

TAX COURT OF NEW JERSEY

Joshua D. Novin  
Judge



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NOT FOR PUBLICATION WITHOUT THE APPROVAL  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

August 5, 2015

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Re: Hamil Graham v. Roselle Borough  
Docket No. 015573-2013

Dear Mr. Linder and Ms. DeAppolonio:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the 2013 tax year assessment on plaintiff's single-family residence. For the reasons stated more fully below, the assessment is reduced.

**I. Procedural History and Factual Findings**

Hamil Graham ("plaintiff") is the owner of the single-family home located at 448 Bartlett Street, in the Borough of Roselle, County of Union and State of New Jersey. The property is identified on the tax map of the Borough of Roselle as Block 6301, Lot 5 (the "subject property"). For the 2013 tax year, the subject property was assessed as follows:

Land:	\$64,000
<u>Improvements:</u>	<u>\$88,600</u>
Total	\$152,600

The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for Roselle Borough (“defendant”) for the 2013 tax year is 57.61%, with a corresponding Chapter 123 common level range between 48.97% and 66.25%. See N.J.S.A. 54:1-35a(a); N.J.S.A. 54:1-35a(b). When the average ratio is applied to the assessment, the implied equalized value of the subject property for the 2013 tax year is \$264,884.56.

Plaintiff filed a petition of appeal with the Union County Board of Taxation (the “Board”) challenging the 2013 tax year assessment on the subject property. On August 23, 2013, the Board entered a Memorandum of Judgment (the “Judgment”) denying plaintiff’s claim for relief under judgment code “2A” – “Assessment within Range.” Plaintiff filed a timely Complaint with the Tax Court contesting the Board’s Judgment. The defendant did not file a Counterclaim. The matter was tried to conclusion on February 9, 2015.

At trial, plaintiff offered the testimony of a State of New Jersey certified general real estate appraiser (“plaintiff’s appraiser”) and offered the appraisal report of plaintiff’s appraiser into evidence. Defendant raised three objections to plaintiff’s appraiser’s testimony and admission of his appraisal report. Defendant argued that plaintiff’s appraiser should be barred from testifying because he did not personally inspect the interior of the subject property. Instead, plaintiff’s appraiser engaged a State of New Jersey certified residential real estate appraiser, as an independent contractor (the “independent contractor appraiser”), to inspect and photograph the interior of the subject property.<sup>1</sup> Defendant further objected to the admission of the appraisal report because it was executed on December 22, 2014 and reflects that the licenses of plaintiff’s appraiser and the independent contractor appraiser expired on December 31, 2013.

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<sup>1</sup> Defendant did not contest plaintiff’s appraiser’s experience and qualifications to be an expert witness, rather defendant’s counsel asserted that plaintiff’s appraiser reliance upon the independent contractor appraiser’s interior inspection of the subject property prohibited his testimony as an expert witness in this matter.

Finally, defendant argued that because the appraisal report designated plaintiff's appraiser as "supervisory appraiser" and not as "appraiser", the testimony of the "appraiser" was required in order to admit the report into evidence.

The court reserved decision on accepting plaintiff's appraiser as an expert and admitting his appraisal report into evidence in this matter. The court invited plaintiff and defendant to submit post-trial briefs addressing plaintiff's appraiser's qualifications to testify as an expert, admission of the appraisal report and plaintiff's appraiser's designation in the appraisal report as "supervisory appraiser". The parties submitted post-trial briefs addressing those issues.

## **II. Conclusions of Law**

### **a. Qualification and admissibility**

Under N.J.R.E. 702, an individual possessing particular knowledge, skill, experience, training or education, may be qualified by the court as an expert and therefore, permitted to offer opinion testimony. An expert must be suitably "qualified and possessed of sufficient specialized knowledge to be able to express and to explain the basis of that opinion." State v. Moore, 122 N.J. 420, 458-59 (1991). Thus, not only must a witness be duly qualified to testify as an expert, but for the expert's opinion to be meaningful to the trier of fact, it must be supported by a proper foundation, based on credible facts and data. Peer v. City of Newark, 71 N.J. Super. 12, 21 (App. Div. 1961), certif. denied, 36 N.J. 300 (1962). As set forth in Rosenberg v. Tavorath, 352 N.J. Super. 385, 401 (App. Div. 2002):

In addition to determining whether a witness is qualified to testify as an expert, the trial court must also decide the closely related issue as to whether the expert's opinion is based on facts and data. Biunno, Current N.J. Rules of Evidence, comment 2 on N.J.R.E. 702 (2002). As construed by applicable case law, N.J.R.E. 703 requires that an expert's opinion be based on facts, data, or another expert's opinion, either perceived by or made known to the expert,

at or before trial. Buckelew v. Grossbard, 87 N.J. 512, 524 (1981); Nguyen v. Tama, 298 N.J. Super. 41, 48-49 (App. Div. 1997).

Therefore, it is incumbent upon the trial court, after qualifying a witness as an expert, to evaluate the facts or data which form the basis of the expert's opinion. An expert's conclusions must be rooted in facts and data perceived or made known to the expert at or before the trial. Although, they need not be admissible, the facts and data must be "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." N.J.R.E. 703. Thus, the expert must "give the why and wherefore" of his or her opinion, rather than a mere conclusion." Rosenberg v. Tavorath, *supra*, 352 N.J. Super. at 401 (quoting Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div.), certif. denied 145 N.J. 374 (1996)). The bare conclusions of an expert, unsupported by factual evidence and data will not withstand judicial scrutiny and constitutes an inadmissible "net opinion." State v. Townsend, 186 N.J. 473, 494-495 (2006).

In support of plaintiff's appraiser's qualification as an expert in this matter, plaintiff relies upon the Tax Court's opinion in Elrabie v. Borough of Franklin Lakes, 24 N.J. Tax 158, 163 (Tax 2008). In Elrabie, the taxpayers objected to admission of defendant's expert's appraisal report based upon his testimony that he did not personally inspect the interior of the residence prior to reaching an opinion on value. In that case, defendant's expert's appraisal report was signed by both the expert and an appraiser he employs, and contained a certification indicating that only the employee appraiser personally inspected the interior of the property. The employee appraiser reported his findings and observations to defendant's expert, who inspected the exterior of the taxpayers' residence. Thus, defendant's expert obtained information regarding the interior condition of the taxpayers' property from his employee

appraiser, from individuals who performed a municipal-wide revaluation and from the multiple listing service.

In rejecting the taxpayers' argument, the court concluded that defendant's expert possessed "a sufficient basis upon which to opine on the value" of the taxpayers' property, thereby rendering his testimony and appraisal report admissible. Id. at 163. In reaching that conclusion, the court pointed to the Appellate Division's decision in Jablin v. Borough of Northvale, 13 N.J. Tax 103 (App. Div. 1991). There the court advanced the view that an expert's failure to conduct an interior inspection of the property "speaks to the weight to be accorded testimony as opposed to its admissibility." Id. at 108. The court, in examining N.J.R.E. 703 and N.J.S.A. 2A:83-1, observed that an expert is permitted to rely upon "facts or data. . . made known to him at or before the hearing" and to "testify regarding information of comparable land sales obtained from the owner, seller, purchaser, lessee...or the broker or attorney who 'negotiated...or [was] cognizant of such sales...'" Id. at 106. Although Jablin, supra, did not address admissibility of the expert's report, it is a well-settled principle that if a witness is qualified as an expert, then the expert's report may be admitted into evidence to assist the trier of fact. See Little Egg Harbor Township v. Bonsangue, 316 N.J. Super. 271, 280 (App. Div. 1998).

Here the objections raised by defendant to the court accepting plaintiff's appraiser as an expert and admission of his appraisal report speak to issues of credibility and the weight to be accorded plaintiff's appraiser's testimony in this matter. Voir dire of plaintiff's appraiser revealed that he is a licensed State of New Jersey certified general real estate appraiser, who has been appraising real property for more than 29 years. Plaintiff's appraiser also provided credible testimony that his license and the license of the independent contractor appraiser were in full

force and effect both as of the valuation date and as of the date of the appraisal report.

Plaintiff's appraiser detailed the oversight process employed by his office to ensure that appraisers rendering services to his office are properly licensed with the State of New Jersey and maintain appropriate errors and omissions insurance coverage. Moreover, in the past, this court had recognized plaintiff's appraiser as an expert in the field of property valuation. Thus, the court is satisfied that plaintiff's appraiser possessed the requisite knowledge, skill, experience and training to be qualified as an expert in property valuation and to express opinion testimony.

Turning to the closely aligned issue, under N.J.R.E. 703, whether the facts or data relied upon by plaintiff's appraiser were perceived or made known to him at or before trial, the court affirmatively concludes that they were. Plaintiff's appraiser candidly acknowledged that the independent contractor appraiser bore responsibility for inspecting the interior of and gathering data about the subject property, including photographing same. In reaching his opinion of value for the subject property, plaintiff's appraiser provided credible testimony that he inspected the exterior and formulated "my opinion of value" based on a review of "the data, as well as verbally going over the reports" with the independent contractor appraiser. Plaintiff's appraiser conferred with the independent contractor appraiser regarding the interior features and amenities of the subject property, including their condition, and reviewed her interior photographs. Significantly, the certification page of the appraisal report was signed by both plaintiff's appraiser and the independent contractor appraiser, signaling that the views and opinions expressed therein were plaintiff's appraiser's opinions and conclusions. Thus, the record is replete with factual evidence, data and information about both the subject property and the comparable sales, upon which plaintiff's appraiser relied, to form his opinion of value.

Hence, the court concludes that plaintiff's appraiser's opinion of value for the subject property was sufficiently supported by facts, data and information which were made known to him prior to preparation of the appraisal report and his testimony in this matter. Moreover, the sources of factual information and data were of a type reasonably relied upon by other experts in his field. N.J.R.E. 703. Thus, plaintiff's appraiser amassed sufficient data and information upon which he was able to base an opinion of value for the subject property, rendering his opinion testimony and appraisal report admissible.

The court further concludes that plaintiff's appraiser's designation as "supervisory appraiser" on the "Appraiser's Certification" contained in the appraisal report has no bearing on plaintiff's appraiser's qualification as an expert and admission of his appraisal report in this matter. A "trainee" real estate appraiser must perform appraisal services under the "direct supervision" of a state certified general or residential real estate appraiser designated as "supervising appraiser." N.J.A.C. 13:40A-4.6. Moreover, a "supervising appraiser" is required to "[p]ersonally inspect, with the trainee, the interior and exterior of each appraised property until the supervising appraiser determines that the trainee is competent in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice." N.J.A.C. 13:40A-4.6(e)(6). Here, the independent contractor appraiser was not a "trainee" real estate appraiser requiring direct supervision. Credible evidence was presented during trial that the independent contractor appraiser was a state certified residential real estate appraiser. Thus, the provisions of N.J.A.C. 13:40A-4.6(e)(6) requiring the "supervising appraiser" to personally inspect the subject property with the "trainee" were inapposite. Additionally, by executing the "Appraiser's Certification" in the appraisal report, plaintiff's appraiser certified that the statements contained in the report are true and correct, the reported opinions and conclusions are

his personal, impartial and unbiased opinions and conclusions, and that the opinions, analyses and conclusions have been prepared in accordance with the Uniform Standards of Professional Appraisal Practice. Thus, the opinions, conclusions and analysis contained in the appraisal report are plaintiff's appraiser's and the testimony of the independent contractor appraiser is unnecessary to admit the appraisal report into evidence.

**b. 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 v. North Arlington Borough, 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. Newark City, 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)(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, 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 the matter 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 the presumption of validity has been overcome, does not equate to a finding by the court that the 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. Edison Township, 127 N.J. 290, 312 (1992). The court must be mindful that “although there may have been enough evidence [presented] to overcome the presumption of correctness 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).

### **III. Valuation**

The plaintiff’s appraiser employed the comparable sales approach to reach an opinion of the true market value of the subject property. In plaintiff’s appraiser’s opinion, the true market value of the subject property, as of the October 1, 2012 valuation date, was \$155,000.

“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) (citing Appraisal Institute, The Appraisal of Real Estate 81 (11<sup>th</sup> ed. 1996), certif. denied, 168 N.J. 291 (2001)). “[T]he answer as to which approach should predominate depends upon the facts in the particular case.” 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). 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.” Appraisal Institute, The Appraisal of Real Estate 377 (14<sup>th</sup> ed. 2013). The sales comparison approach involves a “comparative analysis of properties” and requires the expert to 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 data is available, this [approach] is the most straight forward and simple way to explain and support an opinion of market value.” Greenblatt v. Englewood City, supra, 26 N.J. Tax at 53 (citing Appraisal Institute, The Appraisal of Real Estate 300 (13<sup>th</sup> ed. 2008)). Here the court concludes, as did plaintiff’s appraiser, the sales comparison approach is the most appropriate method to determine the true market value of the subject property.

Based on the evidence proffered during trial, the court concludes the subject property is a ranch-style, single-family home, approximately 40 years old, in average condition, situated on a 6,000 square foot lot. The home consists of a total of seven rooms, three bedrooms, one full bathroom on the main floor and one full bathroom in the basement, a full finished basement, a one-car garage, a rear deck and patio area and in-ground pool. The subject property has a gross

living area of 1,815 square feet. The third bedroom in the subject property has been extended into a portion of the garage, resulting in the garage bearing dimensions of 8.0' (w) x 12.0' (l). The home is located appurtenant to a right of way containing overhead "power lines".

Engaging in the sales comparison approach, plaintiff's appraiser relied on the sale of three single-family homes in Roselle Borough. The unadjusted sales prices of the comparable sales ranged from \$140,000 to \$159,000. After adjustments, the adjusted sales prices ranged from \$144,900 to \$164,400.

Comparable sale one located at 561 Trinity Place, Roselle Borough, New Jersey sold in September 2012, for a reported price of \$140,000. This comparable is a cape-cod style home, located approximately 0.24 miles from the subject property, on an 8,250 square foot lot. Comparable sale one has a gross living area of 1,672 square feet. Plaintiff's appraiser made the following adjustments to the sales price of comparable sale one: (i) a negative adjustment of \$5,000 for location; and (ii) a positive adjustment of \$2,900 for gross living area, calculated at \$20.00 per square foot; and (iii) a positive adjustment of \$3,000 for the lack of central air conditioning; and (iv) a negative adjustment of \$3,000 for the presence of a one-car garage; and (v) a positive adjustment of \$2,000 for lack of a deck; and (vi) a positive adjustment of \$5,000 for the lack of an in-ground pool.

In total, plaintiff's appraiser made net adjustments of 3.5% and gross adjustments of 14.9% to comparable sale one. The final adjusted sale price was \$144,900.

Comparable sale two located at 1241 Wheatsheaf Road, Roselle Borough, New Jersey sold in July 2012, for a reported price of \$159,000. This comparable is ranch style home, located approximately .95 miles from the subject property, situated on a 15,375 square foot lot. This comparable has a gross living area of 1,480 square feet. Plaintiff's appraiser made the

following adjustments to the sales price of comparable sale two: (i) a negative adjustment of \$5,000 for location; and (ii) a negative adjustment of \$2,300 for lot size; and (iii) a positive adjustment of \$2,000 for the lack of a half bathroom; and (iv) a positive adjustment of \$6,700 for gross living area, calculated at \$20.00 per square foot; and (v) a positive adjustment of \$3,000 for the lack of central air conditioning; and (vi) a negative adjustment of \$6,000 for the presence of a two-car garage; and (vii) a positive adjustment of \$2,000 for lack of a deck; and (viii) a positive adjustment of \$5,000 for the lack of an in-ground pool.

In total, plaintiff's appraiser made net adjustments of 3.4%, and gross adjustments of 20.12% to comparable sale two. The final adjusted sale price was \$164,400.

Comparable sale three located at 429 E. 5<sup>th</sup> Avenue, Roselle Borough, New Jersey sold in May 2012, for a reported price of \$155,000. This comparable is ranch style home, located approximately 1.29 miles from the subject property, situated on a 7,500 square foot lot. This comparable has a gross living area of 1,576 square feet. Plaintiff's appraiser made the following adjustments to the sales price of comparable sale three: (i) a negative adjustment of \$5,000 for lot size; and (ii) a positive adjustment of \$4,800 for gross living area, calculated at \$20.00 per square foot; and (iii) a negative adjustment of \$3,000 for the presence of a one-car garage; and (iv) a positive adjustment of \$2,000 for the lack of a deck; and (v) a positive adjustment of \$5,000 for the lack of an in-ground pool.

In total, plaintiff's appraiser made net adjustments of 2.5%, and gross adjustments of 12.77% to comparable sale three. The final adjusted sale price was \$158,800.

The court finds that comparable sale one lacks credibility as evidence of the true market value of the subject property.

Comparable sale one is a cape-cod style home. During trial, plaintiff's appraiser stated that "there are not a lot of ranches in Roselle, so I was forced to use a different style..." in the comparative sales analysis. Plaintiff's appraiser further conceded that he utilized comparable sale one only because "there were no other ranch sales similar to the subject" and "a cape-cod is a slightly similar (emphasis added) alternative housing choice..." Paramount to the sales comparison approach to value, is the requirement that a substantial similarity must exist between the subject property and the comparable properties. "Evidence of comparable sales is effective in determining value only where there is a substantial similarity between the properties." Venino v. Borough of Carlstadt, 1 N.J. Tax 172, 175 (Tax 1980), aff'd o.b. 4 N.J. Tax 528 (App. Div. 1981); See also Bloomfield Associates v. Bloomfield Town, 12 N.J. Tax 501 (Tax 1992); Glenpointe Assocs. v. Township of Teaneck, 241 N.J. Super. 37, 48 (App. Div. 1990), certif. denied, 122 N.J. 391 (1990). By definition, comparability does not require properties to be identical, "differences between a comparable property and the subject property are anticipated. They are dealt with by adjustments recognizing and explaining these differences, and then relating the two properties to each other in a meaningful way so that an estimate of the value of one can be determined from the value of the other." U.S. Life Realty Corp. v. Jackson Township, 9 N.J. Tax 66, 72 (Tax 1987). The plaintiff's appraiser's conclusion that a ranch style home is only "slightly similar" to a cape-cod style home may not be unreasonable. However no meaningful testimony, evidence or data was presented in support of his assertion that a cape-cod style home is both competitive in the marketplace with, and an accurate representation of, the true market value of a ranch style home. Likewise, no consideration was given in plaintiff's appraiser's adjustment grid to account for the only "slightly similar" character of the two property styles. In employing a sales comparison approach, the evidence

must show that the properties are “sufficient[ly] similar[] in some significant respects to permit...the fact-finder, to draw rational probative valuation inferences from the sales cited.” Ford Motor Co. v. Township of Edison, supra, 127 N.J. at 307 (quoting Moorestown Township v. Slack, 85 N.J. Super. 109 (App. Div. 1964)). Moreover, the evidence presented “must be based on ‘sound theory and objective data’, rather than on mere wishful thinking.” MSGW Real Estate Fund, supra, 18 N.J. Tax at 376 (quoting FMC Corp. v. Unmack, 92 N.Y. 2d 179, 188 (1998)). Absent quantifiable evidence demonstrating that comparable sale one bears material similarities to, and thus fairly and adequately represents the true market value of the subject property, the court is unable to reach a conclusion on its reasonableness and the weight to be accorded it in the comparative analysis.

Comparable sales two and three were both categorized as non-usable for purposes of the Director of the Division of Taxation’s annual assessment-sales ratio study. N.J.S.A. 54:1-35.1; N.J.A.C. 18:12-1.1(a). Comparable sale two bore non-usable code “10”, referring to “[s]ales by guardians, trustees, executors and administrators” and comparable sale three bore non-usable code “26”, referring to “[s]ales which for some reason other than specified in the enumerated categories are not deemed to be a transaction between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell.” N.J.A.C. 18:12-1.1(a).

Although a sale transaction designated as “non-usable” causes it to be excluded from the Director’s annual assessment-sales ratio study, it does not bar it as evidence of true value. “The purpose behind N.J.A.C. 18:12-1.1 is to ascertain true value... [which] for purposes of this act [N.J.S.A. 54:1-35.3] shall be deemed to be valuation at current market prices...” Township of Pennsville v. Director, Division of Taxation, 16 N.J. Tax 47, 53 (App. Div. 1996). Our Supreme Court has interpreted the term “true value” to be synonymous with the term “market value.”

West Deptford Township v. Gloucester County Board of Taxation, 6 N.J. Tax 79, 86 (Tax 1983).

Market value has been defined as:

the most probable price, as of a specified date, in cash or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Appraisal Institute, The Appraisal of Real Estate 58 (14<sup>th</sup> ed. 2013). Thus, “there may be instances when the sale price may not reflect true market value. In such instances it is for the court to appraise the circumstances surrounding a sale to determine if there were special factors which affected the sale price without affecting the true value.” Glen Wall Assocs. v. Township of Wall, 99 N.J. 265, 282 (1985).

Here, the defendant questioned the reliability of comparable sales two and three, consequently the defendant bears the burden of demonstrating the sales do not reflect “market value”. Defendant argued that comparable sales two and three were identified as non-usable sales for purposes of the Director’s annual assessment-ratio study and therefore, were not adequate evidence of true market value. However, simply arguing that a sale was categorized as non-usable for purposes of the Director’s annual assessment-sales ratio study does not render the sale unacceptable for valuation purposes. The party opposing consideration of the sale must demonstrate with competent credible evidence that the sale does not reflect true market value. Greenblatt v. Englewood City, *supra*, 26 N.J. Tax at 54. The court concludes that defendant has not met this burden.

In plaintiff’s appraiser’s opinion, comparable sales two and three were “arms-length” sale transactions. Plaintiff’s appraiser provided credible testimony regarding the verification process

he employed with each selling real estate broker to confirm the transaction terms and conditions. In plaintiff's appraiser's opinion, each sale was adequately exposed to the market and listed on a multiple listing service for a commercially reasonable period of time. Plaintiff's appraiser further confirmed that the buyer and seller were each represented by different real estate professionals, and he was unable to discern from them the presence of any duress or compulsion to sell. Although defendant attempted, during cross-examination, to impugn the integrity of comparable sales two and three based on their non-usable code designations, defendant did not present any independent credible evidence that these sales did not reflect market value.

Thus, the court will rely on comparable sale two and three as evidence of the subject property's true market value. However, plaintiff's appraiser's adjustments for location, site size and garage lack a proper foundation and are unsupported by objective market data, studies and information to be meaningful to the court. The above-cited adjustments are without adequate support in the record, other than the knowledge, experience and impressions of plaintiff's appraiser. It is well-settled that 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 v. Edison Township, 2 N.J. Tax 59, 66 (Tax 1980) (citing Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)). Thus, if the basis of an expert's adjustments are not well-defined, the court cannot deduce value therefrom.

Hence, the court accepts as reasonable the following adjustments to comparable sale two: (i) the positive adjustment of \$2,000 for the lack of a half bathroom; and (ii) the positive adjustment of \$6,700 for gross living area; and (iii) the positive adjustment of \$3,000 for the lack of central air-conditioning; and (iv) the positive adjustment of \$2,000 for the lack of a deck; and



(v) the positive adjustment of \$5,000 for the lack of an in-ground pool. This results in total adjustments of a positive \$18,700 ( $\$2,000 + \$6,700 + \$3,000 + \$2,000 + \$5,000 = \$18,700$ ), and an adjusted sales price of \$177,700 ( $\$159,000 + \$18,700 = \$177,700$ ).

The court further accepts as reasonable the following adjustments to comparable sale three: (i) the positive adjustment of \$4,800 for gross living area; and (ii) the positive adjustment of \$2,000 for the lack of a deck; and (iii) the positive adjustment of \$5,000 for the lack of an in-ground pool. This results in total adjustments of a positive \$11,800 ( $\$4,800 + \$2,000 + \$5,000 = \$11,800$ ), and an adjusted sales price of \$166,800 ( $\$155,000 + \$11,800 = \$166,800$ ).

Due to the similarities which exist between comparable sale two and three in gross living area, location and amenities, the court will give equal weight to comparable sales two and three. Thus, after consideration of the comparable property sales, the court concludes that the true market value of the subject property as of October 1, 2012 was \$172,250.

Having reached a conclusion of the fair market value of the subject property, the court must turn its attention to a determination of the correct assessment for the 2013 tax year. This process involves application of the Chapter 123 average ratio. N.J.S.A. 54:1-35a(a). This requires the fair market value of the subject property to be evaluated against the average ratio for the taxing district for the appeal tax year. The Chapter 123 average ratio for the Borough of Roselle for the 2013 tax year is 57.61%, with a lower limit of 48.97% and an upper limit of 66.25%. The ratio of assessment, \$152,600, to fair market value, \$172,250, yields a ratio of 88.59%, which exceeds the upper limit of the common level range.

Consequently, under N.J.S.A. 54:51A-6(a), the formula for determining the revised taxable value of the subject property for the 2013 tax year is:

$$\text{True market value} \quad \times \quad \text{Average ratio} \quad = \quad \text{Revised taxable value}$$

Thus, the calculation for the 2013 tax year is:

$$\$172,250 \quad \times \quad .5761\% \quad = \quad \$99,250 \text{ (rounded)}$$

The court will therefore enter judgment setting the assessment on the subject property for the 2013 tax year as follows:

Land:	\$ 64,000
<u>Improvements:</u>	<u>\$ 35,250</u>
Total	\$ 99,250

Judgment shall be entered accordingly.

Very truly yours,



Joshua D. Novin, J.T.C.