upon which income capitalization conclusions are premised, those conclusions are entitled to little weight. For the foregoing reasons, the court rejects plaintiff’s appraiser’s income capitalization approach to value the subject property.

## **2. Defendant’s Appraiser**

Although defendant’s appraisal report employed both the income capitalization and sales comparison approaches to value, defendant’s appraiser testified that he did not rely on the sales comparison approach to reach a conclusion of value for the subject property. In his opinion, the income capitalization approach was the most appropriate method for deriving a value for the subject property.

Defendant’s appraiser relied upon nine restaurants or “food oriented” retail locations which he considered comparable to the subject property. Defendant’s appraiser credibly testified that the comparable lease information contained in his appraisal report was obtained from either property

that he appraised, and correspondingly, leases which he possessed or reviewed, or lease information which he verified with third parties. The defendant’s appraiser detailed the “tiers” of his data verification process, first attempting to contact the tenant or property owner, then contacting the attorneys responsible for preparing or reviewing the lease, and finally, contacting the broker or brokers involved in the lease transaction.

The nine rentals on which defendant’s appraiser relied to conclude the value of the subject property are outlined below. The appraiser used leases one, two, three, four, and five to derive a value for the subject property for the 2010 tax year; leases three, four, five, six, and seven to derive a value for the subject property for the 2011 tax year; and leases five, six, seven, eight, and nine to derive a value for the subject property for the 2012 tax year.

Lease	Address	Use Occupancy	Condition Basement	Size Parking	Lease date Lease term Lease structure	Rent per Sq. Ft.
#1	2401 Route 22 West Union, NJ	1 Story Restaurant	Average Ten. Reno. No Bsmt.	5,600 sq. ft. Parking	07/2007 15 years Triple Net	\$28.00
#2	115 Elm St. Westfield, NJ	1 Story Restaurant	Average Unf. Bsmt.	4,150 sq. ft. No on-site parking	09/2009 5 years Triple Net	\$30.62
#3	177 Washington Valley Warren, NJ	1 Story Donut Shop	Average No Bsmt.	1,250 sq. ft. Parking	01/2010 10 years Triple Net	\$40.13
#4	128 East Broad St. Westfield, NJ	1 Story Restaurant	Average No Bsmt.	1,800 sq. ft. No on-site parking	03/2010 10 years Triple Net	\$32.00
#5	2560 Route 22 East Scotch Plains, NJ	1 Story Donut Shop	Average No Bsmt.	1,500 sq. ft. Parking	04/2010 5 years Triple Net	\$29.47
#6	417 Route 10 Hanover, NJ	1 Story Diner	Average Unf. Bsmt.	2,434 sq. ft. Parking	09/2011 10 years Triple Net	\$26.11
#7	187 Columbia Tpk. Florham Park, NJ	1 Story Restaurant	Average Ten. Reno. No Bsmt.	3,000 sq. ft. Parking	01/2012 10 years Triple Net	\$33.00
#8	2466 Route 22 Union, NJ	1 Story Diner	Average Unf. Bsmt.	4,865 sq. ft. Parking	02/2012 50 years Triple Net	\$34.53
#9	201 Route 22 Springfield, NJ	1 Story Restaurant	New Ten. Reno. No Bsmt.	4,200 sq. ft. Parking	06/2012 10 years Triple Net	\$32.00

Defendant's appraiser made a variety of adjustments to the comparable rentals to account for changing market conditions, location, building/unit size, and physical attributes. It is well-settled that a witness who has been qualified by the court as an expert is permitted to offer opinion testimony. N.J.R.E. 702. Although the facts or data relied upon by the expert need not be admissible, the testimony must be rooted in facts, science, data or the opinions of other experts. N.J.R.E. 703. Thus, the weight to be accorded expert testimony "depends upon the facts and reasoning which form the basis of the opinion. An expert's conclusion can rise no higher than the data providing the foundation." Inmar Associates, supra, 2 N.J. Tax at 66 (citing City of Passaic v. Gera Mills, supra, 55 N.J. Super. 73).

In discussing his rental size adjustment, defendant's appraiser explained that an adjustment must be made "for economies of scale. . . a larger rental would certainly lease for at a lower rent per square foot than a much smaller rental. . . ." The court observes that a large disparity exists between comparable leases three, four, five, six, seven and the subject property and thus, a rental area adjustment is warranted. The subject property contains 6,098 square feet, while comparable lease three contains 1,250 square feet, or is approximately 20% the size of the subject property; comparable lease four contains 1,800 square feet, or is approximately 30% the size of the subject property; comparable lease five contains 1,500 square feet, or is approximately 25% the size of the subject property; comparable lease six contains 2,434 square feet, or is approximately 40% the size of the subject property; and comparable lease seven contains 3,000 square feet, or is approximately 50% the size of the subject property. In the appraiser's opinion, a 5% adjustment was warranted per 2,500 square foot difference in building area. However, other than the appraiser's bare conclusion, no evidence, statistics, or data was presented or recited to support this adjustment. The appraiser did not identify any market studies, surveys, or pinpoint

the objective data upon which he relied to support his rental area adjustment. Moreover, ignoring the defendant's appraiser's adjustment would be inappropriate, as that would fail to recognize the differences in the market rental values which exist between large and small properties.

Similarly, the appraiser adjusted comparable rental one negatively by 5% to account for changed market conditions between the July 2007 lease date and the October 1, 2010 valuation date. The court finds the need for a market condition adjustment to be credible. A well-documented economic downturn began in late 2007, plunging the United States into one of the worst recessions it had experienced in decades. In defendant's appraiser's opinion, a negative 5% adjustment to comparable rental 1 was warranted to account for those economic events. However, defendant's appraiser presented no market studies, surveys or evidence to support his conclusion that a 5% negative adjustment was warranted over this period of significant economic decline.

Defendant's appraiser further made a location adjustment of negative 10% to comparable rental six to account for its "inferior" location. Although the court acknowledges that under certain conditions location adjustments are necessary, the appraiser presented no traffic studies or testimony supporting his determination that a negative 10% adjustment was warranted. Moreover, defendant's appraisal report also provides little insight in this regard. The report states only that comparable rental six "is a highway locale, although in an inferior mixed-used type area and it required an upward adjustment." The appraisal report offers no meaningful data, studies or surveys to support the location adjustment.

Finally, defendant's appraiser made adjustments to comparable leases one, three, four, five, seven and nine of positive 5% for lack of basement space, and adjustments to comparable leases two, four, five, six and eight of between 5% and 10% for lack of parking or lack of on-site parking. The defendant's appraiser credibly testified that, in a restaurant, rental space is at a

premium and the ability to store produce in walk-ins and to assemble foods in preparation for cooking in an ancillary basement area renders that rental location more valuable. The appraiser further testified that the ready availability of parking and on-site parking makes a restaurant more attractive to prospective patrons. The court finds each of these conclusions to be logical and thus, recognizes the need to make adjustments to account for these differences. However, no evidence, statistics, surveys, or data was provided supporting the degree to which these factors affect rental value.

Adjustments must have a foundation obtained from market-derived sources or objective data and not be based on subjective observations and/or personal experience. An appraiser's adjustments "must have a foundation obtained from the market. . . ." Greenblatt, supra, 26 N.J. Tax at 55. "[T]he opinion of an expert depends upon the facts and reasoning which form the basis of the opinion. Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Id. at 55. Here, defendant's appraiser failed to provide the "why and wherefore" in support of his rental adjustments. The appraiser did not identify any studies, surveys or the objective market data upon which his rental adjustments were based. When the evidentiary foundation forming the basis of an expert's adjustment is not well-defined, the court cannot be expected to deduce a value therefrom. The weight to be accorded expert testimony relative to adjustments "depends upon the facts and reasoning which form the basis of the opinion. An expert's conclusion can rise no higher than the data providing the foundation." Inmar Associates, supra, 2 N.J. Tax at 66 (citing City of Passaic v. Gera Mills, supra, 55 N.J. Super. 73). Consequently, without an adequate understanding of the bases supporting defendant's appraiser's adjustments, the court is unable to conclude that they are reasonable and therefore, is unable to conclude a fair market rental value for the subject property.

**d. The Glen Wall dilemma**

Nonetheless, the court is mindful of its obligation “to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question.” Glen Wall Associates v. Township of Wall, 99 N.J. 265, 280 (1985) (citing New Cumberland Corp. v. Borough of Roselle, 3 N.J. Tax 345, 353 (Tax 1981)). However, to enable the court to make an independent finding of true value, credible and competent evidence must be adduced in the trial record.

Here, plaintiff’s appraiser’s failure to properly verify the integrity and accuracy of the underlying data and information renders the conclusions and opinions based thereon patently unreliable. Although defendant’s appraiser offered credible testimony with respect to the procedures employed by him to assure the accuracy of the underlying comparable lease information, he presented inadequate data, surveys, and analysis supporting his adjustments to the comparable leases. Thus, the court concludes that as a result of the inadequacies in the appraisers’ reports and testimony, the record contains insufficient credible evidence for this court to make an independent determination of the true value of the subject property by a fair preponderance of the evidence.

Accordingly, the court concludes that plaintiff has failed to prove, by a fair preponderance of the evidence, that the local property tax assessments on the subject property exceeded their true market value. Moreover, the court further concludes that defendant has failed to provide credible and competent evidence establishing the true market value of the subject property. Therefore, the court shall enter judgments affirming the 2011, 2012 and 2013 tax year assessments and dismissing plaintiff’s Complaints in this matter.