

TAX COURT OF NEW JERSEY

Joshua D. Novin  
Judge



153 Halsey Street, 12<sup>th</sup> Floor  
P.O. Box 47025  
Newark, New Jersey 07101  
Tel: (973) 645-4280 Fax: (973) 645-4283

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OF THE TAX COURT COMMITTEE ON OPINIONS

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Lawrence P. Cohen, Esq.  
Lavery, Selvaggi, Abromitis & Cohen, P.C.  
1500 Route 517, Suite 300  
Hackettstown, New Jersey 07840

Daniel G. Keough, Esq.  
Ventura, Miesowitz, Keough & Warner, P.C.  
783 Springfield Avenue  
Summit, New Jersey 07901

Re: Baltimore Street Associates, LLC  
v. Lopatcong Township  
Docket Nos. 015105-2010, 015672-2011

Morris Park Associates, LLC  
v. Lopatcong Township  
Docket Nos. 015077-2010, 015791-2011

Dear Mr. Cohen and Mr. Keough:

This letter constitutes the court's opinion in the above-referenced matters on defendant's motions for judgment at the close of all the evidence, under R. 4:40-1. For the reasons explained more fully below, defendant's motions are denied.

**I. Procedural History**

Morris Park Associates, LLC ("Morris Park Associates"), filed tax appeals challenging the 2010 property tax assessments on 124 vacant improved building lots, and the 2011 property tax assessments on 105 vacant improved building lots, located in the Township of Lopatcong,

County of Warren and State of New Jersey (hereinafter referred to as “Lopatcong” or “defendant”). The building lots bear land only assessments for the 2010 and 2011 tax years ranging from \$100,000 to \$105,500. The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for Lopatcong is 100.54% for the 2010 tax year and 104.93% for the 2011 tax year. See N.J.S.A. 54:1-35a(a).

The vacant building lots are located in an age-restricted residential subdivision commonly known as Delaware Crossing. The development is designed for the construction of semi-detached single-family dwellings. The subdivision is located in the AARC (Adult Active Residential Community) Zone of Lopatcong. Permitted uses in the AARC Zone include age-restricted townhouses, apartments and accessory development uses. The building lots are commonly known as Block 85.02, Lots 3 through 8; Block 85.02, Lots 13 through 16; Block 85.02, Lots 20 through 37; Block 85.02, Lot 39; Block 85.02, Lots 43 through 46; Block 85.02, Lot 49; Block 85.02, Lot 53 through 64; Block 85.03, Lots 2 and 3; Block 85.03, Lots 8 through 15; Block 85.03, Lot 18; Block 85.03, Lots 20 through 47; Block 85.04, Lots 1 through 8; Block 85.04, Lots 11 through 19; Block 85.05, Lots 2 through 9; Block 85.05, Lots 12 through 14; Block 85.05, Lots 22 through 31; and Block 85.06, Lot 1 (collectively referred to as the “Morris Park Associates property”).

Baltimore Street Associates, LLC (“Baltimore Street Associates”), filed tax appeals challenging the 2010 and 2011 property tax assessments on 72 vacant improved, multi-family condominium building lots in Lopatcong. The vacant building lots are located within a multi-family condominium development known as Warren Heights. The vacant building lots are commonly known as Block 115.06, Lot 19, Qualifier C0283; Block 115.07, Lots 4 through 12, 14 through 18, 20 through 24, Qualifiers C0334 through C0338, C0321 through C0324, C0326 through C0328, C0311, C0312, C0314 through C0318; Block 115.08, Lots 1 through 16,

Qualifiers C0351 through C0358, and C0341 through C0348; Block 115.09, Lots 1, 3, 9, 10, 11 and 17, Qualifiers C0361, C0363, C0371, C0372, C0373 and C0381; Block 115.10, Lots 1 through 24, Qualifiers C0411 through C0418, C0401 through C0408, C0391 through C0398; Block 115.11, Lot 3, Qualifier C0443; Block 115.11, Lot 8, Qualifier C0448; Block 115.11, Lot 11, Qualifier C0433; Block 115.11, Lot 15, Qualifier C0437; Block 115.11, Lot 16, Qualifier C0438; and Block 115.11, Lot 20, Qualifier C0424 (collectively referred to as the “Baltimore Street Associates property”).

The Morris Park Associates, LLC and Baltimore Street Associates, LLC matters were called for trial together. The parties represented that the appeals filed involved both vacant and improved property. It was the mutual desire of the parties to proceed first with the trials of the vacant improved building lots in the 2010 and 2011 matters only. The 2010 and 2011 Baltimore Street Associates and Morris Park Associates matters were tried consecutively, with testimony and evidence being offered on December 11, 2014, January 6, 2015, May 15, 2015 and June 24, 2015.

During trial, Morris Park Associates and Baltimore Street Associates offered the testimony of a State of New Jersey certified general real estate appraiser, who after voir dire, and over defendant’s counsel’s objection, was accepted by the court as an expert in the field of real property valuation (the “expert”). The court placed a statement of reasons on the record for accepting the expert. The expert prepared written appraisal reports for the Morris Park Associates property and the Baltimore Street Associates property that were each admitted into evidence.

The expert concluded that the highest and best use of the Morris Park Associates property is for development of age restricted single-family residential dwellings, and that the highest and best use of the Baltimore Street Associates property is for development of multi-family

residential dwellings. The expert relied on the Sales Comparison Approach to value both the Morris Park Associates and Baltimore Street Associates properties, concluding that it is the most appropriate approach to determine the market value of vacant land. The defendant did not offer any expert report or expert testimony into evidence, but rather relied on the assessment.<sup>1</sup>

Upon closure of all evidence, defendant sought entry of judgment under R. 4:40-1, and requested the opportunity to submit a brief addressing the issues.<sup>2</sup> In support of the motions for judgment, defendant raises two arguments. First, defendant contends that cross-examination disclosed errors, baseless assumptions and unfounded conclusions in both the expert's testimony and appraisal reports requiring the court to conclude plaintiff failed to overcome the presumption of validity that attaches to the quantum of the tax assessments. Due to these alleged errors, defendant maintains the appraisal reports violate Standards Rule 1-1(b) and (c) of the Uniform Standards of Professional Appraisal Practice and therefore, cannot be used to overcome the presumption of validity. Second, defendant asserts the expert's time adjustments lack any independent analysis, data or statistical information and thus, constitute inadmissible net opinions.

In opposition to defendant's motions, and in support of his cross-motions for judgment under R. 4:40-1, plaintiffs' counsel argues that the record is "amply supported" by appraisal reports and expert testimony, demonstrating the subject properties tax assessments "vastly exceed" their fair market values. Plaintiffs' counsel submits that defendant has offered no expert testimony challenging the opinions and conclusions of plaintiffs' expert, thus, judgments should

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<sup>1</sup> On July 26, 2013, Judge Vito Bianco, J.T.C. entered an Order barring and precluding Lopatcong from offering into evidence at trial any expert report and/or expert testimony in these matters.

<sup>2</sup> Due to the length of time which elapsed between trial dates, prior to closure of the evidence counsel requested the opportunity to review their trial notes to ensure all exhibits sought to be offered into evidence were offered. On July 30, 2015, the court issued an opinion addressing several evidentiary matters raised by counsel and concluded presentation of the evidence. Counsel mutually requested the court first address defendant's motions under R. 4:40-1 before submission of post-trial briefs.

be entered reducing the assessments on the Morris Park Associates and Baltimore Street Associates properties.

## II. Conclusions of Law

A motion for judgment or involuntary dismissal may be brought either at the close of plaintiff's case, under R. 4:37-2(b), or at the close of all the evidence, under R. 4:40-1. Verdicchio v. Ricca, 179 N.J. 1, 30-32 (2004). Irrespective of when such motions are presented, the trial court's review is governed by the same evidentiary standard. That inquiry requires the trial court to:

accept[ing] as true all the evidence which supports the position of the party defending against the motion and accord[ing] him the benefit of all inferences which can reasonably and legitimately be deduced therefrom....

[Estate of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000) (quoting Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 415 (1997) (quoting Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969)) (citations and quotations omitted from original).]

In deciding such a motion, the court must view the evidence presented as “uncontradicted” and accord the non-moving party the “benefit of all legitimate inferences” which can be deduced therefrom. Verdicchio, supra, 179 N.J. at 30-32. See also MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 376 (Tax 1998). Thus, when presented with a motion for judgment or involuntary dismissal, the decision of the trial court turns upon an evaluation of the evidence. Therefore, the court's analysis in these matters begins with a brief recitation of the evidence presented.

### A. Morris Park Associates, LLC

Plaintiff's expert relies upon four comparable land sales to support his Sales Comparison Approach to valuing the Morris Park Associates property. Three of the land sales are located in the Town of Hackettstown, Warren County, New Jersey, and one is located in the Town of

Millville, Cumberland County, New Jersey. The expert testified that he employed three principle criteria in analyzing and selecting the comparable land sale transactions: (1) it must be a high-density development; (2) subject to age-restrictions; and (3) must have sold within a time frame bearing a reasonable correlation to the dates of valuation. The expert offered that his firm employs a data verification process in which he or licensed staff appraisers review the comparable land sale deeds, SR1A forms, and consult with participants to the transactions to confirm details.

The expert employed adjustments to the comparable land sales for time, size, development approvals and construction of roads/utilities. In the expert's opinion, age-restricted land sale prices were stable in 2007, decreased at a rate of 6% per annum during 2008 and 2009, and stabilized in 2010. Thus, he posited that downward adjustments were warranted to three of the comparable land sales to account for those market changes. The expert further opined that there is an inverse correlation between site size and unit value; the larger the site, the lower the unit value. Thus, in the expert's opinion, an upward adjustment was warranted to one of the comparable land sales to account for differences in site size. Finally, the expert offered testimony that he relied on tables compiled by Marshall Valuation Service (Marshall & Swift/Boeckh, LLC), to estimate the construction costs for street improvements in residential subdivisions. After concluding that a \$300 per front foot cost should be utilized for street improvements, the expert applied the cost estimate to the reported average front foot lot size measurement, in order to reach his concluded upward adjustment of \$15,000 per lot for construction of roads/utilities.

Comparable land sale one is located on Willow Grove Street, Hackettstown, Warren County, New Jersey. This transaction involved the sale of 38.512 acres of vacant land on February 1, 2006 for a reported consideration of \$1,805,475. According to the expert,

comparable land sale one was sold with preliminary development approvals obtained by the seller for 101 high density, single-family dwellings, translating into a value of \$17,875 per unit. Although the expert's appraisal report states that these units were located in an age-restricted community, during direct examination the expert revealed that this was a typographical error, as these units were not subject to any age-restrictions. The expert made adjustments to comparable land sale one for time (6% downward) and construction of roads/utilities (\$15,000 per unit upward). The expert's final adjusted price was \$31,803 per unit.

Comparable land sale two is located at 301 Mountain Avenue, Hackettstown, Warren County, New Jersey. This transaction involved the sale of 14 acres of vacant land and a partially constructed retail building on June 13, 2008 for a reported consideration of \$3,200,000. According to the expert, comparable land sale two was sold subject to the purchaser obtaining development approvals for 180 high-density, age-restricted, single-family dwellings, equating to a value of \$17,777 per unit. The expert made adjustments to comparable land sale two for time (8% downward), lack of development approvals (5% upward), and construction of roads/utilities (\$15,000 per unit upward). The expert's final adjusted price was \$32,174 per unit.

Comparable land sale three is located at 21 Route 57, Hackettstown, Warren County, New Jersey. This transaction involved the sale of 6.35 acres of land on July 31, 2009 for a reported consideration of \$2,200,000. According to the expert, comparable land sale three was sold with development approvals for 110 age-restricted, single-family townhomes. Subsequent to the sale, the purchaser sought amended development approvals for 128 age-restricted, single-family dwelling rental units, equating to a value of \$17,188 per unit. The expert made adjustments to comparable land sale three for time (1.5% downward), lack of development approvals (5% upward), and construction of roads/utilities (\$15,000 per unit, upward). The expert's final adjusted price was \$32,777 per unit.

Comparable land sale four is located at 2709 East Main Street, Millville, Cumberland County, New Jersey. This transaction involved the sale of 1,350 acres of land on October 5, 2010 for a reported consideration of \$4,000,000. According to the expert, comparable land sale four was sold with development approvals for 950 high-density, single-family, age-restricted building lots. The expert offered testimony that subsequent to the sale the purchaser indicated it would not be constructing age-restricted units. Moreover, the expert revealed that the developer made a payment to the municipality of \$1,175,000, in lieu of constructing affordable housing units within the proposed development. Thus, the expert opined that comparable land sale four had an effective sale price of \$5,175,000 or \$5,447 per unit. The expert made adjustments to comparable land sale four for size (15% upward) and construction of roads/utilities (\$15,000 per unit, upward). The expert's final adjusted price was \$21,264 per unit.

After reviewing the net adjusted price range for the four comparable land sales, the expert reached a concluded market value of \$32,000 per vacant building lot as of the October 1, 2009 and October 1, 2010 valuation dates.

#### B. Baltimore Street Associates

Plaintiff's expert relies upon five comparable land sales to support his Sales Comparison Approach to value the Baltimore Street Associates property. The land sales are located in Bergen, Middlesex, Union, Camden and Burlington counties. The expert offered testimony that in analyzing and selecting his comparable land sale transactions, he considered high-density, multi-family residential developments that sold within a time frame bearing a reasonable correlation to the dates of valuation. The expert again offered that his firm employs a data verification process in which he or licensed staff appraisers review the comparable land sale deeds, SR1A forms, and consult with transaction participants to confirm sale details.

The expert employed adjustments to the comparable land sales for time, location, development approvals and construction of roads/utilities. In the expert's opinion, multi-family residential land values were stable in 2007, decreased at a rate of 6% per annum during 2008 and 2009, stabilizing in 2010. Thus, he posited that downward adjustments were warranted to three of the comparable land sales to account for those market changes. The expert further opined that three of the comparable land sales are situated in superior locales. Thus, in the expert's opinion, a downward adjustment was warranted to three comparable land sales to account for differences in site size. Because Baltimore Street Associates received final development approvals to construct high density, multi-family condominium units, the expert concluded that an adjustment was warranted to one of the comparable land sales, which he opined was sold without development approvals. Finally, the expert offered testimony that he relied on tables compiled by Marshall Valuation Service (Marshall & Swift/Boeckh, LLC), to estimate the construction costs for street improvements in residential subdivisions. After concluding that a \$300 per front foot cost should be utilized for street improvements, the expert applied the cost estimate to the reported average front foot lot size measurement. The expert then divided that figure in half to account for the 2 units associated with each lot, in order to reach his final concluded adjustment of \$5,700 per lot for construction of roads/utilities.

Comparable land sale one is located on 324-326 River Street, Hackensack, Bergen County, New Jersey. This transaction involved the sale of 8.48 acres of land with development approvals for construction of 361 apartment units, on November 20, 2007 for a reported consideration of \$14,485,000 or \$40,125 per unit. The expert employed adjustments to comparable land sale one for time (11% downward), location (30% downward) and construction of roads/utilities (\$5,700 per unit upward). The expert's final adjusted price was \$30,698 per unit.

Comparable land sale two is located on Woodbridge Avenue, Edison, Middlesex County, New Jersey. This transaction involved the sale of 22.55 acres of land with development approvals for the construction of 198 garden home condominiums, 87 townhomes and 45 affordable housing units, on January 31, 2008 for a reported consideration of \$14,000,000 or \$58,333 per unit. The expert employed adjustments to comparable land sale two for time (10.5% downward), location (30% downward), and construction of roads/utilities (\$5,700 per unit upward). The expert's final adjusted price was \$42,246 per unit.

Comparable land sale three is located at 215 Birchwood Avenue, Cranford, Union County, New Jersey. According to the expert, this transaction involved the sale of 6.345 acres of land without development approvals, on September 19, 2008 for a reported consideration of \$8,000,000. Based upon the expert's examination of the transaction details, comparable land sale three was sold subject to the purchaser obtaining development approvals for a 360 townhouse/condominium facility, of which 54 are designated affordable housing units. In the expert's opinion, this equates to a value of \$26,144 per unit. The expert made adjustments to comparable land sale three for time (6.5% downward), location (30% downward), lack of development approvals (30% upward), and construction of roads/utilities (\$5,700 per unit, upward). The expert's final adjusted price was \$30,144 per unit.

Comparable land sale four is located at 14-18 Shire Court, Somerdale, Camden County, New Jersey. According to the expert's testimony and appraisal report, this transaction involved the sale of 1.48 acres of land with development approvals for the construction of 40 townhomes. The sale was effectuated on December 10, 2009 and March 7, 2010 for a reported consideration of \$1,430,000 or \$35,750 per unit. The expert made an adjustment to comparable land sale four for the construction of roads/utilities (\$5,700 per unit, upward). The expert's final adjusted price was \$41,450 per unit.

Comparable land sale five is located on Riverwalk Boulevard and Beverly Road, Burlington Township, Burlington County, New Jersey. According to the expert, this transaction involved the sale of 25.83 acres of land, with development approvals for the construction of 250 townhomes and carriage style units. The sale was effectuated on December 23, 2011 for a reported consideration of \$6,375,010 or \$25,500 per unit. The expert made an adjustment to comparable land sale five for the construction of roads/utilities (\$5,700 per unit, upward). The expert's final adjusted price was \$31,200 per unit.

After reviewing the net adjusted price range for the five comparable land sales, the expert reached a concluded market value of \$36,000 per vacant building lot as of the October 1, 2009 and October 1, 2010 valuation dates.

Lopatcong did not offer any expert testimony in either the Morris Park Associates or Baltimore Street Associates matters. However, defendant's counsel conducted an extensive cross-examination of the expert over several days. The trial record is replete with examples of exchanges between the expert and defendant's counsel challenging the accuracy of factual information and data relied upon by the expert, probing into the legitimacy of the analysis performed by the expert, scrutinizing the adjustments employed by the expert, and confronting the expert on alleged discrepancies, inaccuracies and inconsistencies.

### C. Presumption of Validity

As construed by applicable case law, a presumption of validity attaches to original tax assessments, and judgments of the county boards of taxation. MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998); Riverview Gardens, Section One, Inc. v. North Arlington, 9 N.J. 167, 174-175 (1952); Aetna Life Insurance Co. v. Newark City, 10 N.J. 99, 105 (1952); Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985). The presumption "attaches to the quantum of the tax assessment. Based on this presumption, the

appealing taxpayer has the burden of proving that the assessment is erroneous.” Pantasote Co., supra, 100 N.J. at 413 (citing Riverview Gardens v. North Arlington Borough, 9 N.J. 167, 174 (1952)). The presumption remains intact “even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity.” Transcontinental Gas Pipe Line Corp. v. Bernards Township, 111 N.J. 507, 517 (1988).

However, the presumption is not an evidentiary device functioning “as a mechanism to allocate the burden of proof. It is, rather, a construct that expresses the view that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law.” Pantasote Co., supra, 100 N.J. at 413 (quoting Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981)). The evidence presented must be “based on sound theory and objective data, rather than on mere wishful thinking.” MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 376. A litigant can only surmount 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 Insurance Co., supra, 10 N.J. 99, 105 (1952). Thus, the appealing party shoulders the burden of presenting the court with credible evidence “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)).

In the absence of a motion for judgment or involuntary dismissal, before engaging in an evaluation and analysis of the evidence, the court must nevertheless decide whether the

presumption of validity has been overcome. MSGW Real Estate Fund, LLC, *supra*, 18 N.J. Tax at 377. Only after the court has concluded that the presumption of validity has been “overcome with sufficient evidence...must the court ‘appraise the testimony, make a determination of true value and fix the assessment’” based on a fair preponderance of the evidence. 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)). If the court concludes the presumption of validity has not been overcome, in the absence of a counter-claim, the assessment must be affirmed and the court need not make an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992); Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-704 (App. Div. 1996).

D. In viewing the evidence presented as uncontradicted and according plaintiff the benefit of all legitimate inferences which can be deduced therefrom, did plaintiff overcome the presumption of validity?

When presented with a motion for judgment, the “essence of the inquiry is whether the evidence presents a sufficient disagreement” to warrant submission of the matter to the trier of fact, or whether the evidence “is so one-sided that the party bringing the motion must prevail as a matter of law.” Blazoski v. Cook, 346 N.J. Super. 256, 274 (App. Div.) (citing R. 4:40-1; Dolson, *supra*, 55 N.J. at 5), certif. denied, 172 N.J. 181 (2002). A motion for judgment “must be denied if the evidence, together with the legitimate inferences to be drawn therefrom, could sustain a judgment in favor of the party opposing the motion.” Ibid. Thus, “if, accepting as true all the evidence which supports the position of the party defending against the motion and according him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied.” Id. at 274-75 (quoting Dolson, *supra*, 55 N.J. at 5).

Here defendant asserts that cross-examination revealed substantial errors in the expert's analysis and in the preparation of his appraisal report. Thus, defendant charges that plaintiff failed to overcome the presumption of validity. Moreover, defendant contends the errors disclosed during cross-examination result in the expert's report violating Standards Rule 1-1(b) and (c) of the Uniform Standards of Professional Appraisal Practice.

The Uniform Standards of Professional Appraisal Practice ("USPAP") are developed by the Appraisal Standards Board of The Appraisal Foundation. USPAP Standards Rule 1-1(b) and (c) provide that:

In developing a real property appraisal, an appraiser must: (b) not commit a substantial error of omission or commission that significantly affects an appraisal; (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although considered individually, may not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.

Plaintiff's expert acknowledged that he was familiar with USPAP and that, in his opinion, the appraisal reports comply with USPAP Standards Rules. The expert's written appraisal reports in both the Morris Park Associates and Baltimore Street Associates matters include a certification that "[o]ur analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice." The reports contain factual data regarding the properties being appraised, including property identification, a statement of ownership, the purpose of the appraisal, the property rights being appraised, the identity of the clients, the intended use of the appraisals, the scope of the assignment, the date of valuation estimate, the average ratio of assessed to true value as of each applicable valuation date, a definition of market value and an analysis of the highest and best use of the properties.

Moreover, the Sales Comparison Approach, employed by the expert in both appraisal reports, is a well-recognized and accepted methodology to valuing real property. The expert offered testimony that he inspected the properties, he or licensed real estate appraisers on his staff researched the competitive market for similar properties and verified sales information by consulting with transaction participants. According to the expert, he then selected units of comparison in the marketplace, examined the differences between the comparable sale transactions and the subject properties, and accounted for those differences by adjusting the sale price of each comparable property. The expert also furnished the court with his interpretation of data upon which his sale price adjustments were premised. Finally, the expert reconciled his analysis of the various indicators of value and reached a concluded opinion of value for the Morris Park Associates and Baltimore Street Associates properties.

Thus, reasonable minds could differ whether the trial record reveals that the appraisal reports demonstrate discrepancies and inconsistencies rendering them patently unreliable and defective in violation of USPAP Standards Rule 1-1(b) and (c).

Accepting the expert's testimony as true, and according plaintiff all inferences which can reasonably be deduced therefrom, Dolson, supra, 55 N.J. at 5, plaintiffs have established the existence of a "debatable question" as to the correctness of the tax assessments on the Morris Park Associates and Baltimore Street Associates properties. The evidence presented, if accepted by the court, would be sufficient to enable the court to make an independent determination of the true value of the properties under appeal. Thus, the court is satisfied that plaintiffs have overcome the presumption of validity which attaches to the quantum of the tax assessments in these matters.

However, having concluded that plaintiffs have overcome the presumption of validity, does not equate to a finding by the court that the tax assessments are erroneous. See Greenblatt

v. Englewood City, 26 N.J. Tax 41, 52 (Tax 2011); Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982). “Evidence which is sufficient for a party to overcome the presumption when considered using the artificial standard, or ‘rose-colored glasses,’ required under R. 4:37-2(b) or R. 4:40-1, is not necessarily sufficient to carry that party's burden of proof when all the evidence is subjected to critical analysis and weighing by the court.” MSGW Real Estate Fund, LLC, *supra*, 18 N.J. Tax at 379 (citing Ford Motor Co., *supra*, 127 N.J. at 314-15). Therefore, the court denies plaintiffs’ cross-motions for entry of judgment, under R. 4:40-1, at the conclusion of all the evidence.

E. Does the expert’s testimony constitute an inadmissible net opinion?

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 trial. Although, the facts and data need not be admissible, they must nonetheless 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. 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 are an inadmissible "net opinion." State v. Townsend, 186 N.J. 473, 494-495 (2006).

Although defendant's counsel raised issues with the veracity, accuracy and reliability of information utilized by the expert in support of his time adjustments, the expert nonetheless furnished the court with his interpretation of factual evidence and data upon which his time adjustment opinions were premised. In the Morris Avenue Associates matter, three of the comparable land sales span the time period from early 2006 through mid-year 2009. In the expert's opinion, those sales demonstrate a decline in land values from an unadjusted unit price of \$17,875 in 2006, to an unadjusted unit price of \$17,188 in 2009. Similarly, three comparable land sales introduced by the expert in the Baltimore Street Associates matter span the time period from late 2007 through early 2010. In the expert's opinion, these comparable sales demonstrate that land values in New Jersey were stable in late 2007 and early 2008, when they began to decline from an unadjusted unit price of \$58,333 in 2008, to an unadjusted unit price of \$35,750 in 2010.

The expert introduced market data from comparable land sale transactions that, in his opinion, support the downward time adjustments employed in his adjustment grid. The data and analysis introduced by the expert, if accepted by the court, could enable the court to conclude that the expert's time adjustments were reasonable and warranted. Thus, the court is satisfied that the expert furnished the court with the "why and wherefore" of his time adjustments and that his opinions in these matters do not constitute net opinions.

### **III. Conclusion**

For the foregoing reasons, the court denies defendant's motions for judgment dismissing plaintiffs' Complaints and denies plaintiffs' cross-motions for judgment. Having concluded that plaintiffs have overcome the presumption of validity, it is the duty and obligation of this court to weigh and evaluate all the evidence presented and to decide the appeals on their merits.

Very truly yours,

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

Hon. Joshua D. Novin, J.T.C.