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THE TAX COURT COMMITTEE ON OPINIONS

GRACE ASHKENAZI,	:	TAX COURT OF NEW JERSEY
	:	
Plaintiff,	:	DOCKET Nos.: 003252-2016,
	:	000434-2017, 000107-2018, 001026-2019
	:	
v.	:	
	:	
BOROUGH OF DEAL,	:	
	:	
Defendant.	:	
	:	

Approved for Publication  
In the New Jersey  
Tax Court Reports

Decided: October 2, 2020

Michael I. Schneck for plaintiff  
(Schneck Law Group, LLC, attorney).

Martin M. Barger for defendant  
(Barger & Gaines, attorney).

SUNDAR, J.T.C.

This opinion constitutes the court’s decision after trial of the above-captioned matters. Plaintiff owns property (Subject), a 2.54-acre lot improved by a 11,330 square-foot single-family home located in defendant taxing district, Borough of Deal (Borough), and identified as Block 34, Lot 13. For each tax year at issue, Plaintiff appealed the Subject’s local property tax assessment set forth below, and each party’s real estate appraiser concluded its value as follows:

Year	Assessment	Plaintiff’s Appraiser	Borough’s Appraiser
2016	\$24,713,400	\$7,600,000	\$19,000,000
2017	\$26,412,700	\$7,600,000	\$19,250,000
2018	\$27,133,200	\$7,600,000	\$19,500,000
2019	\$29,089,600	\$8,000,000	\$20,500,000

Both appraisers agreed that the Subject was over-assessed. However, they disagreed as to its value and as to the most credible valuation methodology. Plaintiff’s appraiser deemed the comparable sales approach as the most reliable method on grounds the Subject is no different than

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any other single-family home which is exposed to the market for sale, despite its location in the Borough, its mansion-type structure, and its several high-end improvements. He opined that the Borough was no different than any other competitive township where homes were bought and sold, however he would not consider any of the private sales in the Borough since they were not exposed to the market. The Borough's appraiser deemed the cost approach as the most credible indicator of the Subject's value because of its location in the Borough, an elite taxing district with high-end expensive homes, its size, and high-end amenities, and because too many adjustments would be needed under the comparable sales approach rendering the credibility of this method questionable. However, each appraiser tested their respective value conclusions under the other's primary approach, i.e., Plaintiff's appraiser used the cost approach while the Borough's appraiser used the sales comparable approach, but neither used or relied upon those conclusions in their respective final value determinations.

For the reasons more fully stated below, the court finds that under the facts here, the cost approach is the most reliable indicator of the Subject's value. It accepts the Borough's appraiser's land value conclusions. Using the cost data for the Subject's improvement's replacement cost included only in Plaintiff's appraiser's report (which was offered into and accepted as evidence without any objection) and certain other credible cost provisions; 5% for soft costs; 10% for entrepreneurial profit; and after depreciating the adjusted costs at 30%; 31.67%; 33%; and 36.67% for each respective tax year, the court concludes that the stabilized value of the Subject as \$16,460,000 for each tax years 2016-2018, and \$18,111,000 for tax year 2019.

### **SUBJECT DESCRIPTION**

The appraisers essentially agreed on the physical characteristics of the Subject. The lot is an irregularly shaped parcel of land measuring about 2.54 acres. It is located among various styles

of residential dwellings, on the westerly side of Ocean Avenue, between Runyan and Roseld Avenues, with a frontage of 320± lineal feet. It is on the second block from the beach.

The improvements consist of a main house, a contemporary, Mediterranean style single-family two-storied home built in 1989 and having 11,330 square feet (SF) of gross living area (GLA). There are seven bedrooms, and six full and two half-bathrooms. The first floor comprises an entrance foyer, living room, dining room, family room, kitchen, butler's pantry, den, office, laundry room, and two half-baths. The second floor has two bedrooms with a shared full bathroom (for staff), four bedrooms with private full bathrooms, a master suite with sitting room, a dressing room, master bath and a fireplace. A spiral staircase inside the house leads to an Observation Tower which, per the Borough's appraiser's personal inspection, provided partial views of the ocean. The basement is full and finished, and contains an indoor whirlpool (hot tub), lap-pool, sauna, gym, laundry room. There is also one full, and one-half bathroom. Amenities include a three-stop elevator and two more fireplaces. The house has a one-car attached garage.

The other residence is a carriage house, with a two-car garage. The apartment therein has one full and one half-bath, three bedrooms, kitchen and living room.

The Subject has an outdoor greenhouse with an unfinished basement. There is also an in-ground pool with a pool house that has a kitchen, four cabanas and two full bathrooms. The photographs evidence the exterior grounds as being well-landscaped with several patios, gardens, walkways, brick-laid tiered terraces, and a brick driveway.

Both appraisers agreed that the home was of excellent quality (Plaintiff's appraiser attributing the excellence to the outdoor amenities/landscaping, however, on his adjustment grid noting that the Subject's construction was excellent), and in average condition. Although Plaintiff's appraiser described some instances of deferred maintenance, such as some windows

with broken seals (thus having leakage), and a portion of roof leakage, the photographs show the main house to be in very good condition. He testified that the jacuzzi and lap pool have not worked for more than twenty years, however, the pictures do not show their condition to be dilapidated. He also testified that the cabana bathrooms are not functional. The photographs show the landscaping, and outdoor amenities to be very well maintained. Although the basement under the outdoor greenhouse showed wear and tear and water stained concrete floor, it is not unusual given the greenhouse's normal use. Overall, the Subject appears to be very well-maintained both exterior and interior, with high quality improvements as evidenced by the photographs.

## **PLAINTIFF'S APPRAISERS' VALUATION**

### *Sales Comparable Approach*

Plaintiff's appraiser believed this approach as more reliable because: (1) the Subject was nearly 30 years old as of the valuation dates, thus it is difficult to reliably estimate depreciation; (2) the Subject is over-improved thus suffers from super-adequacy/obsolescence; and (3) cost does not equal value. He stated that he only used sales which were exposed to the market through Multiple Listing Services (MLS) or other internet-based services, and not private sales that predominantly prevail in the Borough especially for high-end residences. As he found the Subject unique due to its large lot size and GLA, he extended his search for comparable sales to Allenhurst and the Elberon section of Long Branch which he asserted were competitive, in that buyers would consider either of these taxing districts as an alternative to buying a home in the Borough. He decried the Borough's posture that Deal has its own market since homeowners therein, predominantly summer residents, seek to live amongst their close-knit community, thus, would exclusively choose the Borough to buy homes. He also dismissed the Subject's neighborhood,

ornate streetlights, and the Subject's proximity to the Deal Casino Club as factors that would significantly add to its desirability, attractiveness, and elite nature.

His seven comparable sales with adjustments (in italics) are as follows:

	<b>Subject</b>	<b>Comparable 1</b>	<b>Comparable 2</b>	<b>Comparable 3</b>
Address	190 Ocean Ave Deal	52 Neptune Ave Deal	67 Roosevelt Ave Deal	65 Jerome Ave Deal
Sale Price	N/A	\$2,800,000	\$2,700,000	\$4,250,000
Sale Date	N/A	6/2/2014	11/7/2015	11/18/2015
Year Built	1989	1996	1976	1918
<i>GLA</i>	11,330	4,756 (+986,000)	4,600 (+1,010,000)	8,494 (+425,000)
<i>Bathrooms</i>	6.2	7	3.1 (+105,000)	5.2 (+30,000)
<i>Basement</i>	Full/Finished Lap Pool/Spa, Sauna, 1.1 Baths	Full/Unfinished (+150,000)	Partial/Unfinished (+150,000)	Full/Unfinished (+150,000)
<i>Fireplaces</i>	3	3	2 (+10,000)	2 (+10,000)
<i>Garage/ Carport</i>	3/1	1/0 (+60,000)	2/0 (+35,000)	0/1 (+50,000)
Other Improvements	Carriage House, Pool, Cabana, Greenhouse, Patios Elevator	Patio, Pool, Deck, Porches (+230,000)	Patio, Open Porch (+300,000)	Pool, Cabana, Patio Porches (+190,000)
<i>Condition/ Quality</i>	Average/Excellent	Average/Good (+280,000)	Average/Average (+540,000)	Average/Good (+425,000)
<i>Lot Size</i>	2.54 Acres	0.3444 Acres (+2,898,000)	0.6371 Acres (+2,512,000)	0.8987 Acres (+2,167,000)
Location	Good – 2 <sup>nd</sup> BB <sup>1</sup>	Good – 2 <sup>nd</sup> BB	Good – 2 <sup>nd</sup> BB	Good – 2 <sup>nd</sup> BB
View	Obstructed/Limited	Obstructed/Limited	None	None
Total Adjustment	N/A	\$4,604,000	\$4,662,000	\$3,447,000
Adj. Sale Price	N/A	\$7,404,000	\$7,362,000	\$7,697,000
	<b>Comparable 4</b>	<b>Comparable 5</b>	<b>Comparable 6</b>	<b>Comparable 7</b>
Address	16 Stratford Place Deal	1 Allen Ave Allenhurst	15 Allen Ave Allenhurst	2 Cedar Ave Allenhurst
Sale Price	\$2,100,000	\$3,000,000	\$4,200,000	\$6,120,000
Sale Date	9/6/2016	10/13/2017	1/26/2018	9/14/2018
Year Built	1999	1907	1907	1984
<i>GLA</i>	5,870 SF (+819,000)	6,527 SF (+720,000)	4,216 SF (+1,067,000)	5,156 SF (+926,000)
<i>Bathrooms</i> <sup>2</sup>	6.0 (+30,000)	4.2 (+60,000)	5.1 (+45,000)	4.2 (+60,000)

<sup>1</sup> "BB" stands for beach block. 2<sup>nd</sup> BB means the comparable is two blocks away from the ocean.

<sup>2</sup> At \$30,000 per full, and \$15,000 per half bath (only above-ground baths were counted).

<i>Basement</i>	Full/Unfinished (+150,000)	Full/Unfinished (+150,000)	Full/Unfinished (+150,000)	Partial/Finished (+150,000)
<i>Fireplaces</i> <sup>3</sup>	None (+30,000)	3	1 (+20,000)	3
<i>Garage/ Carport</i>	1/0 (+60,000)	2/0 (+35,000)	4/0 (-15,000)	2/2 (+15,000)
<i>Other Improvements</i>	Open Porch, Patio (+300,000)	Carriage House, Open Porch (+260,000)	Porch, Pool, Patio (+250,000)	Porch, Deck, Patio (+290,000)
<i>Condition/ Quality</i> <sup>4</sup>	Average/Average (+420,000)	Average/Average (+600,000)	Good/Good	Good/Good
<i>Lot Size</i>	0.4304 Acres (+2,785,000)	0.4811 Acres (+2,718,000)	0.3788 Acres (+2,853,000)	0.4439 Acres (+2,767,000)
<i>Location</i>	Good – 3 <sup>rd</sup> BB <sup>5</sup> (+210,000)	Good – 2 <sup>nd</sup> BB	Good – 2 <sup>nd</sup> BB	Oceanfront <sup>6</sup> (-1,836,000)
<i>View</i>	None	Waterview (-300,000) <sup>7</sup>	Partial Waterview (-210,000) <sup>8</sup>	Waterview (-612,000)
<b>Total Adjustment</b>	\$4,804,000	\$4,243,000	\$4,160,000	\$1,760,000
<b>Adj. Sale Price</b>	\$6,904,000	\$7,243,000	\$8,360,000	\$7,880,000

The “Other Improvements” in the adjustment grid were as follows:

Deck/Open Porch/Patio/Terrace/Carport	\$10,000
Garage (per car)/Elevator/Greenhouse	\$25,000
Subject Finished Basement	\$200,000
Full Basement/Finished Basement/Pool/Cabana	\$50,000
Partial Basement/Partially Finished Basement	\$25,000
Subject Carriage House	\$150,000
Comparable Carriage House	\$50,000

Adjustments, per the appraiser, were discussed with builders, brokers, and market participants and checked against the Marshall & Swift (M&S) cost data.

Adjustments for differences in lot size were by using a linear regression analysis for which the appraiser used six vacant land sales as follows:

<sup>3</sup> At \$10,000 per fireplace.

<sup>4</sup> Adjustments were in 10% increments (i.e., the differences between Average and Good and between Good and Excellent are each 10%; the difference between Average and Excellent is 20%).

<sup>5</sup> At 10% of sales price, since comparable further away from the ocean, thus inferior to the Subject.

<sup>6</sup> At 30% of sales price, since comparable was oceanfront, thus superior to the Subject.

<sup>7</sup> At 10% of sales price.

<sup>8</sup> At 5% of sales price.

Property Location	Sale Date	Sale Price	Size (Acres)
2 Monmouth Terr., Deal	1/28/2014	\$3,500,000	0.4821
8 Allen Ave, Allenhurst	6/30/2015	\$2,170,000	0.4269
Spier Ave, Allenhurst	10/28/2016	\$1,400,000	0.3444
28 Whitehall Ave, Deal	2/28/2017	\$2,700,000	0.5438
37 Parker Ave, Deal	3/23/2017	\$3,300,000	1.0331
80 Neptune Ave, Deal	9/29/2017	\$1,750,000	0.5615

He upped the sale price of Spier Avenue by +30% it being farther away (third block) from the beach, unlike the Subject. The regression analysis employed the formula  $y=mx+b$ , where  $b$  is the constant,  $x$  is the lot size in excess of the constant, and  $m$  is the variable, i.e., the value per acre in excess of the constant. The computer-generated calculations and plotting (sale price on the y-axis; lot size on the x-axis) showed a value of \$1,650,222 per acre.<sup>9</sup> He discounted this by 20% as all sales (except Spier Avenue) were within the beach block unlike the Subject, with his report noting that the \$1,650,222 “extraction represents a surplus land value for the properties within the beach block,” therefore he used an “adjustment of \$1,320,000” per acre.

The appraiser employed a similar regression analysis to conclude differences in GLA. He used Comparable 1 as if it were the Subject, thus, the property to which the other six were compared to. He tabulated the adjusted sale prices of the other six comparables essentially by eliminating the adjustments for lot size and GLA in his prior grid. He then determined that 4,000 SF was the constant or  $b$  for purposes of the formula,  $y=mx+b$ . The computer-generated calculations and plotting (“indicated value” in increments of \$500,000 on the y-axis; SF in increments of 2,000 the x-axis), showed “ $y=120.89x + 2,774,905.53$ ”, which per the appraiser

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<sup>9</sup> The appraiser used the smallest lot size as the constant or  $b$ , thus, the value of the 0.3444-acre lot;  $x$  was the lot size in excess of 0.3444 acres; and  $m$  was the value per-acre in excess of 0.3444 acres. Per the computer-generated calculations and plotting,  $y$  equaled  $1,660,221.69x + 2,175,666.03$ , which the appraiser stated meant the  $b$  or value of 0.3444 acres was \$2,175,666, and  $m$  or value per-acre in excess of 0.3444 acres was \$1,650,222. The formula also provided the Subject’s lot value as \$5,528,000 per his report. However, he testified, this was incorrect since he failed to subtract 0.3444 from the Subject’s 2.54 acres lot in determining the variable  $x$ . As so deducted, the Subject’s lot was worth about \$5,079,666 ( $\$1,320,000 \times 2.20$  acres + \$2,175,666).

meant that the GLA adjustment should be at \$120.89 per SF. However, he determined that this was “slightly low,” therefore, and based on discussions with builders, brokers, and market participants, and as verified against the M&S cost data, he concluded \$150 per SF as appropriate.

Using the adjusted sale prices of Comparables 1, 2 and 3 for tax year 2016; Comparables 2, 3, and 4 for tax year 2017, and Comparables 3, 4, and 5 for tax year 2018, he concluded a value of \$7,600,000 for each respective tax year. Using the adjusted sale prices of Comparables 5, 6, and 7, he concluded a value of \$8,000,000 for tax year 2019.

#### *Cost Approach*

Plaintiff’s appraiser applied a cost approach as a test to his value conclusions noted above, using data from M&S, but did not rely on it in his final value determinations. He deemed the building class as Class D-Masonry Veneer, the building to be of “excellent” quality and condition, but used base costs pertaining to Type IV for the main house (categorized as Section I with 9,600 SF and Section II with 1,775 SF). For the finished portion of the basement (4,471 SF) he used costs pertaining to “excellent” quality, and the M&S costs for the unfinished portion of the basement (889 SF). His report noted the carriage house (1,492 SF) as “excellent,” in both quality and condition, yet used costs pertaining to “good.” He reduced the base costs for the floor area multiplier and increased them by current cost multipliers (CCM) and local cost multipliers (LCM).

He then determined the costs for the other improvements and amenities such as garage, pool, elevator, guest house, fireplace, porch, patio (with negative amounts for a “shared” roof or wall), which he labeled as “Lumpsums.” To these total costs, he added 5% for soft costs and 10% for entrepreneurial profit. He then reduced the total costs for depreciation at 40%; 42%; 44% and 46% for each respective tax year based a 50-year economic life and a 20-year effective age due to



the alleged deferred maintenance present in the Subject. Unlike his inclusion of the M&S cost data and cost multipliers (CM), his report did not include data on depreciation rates.

Based on the above, his total replacement cost of the Subject’s improvements for each tax year 2016-2019 was as follows: \$3,644,489; \$3,626,268; \$3,536,509; and \$3,516,017. He added land value for each tax year at \$5,528,000, and \$200,000 for “As-Is Site Improvements.” This provided a value under the cost approach as follows for each respective tax year: \$9,372,489; \$9,354,268; \$9,264,509; and \$9,244,017.

## **BOROUGH’S APPRAISERS’ VALUATION**

### *Cost Approach*

The Borough’s appraiser opined the cost approach as most reliable since the Subject’s size and extensive/expensive amenities would require numerous and substantial adjustments under the sales comparison approach rendering the latter questionable indicators of value (plus no property comparable to the Subject had sold in the last five years). He first determined the value for vacant land based on comparable land sales, zoned for residential use, as adjusted for location, on a per SF (PSF) basis. For tax years 2016 through 2018, he used seven land sales<sup>10</sup> as follows:

	Location	Sale Date	Sale Price	Size (SF)	Price PSF	Location Adjustment <sup>11</sup>	Adj. Price PSF
1	80 Neptune Ave, Deal	9/29/17	\$1,750,000	22,500	\$77.78	+10%	\$85.56
2	37 Parker Ave, Deal	3/23/17	\$3,300,000	44,867	\$73.55	+5%	\$77.23
3	28 Whitehall Ave, Deal	2/28/17	\$2,700,000	23,688	\$113.98	-5%	\$108.28
4	Spier Ave, Allenhurst	10/28/16	\$1,400,000	15,000	\$93.33	0%	\$93.33

<sup>10</sup> Sales 1-4, 6 and 7 were also used by Plaintiff’s appraiser in determining the adjustments for lot size differences in his sales comparison approach, and incidentally computing the value of the Subject’s lot size.

<sup>11</sup> Sales 1 and 2 were adjusted upward because they are farther from the ocean than the Subject is. Sales 3 and 6 are located within one block of the beach, on the east side of Ocean Avenue, and were adjusted downward. Sale 7 is located across the street from the ocean, so it was given the largest downward adjustment.

5	274 Ocean Ave, Deal <sup>12</sup>	10/26/16	\$7,600,000	60,000	\$126.67	0%	\$126.67
6	8 Allen Ave, Allenhurst	6/30/15	\$2,170,000	18,413	\$117.85	-5%	\$111.96
7	2 Monmouth Terr, Deal	1/28/14	\$3,500,000	21,000	\$166.67	-25%	\$125.00

Based on the adjusted sale prices, the Borough's appraiser concluded a unit value of \$104 PSF. This, when applied to the Subject site (10,642 SF), provided a land value of \$11,506,768, or \$11,500,000 (rounded).

For tax year 2019, he used three more sales in Deal, in addition to the two used for tax years 2016-2018, with adjustments for location, as follows:

	Location	Sale Date	Sale Price	Size (SF)	Price PSF	Location Adjustment <sup>13</sup>	Adj. Price PSF
1	72 Brighton Ave, Deal	3/1/19	\$4,116,000	33,750	\$121.96	+5%	\$128.05
2	62 Phillips Ave, Deal	9/5/18	\$3,000,000	28,000	\$107.14	+5%	\$112.50
3	2 Beringer Rd, Deal <sup>14</sup>	10/3/17	\$14,200,000	66,600	\$213.21	-40%	\$127.93
4	28 Whitehall Ave, Deal	2/28/17	\$2,700,000	23,688	\$113.98	-5%	\$108.28
5	274 Ocean Ave, Deal	10/26/16	\$7,600,000	60,000	\$126.67	0%	\$126.67

Based on these adjusted sale prices, he determined a unit value of \$120 PSF, and as applied to the Subject's lot, provided a land value of \$13,277,040 (rounded to \$13,275,000).

For purposes of determining the replacement cost of improvements, the appraiser classified the Subject as a high-value residence, Class D, of good quality. For tax years 2016-2018, he separated the improvements in three categories: main house; guest house/greenhouse; site improvements. He used the same base cost amounts for these class for all three tax years based on M&S data, however, there were differences between the CCMs and LCMs, and depreciation

<sup>12</sup> This sale was of two lots: Block 73, Lot 1.01 (31,703 SF) for \$3,952,000 and Block 73, Lot 1 (28,287 SF) for \$3,648,000. There was a single-family house on the property at the time of sale.

<sup>13</sup> Sales 1 and 2 are farther from the ocean than the Subject, which resulted in the upward adjustments. Sale 3 is located on the beach, thus adjusted by -40%.

<sup>14</sup> At the time of sale, there was a house. The Borough's appraiser was unsure if the buyer tried to renovate the house, but when he revisited the property, he stated, the house was gone.

rates between the tax years. For tax year 2018, for the two stories of the main building, he used a base cost of \$464.46 PSF, multiplied it by 0.898 to adjust for the floor area/perimeter, and added \$5.70 PSF and \$2.93 PSF for heating/cooling and elevators respectively, for an adjusted base cost of \$425.72 PSF. This times 11,330 SF GLA provided the adjusted cost PSF for the main building as \$4,823,352. To this, he added the following costs:

Finished Basement Area	4,471 SF x \$65.60 PSF	\$293,298
Unfinished Basement Area	889 SF x \$21 PSF	\$18,669
Attached Garage	352 SF x \$77 PSF	\$27,104
Canopy	484 SF x \$77 PSF	\$37,268
Patio	4,142 SF x \$16.30 PSF	\$67,515
Brick Terrace	1,458 SF x \$14.40 PSF	\$20,995
Three Fireplaces		\$52,800

The above costs plus CCM (1.03) and LCM (1.26), plus 10% entrepreneurial profit) provided a total cost new as \$7,624,705.

He performed the above exercise (cost increased by CMs and 10% entrepreneurial profit) to these additional items under the category guest house/greenhouse:

Guest House	1,492 SF x \$124.95 PSF	\$186,425
Attached Garage	414 SF x \$77 PSF	\$31,878
Greenhouse with Basement	1,152 SF x \$52.25 PSF	\$60,192

He applied a depreciation rate of 16% (based on a 60-year lifespan, and an effective age of 20 years based on the house's "level of maintenance") to the total of the above costs. He then determined the costs of the following site improvements:

Gunite Pool	1,800 SF x \$65.80 PSF	\$118,440
Concrete Pool		\$40,350
Spa		\$17,950
Cabana	784 SF x \$190.99 PSF	\$149,736
Landscaping, lighting, etc.		\$813,971
Total Cost New		\$1,140,447

He multiplied these costs by the same CMs (1.03 CCM; 1.26 LCM), used 50% physical depreciation based on a 20-year useful life and a 10-year effective age for a depreciated cost of

\$740,036. The total depreciated cost of all improvements was \$6,866,140. To this, he added 10% entrepreneurial profit for a final value of \$7,552,755, which plus the land value of \$11,500,000 provided the Subject's value at \$19,052,755 rounded to \$19,055,000 (tax year 2016) (and showed \$19,000,000 as his summarized valuation on page 2 of his report).

For tax years 2017 and 2018, he used the same base costs as he had for tax year 2016, and the 10% entrepreneurial profit. He used an increased the CCM of 1.08. Depreciation for the main house, the guest house, and greenhouse increased by one point to 17% (tax year 2017), resulting in the depreciated value of all improvements at \$7,835,276. This plus the land value provided the Subject's value at \$19,335,276 rounded to \$19,335,000 for tax year 2017 (but shown at \$19,250,000 in his summarized valuations on page 2 of his report).

For tax year 2018, he used a CCM of 1.13. The depreciation for the main house, the guest house, and greenhouse increased by another point to 18%, thus, the depreciated value of all improvements was \$8,110,009. This plus the land value provided the Subject's value at \$19,610,009 rounded to \$19,610,000 for tax year 2018 (but shown at \$19,500,000 in his summarized valuations on page 2 of his report).

For tax year 2019, he used a lower base cost than for prior tax years: for the two stories of the main house, he used \$410 PSF which he multiplied by 0.982 (floor area/perimeter), then added \$21.30 PSF and \$4.96 PSF for heating/cooling and elevators respectively, for an adjusted base cost of \$428.88 PSF, which times the building's GLA of 11,330 provided an adjusted cost of \$4,859,210. He also added the same items as for prior tax years:

Finished Basement Area	4,471 SF x \$103 PSF	\$460,513
Unfinished Basement Area	889 SF x \$22.45 PSF	\$19,958
Attached Garage	352 SF x \$53 PSF	\$18,656
Canopy	484 SF x \$24.40 PSF	\$11,810
Patio	4,142 SF x \$14.40 PSF	\$59,645
Brick Terrace	1,458 SF x \$18.60 PSF	\$27,119

Three Fireplaces		\$52,800
Guest House	1,492 SF x \$115 PSF	\$171,580
Attached Garage (Guest House)	414 SF x \$53 PSF	\$21,942
Greenhouse with Basement	1,152 SF x \$103.50 PSF	\$119,232
Gunite Pool	1,800 SF x \$82.50 PSF	\$148,500
Concrete Pool		\$42,700
Spa		\$17,950
Cabana	784 SF x \$172.50 PSF	\$135,240
Landscaping, lighting, etc.		\$895,370

He applied a CCM of 1.03 and an LCM of 1.30, and added 10% for entrepreneurial profit to the total cost of each improvement categories (main building; guest house/greenhouse; site improvements). He depreciated the total cost of the first two categories by 20% and the site improvements by 50%. The depreciated value of all improvements was determined as \$7,773,748, which with land value (\$13,275,000) provided the Subject's value at \$21,048,748 rounded to \$21,050,000 (but shown as \$20,500,000 in his summarized valuations on page 2 of his report).

#### *Sales Comparison Approach*

For tax years 2016-2018, the Borough's appraiser used seven improved sales and adjusted their sale prices for location; lot size (all upward since the Subject's lot was larger); GLA; basement/finish; garage count; age/condition; amenities/modernization. He concluded a value of \$18,000,000; \$18,500,000; \$18,500,000; and \$19,200,000 for each tax year. He placed minimal weight to this approach due to the small size of the comparables and the quantum of adjustments. He thus used his cost approach conclusions as the Subject's reliable value indicator.

#### **ANALYSIS**

A complainant carries a dual burden: first overcoming an assessment's presumptive correctness, and thereafter, persuading the court of the correct value of the property. MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373, 377 (Tax 1998). The court can only determine the true value of the property based upon "the evidence before it and the

data that are properly at its disposal.” F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985).

Plaintiff overcame the presumptive correctness of the assessments as her appraiser’s testimony raised a debatable question as to their correctness, which was endorsed by the Borough’s appraiser’s agreement that the Subject was over-assessed. Plaintiff’s appraiser also supported his value conclusions using accepted valuation methodologies. The court will now examine all evidence to determine the Subject’s value for each tax year.

### *I. Highest and Best Use*

“The highest and best use analysis requires 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. Twp. of South Hackensack, 27 N.J. Tax 255, 268 (Tax 2013) (citations omitted), aff’d, 28 N.J. Tax 337 (App. Div. 2015). “Actual use is a strong consideration” when analyzing the highest and best use (HBU) “of an improved property.” Ibid. (citation omitted).

Plaintiff’s appraiser opined that the highest and best use (HBU) for the Subject as vacant, was the subdivision of the lot and construction of two single-family dwellings, however, as improved, to be its existing use. The Borough’s appraiser’s report was silent as to the HBU as vacant but he testified that it was for the development of a single-family home. As improved, the appraisers agreed that the Subject’s HBU was “its current single-family residential use” or the “[c]ontinuation of existing use as a single-family dwelling.”

Both appraisers agreed that the Subject’s 2.54 acre-lot rendered it as oversized, the minimum lot size being 18,750 SF or 0.43 acres under the zoning ordinance. Plaintiff’s appraiser noted that the Subject lot could “be subdivided into two” lots each measuring +/-1.27 acres, however, demolition of the existing improvements was not “financially feasible” since his value conclusion

of the Subject's lot under his regression analysis, less \$500,000 estimated demolition and subdivision approval costs, was still lesser than the value of the lot as improved.<sup>15</sup>

The Subject being legally conforming in a residential zone, and in the absence of any credible evidence of a more financially feasible or maximally productive use, the court agrees with both appraisers' conclusion of the Subject's HBU as being the continuation of its present use.

## *II. Valuation*

While the sales comparison approach is deemed more probative for valuing single-family homes as compared to the cost approach due to issues in the latter such as the difficulty of estimating a reliable/credible depreciation rate for older homes, an appraiser is not bound to use only the former approach. Nor is an appraiser barred from using the cost method as an appraisal technique. Rather, use of, or reliance upon one or more valuation methods "depends upon the particular facts and the reaction to them of experts steeped in the history and hopes of the area." Pantasote Co. v. City of Passaic, 100 N.J. 408, 414 (1985) (citation omitted). See also Genola Ventures-Shrewsbury v. Borough of Shrewsbury, 2 N.J. Tax 541, 551-52 (Tax 1981) ("An expert is not limited to the traditional approaches to value if his knowledge and experience, adequately supported, can be of assistance in regard to the critical issue of that price which hypothetical parties will use as an exchange for real property on the assessment date"); Pennwalt Corp. v. Twp. of Holmdel, 4 N.J. Tax 51, 61 (Tax 1982) ("[t]he decision as to which valuation approach should predominate depends upon the facts of the particular matter and the reaction to these facts by the experts") (citation omitted).

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<sup>15</sup> This HBU analysis was contained in the portion of Plaintiff's appraiser's report explaining adjustments for differences in lot size using linear regression, which notes:

As per municipal zoning, the subject property can be subdivided into two 1.27 Ac +/- . Analysis above demonstrate that value of each of those lots will be \$3,850,000 +/-, for a total of \$7,700,000 less subdivision approval costs, and demolition costs estimated at \$500,000. Analysis on the previous pages demonstrate that the value of the subject property is higher. Therefore, a demolition of the existing improvements is not financially feasible.

Thus, the cost approach is acceptable for valuing a single-family residence if justifiable circumstances so warrant. See e.g. Appraisal Institute, The Appraisal of Real Estate 566 (14<sup>th</sup> ed. 2013) (“The cost approach is particularly important when a lack of market activity limits the usefulness of the sales comparison approach”). Similarly, when there are sufficient sales of comparable properties in competitive markets, the sales comparable approach may be more viable.

1. Sales Comparable Approach

The court rejects the Borough’s appraiser’s sales comparable approach because it is bereft of any explanation for the adjustments, i.e., the whys and wherefores are missing.

The court is also unpersuaded that Plaintiff’s appraiser’s sales comparable approach provides a credible indicator of the Subject’s value. Although he explained the whys and wherefores for his adjustments, the sheer magnitude of the same (quantum, and number of items to be adjusted), almost resulted in doubling or tripling the sale prices of the comparables. This itself raises a doubt whether the sales are comparable. Additionally, his cost approach exceeds his value conclusions under the sales comparison approach by about \$2,000,000. To the court, this also indicates the questionable reliability on the sales comparison alone.

Further, the court also questions the veracity of his linear regression analysis to derive adjustments for lot size and GLA. Linear regression analysis is defined as:

a statistical technique in which a mathematical equation can be derived to quantify the relationship between a dependent (outcome) variable and one or more independent (input) variables. In appraisal, the dependent variable is usually price or rent. The independent variables are usually broadly derived from . . . forces that affect value (social, economic, governmental, and environmental) and the physical characteristics of the land and improvements.

[The Appraisal of Real Estate at 295.]



See also Navelski v. Int'l Paper Co., 244 F. Supp. 3d 1275, 1298-1299 (N.D. Fla. 2017) (defining linear regression as an “analytical tool to examine the relationship between” a dependent and independent variable “by plotting data on the X (horizontal) and Y (vertical) axes of a graph and then finding the straight line, called a regression line, that best fits through the data points”).<sup>16</sup>

However, appraisers must explain the computer-generated results: the whys and wherefores, the hows and whys, after data input. The same goes for the data input. Plaintiff's appraiser testified that for the lot size adjustment, he chose the smallest lot size as the constant, and the computer then generated the resultant numbers. Why does the computer say \$1,650,222 is the per acre sale price? How did the computer arrive at \$2,175,666 (the value of his constant, 0.3444 acres)? He claimed it did not matter what the constant is, i.e., it is interchangeable, such as for instance, any of the lots he used in his lot size adjustments could be used as the constant and computer would still show \$1,650,222 as the per acre value. This makes no sense, nor was it proven to show why this makes sense.<sup>17</sup> As to the GLA adjustment, why choose 4,000 SF as the constant when the Subject is almost three times that size? Why choose Comparable 1 as the “Subject” to which others should be compared to? What did he do to ensure the accuracy of the resultant equation?

Thus, there was no step-by-step explanation so that one clearly understood how the computer arrived at the various numbers on his chart. An appraiser, when used computer-assisted

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<sup>16</sup> The court explained the “regression equation” as  $Y = a + bX$ . There as used, Y was the “sales price of a home, which is the dependent variable to be explained,” “X” or the “explanatory variable,” was the sale date of each home, “a is the point at which the regression line intercepts with the Y-axis when X equals 0,” and “b is the slope of the regression line, which represents the change in the dependent variable (sales price) associated with a change in the explanatory variable (the passage of time).” Navelski, 244 F. Supp. 3d at 1299, n.23 (citing Federal Judicial Center, Reference Manual on Scientific Evidence 305, 336-38 (3d ed. 2011)).

<sup>17</sup> Additionally, Plaintiff's appraiser discounted the computer-generated value of land in excess of 0.3444 acres by 20% claiming that it was “surplus land value for the properties within the beach block.” This is not supported by any data, and appears to dilute his initial 30% increase to the Spier Avenue property, the one which was the constant b measuring 0.3444 acres.

calculations should understand that “the output of an AVM [automated valuation model] is not, by itself, an appraisal.” The Appraisal of Real Estate at 297-98. Further, a glance at a linear regression sample for lot size adjustments in the treatise lists information such as “Multiple R, R Square, Adjusted R Square, Standard Error, Observations” and various other statistical terminology and accompanying numbers. See id. at 419-21. Surely, these are calculations or inputs which should mean something in the computer-generated regression equation.<sup>18</sup> None of this information was in Plaintiff’s appraiser’s chart nor were there any explanations in this regard.

As noted, when using statistical analysis to compute adjustments, an appraiser must “[p]roperly apply[] fundamental statistical concepts [and] . . . the methodology selected.” Id. at 400. It is useless to “develop a result that is mathematically precise yet logically meaningless.” Ibid. Rather, any such analysis “must reflect the thought processes and conclusions of market participants to serve as a useful, persuasive valuation tool.” Here, for instance, as to the lot size adjustment, the court cannot agree that an acre will sell for \$1,320,000 in Deal. The actual sales prices (as adjusted for location) of vacant land simply do not support this conclusion.

In sum, the court is unpersuaded that the computer-generated value per acre, or the PSF GLA value, is necessarily more credible or accurate. As with any adjustment, if there is no reasoned explanation that would allow this court to meaningfully evaluate the process by which the expert’s conclusion was reached, then it is unpersuasive. The computer-generated number based on the expert’s input of certain data (here adjusted land sales and his choice of a constant) does not replace the need for such reasoning. See e.g. Forsgate Ventures IX, L.L.C. v. Twp. of South Hackensack, 29 N.J. Tax 28, 45 (Tax 2016) (while “automated valuation software may be useful in terms of streamlining the valuation process . . . without a detailed explanation of the

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<sup>18</sup> The significance and explanation of the terms are explained later in the text, as well as with a scatter plot similar to the one Plaintiff’s appraiser’s report used. The Appraisal of Real Estate at 734, 736.

valuation software used, the court has no way to gauge the accuracy or reasonableness of the estimates [it] produce[s]”), aff’d, 31 N.J. Tax 135 (App. Div. 2018); Palisadium Mgt. Corp. v. Borough of Cliffside Park, 456 N.J. Super. 293, 297 (App. Div. 2018) (“Real estate appraisers testifying in the Tax Court should be guided” by the “net opinion rule,” thus should be able to “demonstrate that both the factual bases and the methodology are reliable”) (citation and internal quotation marks omitted). If the value inferences raised by the use of linear regression analysis are not explained step-by-step, they are unpersuasive as being value or adjustment determinants.

## 2. Cost Approach

Due to the size of the Subject and its several improvements and amenities, the court determines that the cost approach should predominate because the proofs in support thereof are more reliable. Potential buyers of the Subject could reasonably measure its price by the cost of constructing their own custom, oceanfront residence without necessarily discounting the custom features. This is the “principle of substitution [which] is basic to the cost approach.” The Appraisal of Real Estate 563. “This principle affirms that a knowledgeable buyer would pay no more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay.” Id. at 563-64.

### i. Land Value

The court does not find persuasive Plaintiff’s appraiser’s land value computation. It was based on a linear regression analysis which the court rejected for reasons stated above. Additionally, and as explained above, his further adjustment to the result of the computer-generated value number was bereft of supporting data.

The Borough’s appraiser’s land value conclusions are more credible. Plaintiff’s appraiser contended that the Borough’s appraiser’s land value conclusions are suspect because he did not

adjust for size, thus, failed to consider the potential of surplus or excess land, i.e., there is a diminishing return on land in excess of the amount of land needed to build a house. He maintained that all the comparables were buildable lots, therefore, they all had surplus land to the extent they exceeded the minimum lot size requirement. This concept, he maintained, is exemplified by land sale 5 (274 Ocean Avenue, Deal). This property sold for \$7,600,000, significantly more than the other land sales, but this was only because it was a sale of two lots thus, sold at a premium. It would not have sold for this price if only one house could be built on the entire lot.

The Borough's appraiser denied that there was a diminishing return on land area (larger the size, lower the value), and that the unit prices of the land sales evidenced that this is not true (some smaller lots selling for less PSF than the larger lots), thus, there was no correlation between size and unit prices especially in the Borough. He also stated that the per unit sale prices when viewed together, were not wildly divergent to show a price differential between lot sizes, and that his conclusions did not pick the highest PSF amounts. He also noted that while the Subject's lot was large, it was still suitable as one lot to support the one single family home on it.

The court finds the Borough's appraiser's explanation more reasonable. Simply because a property's lot is larger than the minimum lot size, it does not, without more, automatically render all area in excess thereof as less-valued surplus land. The PSF prices of the land sales in Deal also do not support Plaintiff's appraiser's rebuttal. The court also rejects Plaintiff's appraiser's contention that the Borough's appraiser should have performed a linear regression analysis which would show that no matter which land sale is used as the independent variable, the per acre value would be \$1,650,222, for the reasons already set forth above. The court therefore accepts the Borough's appraiser's land value conclusions.

ii. Replacement Cost of Improvements

Both appraisers agreed on the area (SF) of the various improvements and that the building was Class D. Plaintiff's appraiser's report claimed the building quality and condition (house, basement and carriage house) as "excellent," while the Borough's appraiser maintained that the building was a "high value residence" of "good" quality. Only Plaintiff's appraiser's report reproduced the M&S cost data he used, including the CMs (but not depreciation rates), which he labeled as pertinent to the third quarter (3Q) of 2015-2018.<sup>19</sup> The Borough's appraiser testified that he used M&S cost data (printed version) to determine the depreciated replacement cost of the improvements, and conceded that this information was not contained in his reports (which were prepared May 16, 2018 and April 8, 2019), nor available at trial.<sup>20</sup> The court will, as it must, evaluate each appraiser's costs from the data provided by Plaintiff's appraiser, the latter being part of his report offered (and accepted) as evidence without any objection from the Borough.

#### *Base Costs for the Main Building*

Plaintiff's appraiser used base PSF costs for Class D-Masonry Veneer, Type IV for the main house. Type IV describes the exterior walls as "fine masonry veneer, trims, best metal, tiles, some artglass": the interior finish as including "good plaster, ornamental detail, marble, custom carpet, parquet"; lighting and plumbing as being "good custom fixtures, more than one kitchen or

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<sup>19</sup> For tax year 2016, Plaintiff's appraiser used data from M&S (which he labeled 3Q 2015) as of March 2014 (greenhouse); August 2014 (house, guest house, basements, fireplace, elevator, porch, garage); September 2015 (roofs); December 2013 (paving/deck; pool); May 2015 (sheds); October 2015 (CCM and LCM).

For tax year 2017, he used data from M&S (which he labeled 3Q 2016) as of March 2016 (greenhouse); August 2016 (house, guest house, basements, fireplace, elevator, porch, garage); September 2015 (roofs); December 2015 (paving/deck; pool); May 2015 (sheds); October 2016 (CCM and LCM).

For tax year 2018, he used data from M&S (which he labeled 3Q 2017) as of March 2016 (greenhouse); August 2016 (house, guest house, basements, fireplace, elevator, porch, garage); September 2017 (roofs); December 2015 (paving/deck; pool); May 2017 (sheds); October 2017 (CCM and LCM).

For tax year 2019, he used data from M&S (which he labeled 3Q 2018) as of March 2018 (greenhouse); August 2018 (house, guest house, basements, fireplace, elevator, porch, garage); September 2017 (roofs); December 2017 (paving/deck; pool); May 2017 (sheds); October 2018 (CCM and LCM).

<sup>20</sup> The Borough's appraiser's report for tax years 2016-2018 notes that the "replacement cost for the car dealership was determined using the [M&S] Valuation Service." For tax year 2019, however, he corrected the description by noting that the "replacement cost for the High-Value Residence was determined using the [M&S] Valuation Service."

food preparation area”; and heat as “complete H.V.A.C.”<sup>21</sup> Although he classified the carriage house as “excellent” quality and condition, he used costs pertaining to “good.”

The Borough’s appraiser’s base cost of \$464.46 PSF (for the main house for tax years 2016-2018) is reported in M&S as the base cost for Class D-Masonry Veneer, Type VI, but as of August 2016. As of August 2014, the base cost for Type VI is \$458.11 PSF. Type VI is the highest category wherein the exterior walls are “special site-built sash and entries, best clay, slate”; the interior finish includes “custom ceilings and cabinetry, inlaid parquet, matched stone and woods”; lighting and plumbing are “extensive fixtures and custom hardware throughout”; and heat is “complete H.V.A.C.”

For tax year 2019, however, the Borough’s appraiser used \$410 PSF which shows up in the M&S data as of August 2018 as the base cost for Class D, Type V. Type V describes the exterior walls as “best sidings, IFS, much fine trim and fenestration”; interior finish as “coffered ceilings, site-built cabinetry, niches, many extras”; lighting and plumbing as “high-quality fixtures, structured wiring, high amps, fine hardware”; and heat as “complete H.V.A.C.”<sup>22</sup> For Class D-Masonry Veneer, Type VI, the base cost is shown \$497 PSF. Thus, it is unclear whether he intended to use Class D, Type V for all tax years, or Class D-Masonry Veneer, Type VI for all tax years. If he intended to use the former only for tax year 2019, he did not explain why he downgraded the Subject’s Class and Type (thus costs) for one year only.

The Subject was built in 1989. Both appraisers agree that the exterior was masonry. They also agree that the Subject did not undergo any major renovations since then. They further agree that the overall condition is average. Therefore, and although the improvements are very well-

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<sup>21</sup> This is the same description under Class D, Type V. Class D is not qualified by “Masonry Veneer.” Costs in Class D are somewhat lower than Class D, Masonry Veneer.

<sup>22</sup> This is the same description under Class D-Masonry Veneer, for Type V. As noted above, costs in this category are slightly higher than those in Class D without Masonry Veneer.

maintained, the court agrees with Plaintiff's appraiser's use of the base costs for Class D-Masonry Veneer, Type IV for the main house, and for the basement (finished and unfinished).

In this connection, the court rejects the Borough's appraiser's addition of heating/cooling PSF costs to the main house base costs. The M&S data shows that this item is already included in the base cost under "Heat" which is described as "complete H.V.A.C." No justification was proffered for the addition.

The court also agrees with Plaintiff's appraiser's base cost for the carriage house, using Class D, Type "good," since the photographs endorse this. The Borough's appraiser's base cost of \$124.95 (tax years 2016-2018) for the Guest house/Carriage House does not appear in any of the provided cost data. For tax year 2019, he used \$115 PSF which is the base cost for Class C, Type "good" as of August 2018. Plaintiff's appraiser's classification being more consistent, the court will use his costs.

Because the court can verify the data, the court agrees with Plaintiff's appraiser's floor area multipliers. It could not verify the Borough's appraiser's computations.

#### *Base Costs for Other Improvements*

The court will use costs for each item in both appraisers reports to the extent verifiable or reasonably approximated from the data provided, or reasonably estimated by the appraisers.

#### *Cost Multipliers*

The CCMs provided in Plaintiff's appraiser's report are the supplements to cost data as of October of 2015-2018, and the table is broken into sections of the M&S calculator cost sections and segregated cost sections for the eastern, central and western portions of the country for Classes A-D and S, and unit-in-place cost sections. The cost data for the various items were from Section 12 (main house, basement, carriage house, elevators, fireplace, porches, garage); Section 17

(shed); Section 57 (roof); section 64 (greenhouse); Section 66 (pools; paving; patio deck). The LCM for each tax year as to New Jersey was for Classes A-D and S, one at a State-wide number, and separate ones for 24 cities.

The court has accepted Plaintiff's appraiser's Class D-Masonry Veneer, classification for the Subject as to the main house, basement, carriage house, these three coming under Section 12 of the calculator costs. The applicable CCM and LCM would/should also then be for Class D. As of October of each year, the CCM for Section 12 (eastern) is 1.04; 1.03; 1.05; 1.03.

For each tax year, Plaintiff's appraiser applied the correct CCM as to Section 12, Class D (1.04; 1.03; 1.05; 1.03), thus, for the base costs for the house, basement (finished and unfinished) and the carriage house. The Borough's appraiser used 1.03; 1.08; 1.13; and 1.03 to each of the three categories of his improvements, thus, not in accord with the data.

The LCM (for entire New Jersey) per the M&S data as of October of each year 2015-2018 is 1.26; 1.29; 1.28; 1.26. Plaintiff's appraiser chose the rates for Class D for Asbury Park rather than the general one for all of New Jersey, thus 1.15; 1.18; 1.17; 1.15, but applied them only to the base costs for the house, basement (finished and unfinished) and the carriage house. The Borough's appraiser used 1.26; 1.26; 1.26; and 1.30.

Evidently, Plaintiff's appraiser's CCMs for Section 12 cost data are more accurate and in accordance with the M&S data. The court will therefore use these. The court also finds reasonable Plaintiff's appraiser's use of the LCMs specific to Asbury Park. It is a city in Monmouth County (and the only one listed for that County), and in proximity to the Borough. However, the appraiser's non-use of CMs for any other items he costed out (under "Lumpsums" such as garage, greenhouse, and other amenities) is questionable. He used costs for these items from M&S data as of certain dates, none of which were the assessment dates, and despite the CM data having



included separate rates for these unit-in-place cost sections, he did not apply any CM. In sum, the court will use Plaintiff's appraiser's CCMs and LCMs for each tax year for *all* cost items.

#### *Entrepreneurial Profit*

Both experts agreed to the entrepreneurial profit at 10%. The court accepts this.

#### *Soft Costs*

Soft or indirect costs are "expenditures or allowances that are necessary for construction but are not typically part of the construction contract." The Appraisal of Real Estate at 571. They include the cost of architectural and engineering services, appraisal and legal fees, financing costs such as interest, points, fees, or service charges paid on construction loans, and real estate taxes paid during construction. Ibid. Often, these costs are not included in M&S data, and "[a]ppraisers should recognize when published cost estimates do not include indirect costs." Id. at 583.

Only Plaintiff's appraiser provided 5% for indirect costs. The M&S data does not indicate their specific inclusion except as to heating/cooling which includes prorated share of the contractor's overhead/profits and architect fees. Therefore, the court finds 5% for indirect costs provided by Plaintiff's appraiser as reasonable.

#### *Depreciation*

Plaintiff's appraiser's numbers 40% (20-year effective age over a 50-year economic life) with 2% increments each year was based on his opinion that the Subject required extensive deferred maintenance and was functionally obsolete in several ways. The Borough's appraiser determined the Subject's improvements (the main building and guest house/carriage house) as having a "60 year lifespan," an effective age of 18, 19 and 20 years (tax years 2016-2018) due to "the level of maintenance," and used a depreciation rate of 16%, 17% and 18% respectively "for physical deterioration to the improvements per the [M&S] Depreciation Tables." For tax year

2019, he determined an effective age as 22 years, and attributed a depreciation rate of 20% “per the [M&S] Depreciation Tables.” For improvements such as pool, spa, landscaping/lighting, however, he use a “lifespan” of 20 years “which indicates a rate of depreciation of -5% per year,” then “determined” their effective age as “approximately 10 years,” therefore, used 50% depreciation rate (all tax years).

The court is unpersuaded by Plaintiff’s appraiser’s rates, which being attributable to extensive deferred maintenance and functional obsolescence, are unsubstantiated, and in any event, not borne by the exterior or interior photographs of the Subject. Only the garage under the outdoor greenhouse showed wear and tear and water stained concrete floor which is not unusual given the greenhouse’s normal use. Even the alleged lack of non-use of the indoor lap pool or the cabanas do not evidence any dilapidation.

The Borough’s appraiser’s calculation under the age/life method is mathematically incorrect. 18, 19, 20, 22 effective age divided by the 60-year lifespan would be 30%; 31.67%; 33%; and 36.67%, not 16%; 17%; 18%; and 20%. The Borough’s appraiser testified that if the effective age and life expectancy is input, M&S provides the depreciation rates. However, this data was not included. Since it appears that he used an age-life depreciation method (and performed the same exercise for site improvements such as pool and spa where he provided a 50% depreciation), the court will use 30%; 31.67%; 33%; and 36.67%.

With the above adjustments, the value conclusion for each tax year is as follows:

**TAX YEAR 2016** (more than 50 cents rounded to a dollar)

Main House (with floor area multiplier)	\$303.58 x 9,600 SF	\$ 2,914,368
Main House (with floor area multiplier)	\$309.84 x 1,775 SF	549,966
Finished Basement	\$ 92.11 x 4,471 SF	411,824
Unfinished Basement	\$ 20.02 x 889 SF	17,798

Attached Garage <sup>23</sup>	\$67.03 x 352 SF	\$ 23,595
Shared Wall AG <sup>24</sup>		(6,356)
Canopy <sup>25</sup>	\$58.00 x 484 SF	28,072
Carport <sup>26</sup>	\$12.54 x 560 SF	7,022
Patio <sup>27</sup>	\$16.30 x 4,142 SF	67,515
Brick Terrace <sup>28</sup>	\$14.40 x 1,458 SF	20,995
Fireplaces <sup>29</sup>	\$15,672 x 3	47,016
Elevator <sup>30</sup>	\$25,620	25,620
Open Porch <sup>31</sup>	\$19.37 x 66 SF	1,278
Roof Deck <sup>32</sup>	\$4.34 x 216 SF	937
Guest/Carriage House (with floor area multiplier)	\$101.80 x 1,492 SF	\$ 151,886
Guest House Att. Garage <sup>33</sup>	\$ 49.32 x 414 SF	20,418
Shared Wall		(2,570)
Guest House BIG <sup>34</sup>	\$43.13 x 690 SF	29,760
Shared Wall/Roof		(13,513)

<sup>23</sup> The August 2014 M&S data includes cost information for “detached garage” and shows \$64.03 PSF for Class D, type excellent, 400 SF sized garage. The Subject’s garage is 352 SF. Plaintiff’s appraiser used \$67.03 PSF. The Borough’s appraiser provided \$77 PSF, which is the cost for Class C, “excellent” type detached garage sized 400 SF in the August 2016 M&S data. The court will use Plaintiff’s appraiser’s number since it pertains to Class D.

<sup>24</sup> Only Plaintiff’s appraiser used this deduction. It is appropriate since the M&S data requires the same.

<sup>25</sup> This item appears only in the Borough’s appraiser’s report. The highest cost in the data provided is for steel frame of excellent quality, which is less than what the Borough’s appraiser provided. The court will therefore use the cost as provided in the M&S data for August 2014 which is \$58 PSF.

<sup>26</sup> This item appears only in Plaintiff’s appraiser’s report. The August 2014 M&S data relating to carports notes that “open individual carports with concrete floors” cost \$8.38-\$16.70 PSF. The court will accept Plaintiff’s appraiser’s number since it is within the cost range.

<sup>27</sup> The costs are under “paving-decking” and the most appropriate one for the Subject appears to be “Brick on concrete base, grouted, flat” for which the range is \$10.75-\$17.45 PSF. The photographs evidencing a high quality of the patio (front and rear), the court will use the Borough’s appraiser’s cost of \$16.30 PSF.

<sup>28</sup> The experts differed by 30 cents (\$14.10 PSF v. \$14.40 PSF). Given the excellent condition of this item, as evidenced by the photographs, the court will use the Borough’s appraiser’s number.

<sup>29</sup> The Borough’s appraiser used \$52,800 for three fireplaces, thus \$17,600 per fireplace. This number does not show in the M&S data under any category. Plaintiff’s appraiser’s numbers appear to approximate the cost shown for “Custom or oversized one-story” of “good” quality, therefore, the court will use this. However, he only accounted for one fireplace not for the three in the Subject, hence the cost is multiplied by 3.

<sup>30</sup> Plaintiff’s appraiser appears to have used the August 2014 M&S costs for “excellent” type, but after 60% depreciation as required by M&S for “small residential elevators” (the “lumpsum costs” therein being for an “apartment type elevator”). The court was unable to verify the Borough’s appraiser’s \$2.93 PSF cost for elevator from the data (which he added to the base PSF cost of the main house).

<sup>31</sup> Only Plaintiff’s appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>32</sup> Only Plaintiff’s appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>33</sup> Plaintiff’s appraiser’s \$49.32 PSF is from the August 2014 M&S data for detached garages, Class D-Masonry Veneer, Type “Good” for a 400 SF garage. The Borough’s appraiser’s \$77 PSF is for Class C, “excellent” type detached garage sized 400 SF as it appears in the August 2016 and 2017 M&S data. The photographs support Plaintiff’s appraiser’s lower cost.

<sup>34</sup> This item appears only in Plaintiff’s appraiser’s report, which the court accepts based on testimony of the Subject’s improvements, and that the Borough’s appraiser was unable to inspect the guest house/carriage house.

Greenhouse <sup>35</sup>	\$39.63 x 1,152 SF	\$ 45,654
Greenhouse basement <sup>36</sup>	\$20.75 x 576 SF	11,952
Total Replacement New Direct Costs		\$ 4,353,237
x CCM	1.04	\$4,527,366
x LCM	1.15 (\$4,527,366 x 1.15)	\$5,206,471
Total Cost New Adjusted		\$ 5,206,471
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost		\$ 260,324
		\$ 5,466,795
Add: Entrepreneurial Profit at 10%		\$ 546,680
		\$ 6,013,475
Less: Depreciation (at 30%)		\$ 1,804,043
TOTAL DEPRECIATED COST (1)		\$ 4,209,432
Outdoor Pool <sup>37</sup>		\$
87,525		
Indoor Pool <sup>38</sup>		40,350
Spa <sup>39</sup>		17,950

<sup>35</sup> The M&S data as of March 2014 shows a range \$31-\$48.25 PSF for 1,000 SF greenhouse. The publication states that “[t]he low end of the cost range represents wood or cheap aluminum greenhouses with plain stem walls while the high end is a weather proofed, concealed connection, tubular framed structure.” The photographs evidence the Subject’s greenhouse falling within the latter description. Plaintiff’s appraiser’s \$39.63 PSF represents a mid-ground of the range, while the Borough’s appraiser’s \$52.25 PSF appears slightly higher than the top of the range, however his description was for greenhouse with basement. Whereas, Plaintiff’s appraiser provided a separate lower PSF number for the basement. See *infra* n. 36. Therefore, the court will use Plaintiff’s appraiser’s number for the greenhouse portion.

<sup>36</sup> Only Plaintiff’s appraiser included a cost to the greenhouse basement and used the base costs he used for the unfinished basement in the main house. The court finds this reasonable.

<sup>37</sup> Plaintiff’s appraiser used \$87,525 unit-in-place cost. The Borough’s appraiser used \$65.80 PSF and showed the outdoor (gunite) pool as being 1,800 SF. The August 2013 M&S data states that residential swimming (gunite) pools over 1,000 SF will cost between \$45.25-\$52 PSF. Plaintiff’s appraiser’s provision would appear to be at \$48.63 PSF, which is within that range, while the Borough’s appraiser’s provision appears to exceed the provided range. The court will therefore use Plaintiff’s appraiser’s number.

<sup>38</sup> Plaintiff’s appraiser used \$40,100 while the Borough’s appraiser used \$40,350. Both fall within the ranges shown in M&S data for aquatic exercise pools (depending on the depth). The court will use the higher number of \$40,350 based on the picture of the lap pool which shows it as being in excellent condition.

<sup>39</sup> Plaintiff’s appraiser used \$9,425 and the Borough’s appraiser used \$17,950. The M&S data for spas/hot tubs shows the cost for exterior ones which are “attached” to pool (\$6,550-\$12,300) or “detached” to pool (\$8,000-\$24,700) as of December 2013. For interior installations, it requires addition of 5% to 15%. The Subject’s spa/hot tub is indoors, and from the pictures, detached. Therefore, the Borough’s appraiser’s cost is more appropriate.

Cabana <sup>40</sup>	\$105 x 784 SF	82,320
Landscaping, Lighting etc. <sup>41</sup>		813,971
Total Replacement New Direct Costs		\$ 1,042,116
x CCM 1.04	\$1,083,801	
x LCM 1.15 (\$1,083,707 x 1.15)	\$1,246,371	\$ 1,246,371
Total Adjusted Cost New		\$ 1,246,371
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost		\$ 62,319
		\$ 1,308,690
Add: Entrepreneurial Profit at 10%		\$ 130,869
		\$ 1,439,559
Less: Depreciation (at 50%)		\$ (719,778)
TOTAL DEPRECIATED COST (2)		\$ 719,781
TOTAL DEPRECIATED COST (1) + (2)		\$ 4,929,213
Add: Land Value		\$11,500,000
Total Value of Land & Improvements		\$16,429,213
Rounded to		<b>\$16,430,000</b>

**TAX YEAR 2017** (more than 50 cents rounded to a dollar)

Main House (with floor area multiplier)	\$307.77 x 9,600 SF	\$ 2,954,592
Main House (with floor area multiplier)	\$314.12 x 1,775 SF	557,563
Finished Basement	\$ 93.22 x 4,471 SF	416,787
Unfinished Basement	\$ 20.07 x 889 SF	17,842
Attached Garage <sup>42</sup>	\$68.16 x 352 SF	\$ 23,992
Shared Wall AG <sup>43</sup>		(6,435)

<sup>40</sup> Plaintiff's appraiser used \$56.98 PSF for what he itemized as "shed" of 784 SF, which per M&S data, is for Class C secure storage modular shed building-Average Type. The Borough's appraiser used \$190.99. This number is shown under Bath House, Class C-Excellent Type as of August 2016. Both numbers are unpersuasive. The cabanas are not storage sheds since Plaintiff's appraiser describes the outdoor pool as having "pool house" which has a kitchen and bathrooms (pictures of the latter included, as are pictures of the cabanas exterior). However, under bath houses, the cabanas do not fall under Class C-Excellent type since neither appraiser described there being a sauna within, nor do the cabanas have an exterior wall of face brick, both these features described in this classification and type. From the pictures provided, and Plaintiff's appraiser's testimony that the kitchen area was not functional, the court views the cabanas as somewhere between good and average in Class D and will use \$105 PSF for all tax years.

<sup>41</sup> Plaintiff's appraiser included \$200,000 for "As-Is Site Improvements." The Borough's appraiser included \$813,971 for "landscaping, lighting, etc." Cost for site improvements such as lighting etc. is a generally recognized provision. The Borough's appraiser's amount is more credible given the high quality of the exterior improvements as evidenced by the photographs.

<sup>42</sup> The August 2016 M&S data includes cost information for "detached garage" and shows \$74.50 PSF for Class D, type excellent, 400 SF sized garage. The Subject's garage is 352 SF. Plaintiff's appraiser used \$68.16 PSF. The Borough's appraiser provided \$77 PSF, which is the cost for Class C, "excellent" type detached garage sized 400 SF in the August 2016 M&S data. The court will use Plaintiff's appraiser's number since it pertains to Class D.

<sup>43</sup> Only Plaintiff's appraiser used this deduction. It is appropriate since the M&S data requires the same.

Canopy <sup>44</sup>	\$59.00 x 484 SF	28,556
Carport <sup>45</sup>	\$12.68 x 560 SF	7,101
Patio <sup>46</sup>	\$16.30 x 4,142 SF	67,515
Brick Terrace <sup>47</sup>	\$14.55 x 1,458 SF	21,214
Fireplaces <sup>48</sup>	\$15,840 x 3	47,520
Elevator <sup>49</sup>	\$25,760	25,760
Open Porch <sup>50</sup>	\$20.00 x 66 SF	1,320
Roof Deck <sup>51</sup>	\$4.34 x 216 SF	938
Guest/Carriage House (with floor area multiplier)	\$103.19 x 1,492 SF	\$ 153,959
Guest House Att. Garage <sup>52</sup>	\$ 49.75 x 414 SF	20,597
Shared Wall		(2,624)
Guest House BIG <sup>53</sup>	\$43.66 x 690 SF	30,125
Shared Wall/Roof		(13,718)
Greenhouse <sup>54</sup>	\$40.38 x 1,152 SF	\$ 46,518

<sup>44</sup> This item appears only in the Borough's appraiser's report. The highest cost in the data provided is for steel frame of excellent quality, which is less than the \$77 PSF the Borough's appraiser provided. The court will therefore use the cost as provided in the M&S data for August 2016 which is \$59 PSF.

<sup>45</sup> This item appears only in Plaintiff's appraiser's report. The August 2016 M&S data relating to carports notes that "open individual carports with concrete floors" cost \$8.46-\$16.90 PSF. The court will accept Plaintiff's appraiser's number since it is within the cost range.

<sup>46</sup> The costs are under "paving-decking" and the most appropriate one for the Subject appears to be "Brick on concrete base, grouted, flat" for which the range is \$11.10-\$18 PSF. The photographs evidencing a high quality of the patio (front and rear), the court will use the Borough's appraiser's cost of \$16.30 PSF.

<sup>47</sup> Plaintiff's expert used \$14.55 PSF while the Borough's appraiser used \$14.40 PSF. Given the excellent condition of this item, as evidenced by the photographs, the court will use the higher number.

<sup>48</sup> The Borough's appraiser used \$52,800 for three fireplaces, thus \$17,600 per fireplace. This number does not show in the M&S data under any category. Plaintiff's appraiser's number (\$15,840) approximates the cost shown for "Custom or oversized one-story" of "good" quality in the August 2016 M&S data, therefore, the court will use this. However, he only accounted for one fireplace not for the three in the Subject, hence the cost is multiplied by 3.

<sup>49</sup> Plaintiff's appraiser appears to have used the August 2016 M&S costs for "excellent" type, but after 60% depreciation as required by M&S for "small residential elevators" (the "lumpsum costs" therein being for an "apartment type elevator"). The court was unable to verify the Borough's appraiser's \$2.93 PSF cost for elevator from the data (which he added to the base PSF cost of the main house).

<sup>50</sup> Only Plaintiff's appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>51</sup> Only Plaintiff's appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>52</sup> Plaintiff's appraiser's \$49.75 PSF is from the August 2016 M&S data for detached garages, Class D-Masonry Veneer, Type "Good" for a 400 SF garage. The Borough's appraiser's \$77 PSF is for Class C, "excellent" type detached garage sized 400 SF in August 2016 and 2017 M&S data. The photographs support Plaintiff's appraiser's lower cost.

<sup>53</sup> This item appears only in Plaintiff's appraiser's report, which the court accepts based on testimony of the Subject's improvements, and that the Borough's appraiser was unable to inspect the guest house/carriage house.

<sup>54</sup> The M&S data as of March 2016 shows a range \$31.50-\$49.25 PSF for 1,000 SF. The publication states that "[t]he low end of the cost range represents wood or cheap aluminum greenhouses with plain stem walls while the high end is a weather proofed, concealed connection, tubular framed structure." The photographs evidence the Subject's greenhouse falling within the latter description. Plaintiff's appraiser's \$40.38 PSF represents a mid-ground of the range, while the Borough's appraiser's \$52.25 PSF is slightly more than the top of range, however his description was for greenhouse with basement. Whereas, Plaintiff's appraiser provided a separate lower PSF number for the basement. See *infra* n. 55. Therefore, the court will use Plaintiff's appraiser's number for the greenhouse portion.

Greenhouse basement <sup>55</sup>	\$21.00 x 576 SF	12,096
Total Replacement New Direct Costs		\$4,411,218
x CCM	1.03	\$4,543,555
x LCM	1.18 x \$4,543,555	\$5,361,394
Total Cost New Adjusted		\$ 5,361,394
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost		\$ 268,070
		\$ 5,629,464
Add: Entrepreneurial Profit at 10%		\$ 562,946
		\$ 6,192,410
Less: Depreciation (at 31.67%)		\$ 1,961,136
TOTAL DEPRECIATED COST (1)		\$ 4,231,274
Outdoor Pool <sup>56</sup>		\$
90,225		
Indoor Pool <sup>57</sup>		41,300
Spa <sup>58</sup>		17,950
Cabana <sup>59</sup>	\$105 PSF x 784 SF	82,320
Landscaping, Lighting etc. <sup>60</sup>		813,971
Total Replacement New Direct Costs		\$ 1,045,766
x CCM	1.03	\$1,077,139
x LCM	1.18 (\$1,074,358 x 1.18)	\$1,271,024
Total Adjusted Cost New		\$ 1,271,024
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost		\$ 63,551
		\$ 1,334,575
Add: Entrepreneurial Profit at 10%		\$ 133,476

<sup>55</sup> Only Plaintiff's appraiser included a cost to the greenhouse basement and used the base costs he used for the unfinished basement in the main house. The court finds this reasonable.

<sup>56</sup> Plaintiff's appraiser used \$90,225 unit-in-place cost. The Borough's appraiser used \$65.80 PSF and showed the outdoor (gunite) pool as being 1,800 SF. The August 2015 M&S data states that residential swimming (gunite) pools over \$1,000 SF will cost between \$46.75-\$53.50 PSF. Plaintiff's appraiser's provision would appear to be at \$50.12 PSF, which is within that range, while the Borough's appraiser's provision appears to exceed the provided range. The court will therefore use Plaintiff's appraiser's number.

<sup>57</sup> Plaintiff's appraiser used \$41,300 while the Borough's appraiser used \$40,350. Both fall within the ranges shown in the December 2015 M&S data for aquatic exercise pools (depending on the depth). The court will use the higher number of \$41,300 based on the picture of the lap pool which shows it as being in excellent condition.

<sup>58</sup> Plaintiff's appraiser used \$9,725 and the Borough's appraiser used \$17,950. The December 2015 M&S data for Spas/Hot tubs show the cost for exterior ones which are "attached" to pool (\$6,750-\$12,700) or "detached" to pool (\$9,150-\$25,500). For interior installations, it requires addition of 5% to 15%. The Subject's spa/hot tub is indoors and from the pictures, detached. Therefore, the Borough's appraiser's cost is more appropriate.

<sup>59</sup> Plaintiff's appraiser used \$56.98 PSF for what he itemized as "shed" of 784 SF, which per December 2015 M&S data, is for Class C secure storage modular shed building-Average Type. The Borough's appraiser used \$190.99. This number is shown under Bath House, Class C-Excellent Type as of August 2016. The court will use \$105 PSF for all tax years. See *supra* n. 40.

<sup>60</sup> Plaintiff's appraiser included \$200,000 for "As-Is Site Improvements." The Borough's appraiser included \$813,971 for "landscaping, lighting, etc." Cost for site improvements such as lighting etc. is a generally recognized provision. The Borough's appraiser's amount is more credible given the high quality of the exterior improvements as evidenced by the photographs.

	\$ 1,468,051
Less: Depreciation (at 50%)	\$ (734,026)
TOTAL DEPRECIATED COST (2)	\$ 734,025
TOTAL DEPRECIATED COST (1) + (2)	\$ 4,965,299
Add: Land Value	\$11,500,000
Total Value of Land & Improvements	\$16,465,299
Rounded to	<b>\$16,465,000</b>

**TAX YEAR 2018** (more than 50 cents rounded to a dollar)

Main House (with floor area multiplier)	\$307.77 x 9,600 SF	\$ 2,954,592
Main House (with floor area multiplier)	\$314.12 x 1,775 SF	557,563
Finished Basement	\$ 93.22 x 4,471 SF	416,787
Unfinished Basement	\$ 20.07 x 889 SF	17,842
Attached Garage <sup>61</sup>	\$68.16 x 352 SF	\$ 23,992
Shared Wall AG <sup>62</sup>		(6,435)
Canopy <sup>63</sup>	\$59.00 x 484 SF	28,556
Carport <sup>64</sup>	\$12.68 x 560 SF	7,101
Patio <sup>65</sup>	\$16.30 x 4,142 SF	67,515
Brick Terrace <sup>66</sup>	\$14.55 x 1,458 SF	21,214
Fireplaces <sup>67</sup>	\$15,840 x 3	47,520
Elevator <sup>68</sup>	\$25,760	25,760

<sup>61</sup> The August 2016 M&S data includes cost information for “detached garage” and shows \$74.50 PSF for Class D, type excellent, 400-SF sized garage. The Subject’s garage is 352 SF. Plaintiff’s appraiser used \$68.16 PSF. The Borough’s appraiser provided \$77 PSF, which is the cost for Class C, “excellent” type detached garage sized 400 SF in the August 2016 M&S data. The court will use Plaintiff’s appraiser’s number since it pertains to Class D.

<sup>62</sup> Only Plaintiff’s appraiser used this deduction. It is appropriate since the M&S data requires the same.

<sup>63</sup> This item appears only in the Borough’s appraiser’s report. The highest cost in the data provided is for steel frame of excellent quality, which is less than the \$77 PSF the Borough’s appraiser provided. The court will therefore use the cost as provided in the M&S data for August 2016 which is \$59 PSF.

<sup>64</sup> This item appears on in Plaintiff’s appraiser’s report. The August 2016 M&S data relating to carports notes that “open individual carports with concrete floors” cost \$8.46-\$16.90 PSF. The court will accept Plaintiff’s appraiser’s number since it is within the cost range.

<sup>65</sup> The costs are under “paving-decking” and the most appropriate one for the Subject appears to be “Brick on concrete base, grouted, flat” for which the range is \$10.75-\$17.45 PSF. The photographs evidencing a high quality of the patio (front and rear), the court will use the Borough’s appraiser’s cost of \$16.30 PSF.

<sup>66</sup> Plaintiff’s expert used \$14.55 PSF while the Borough’s appraiser used \$14.40 PSF. Given the excellent condition of this item, as evidenced by the photographs, the court will use the higher number.

<sup>67</sup> The Borough’s appraiser used \$52,800 for three fireplaces, thus \$17,600 per fireplace. This number does not show in the M&S data under any category. Plaintiff’s appraiser’s number (\$15,840) approximates the cost shown for “Custom or oversized one-story” of “good” quality in the August 2016 M&S data, therefore, the court will use this. However, he only accounted for one fireplace not for the three in the Subject, hence the cost is multiplied by 3.

<sup>68</sup> Plaintiff’s appraiser appears to have used the August 2016 M&S costs for “excellent” type, but after 60% depreciation as required by M&S for “small residential elevators” (the “lumpsum costs” therein being for an “apartment type elevator”). The court was unable to verify the Borough’s appraiser’s \$2.93 PSF cost for elevator from the data (which he added to the base PSF cost of the main house).



Open Porch <sup>69</sup>	\$20.00 x 66 SF	1,320
Roof Deck <sup>70</sup>	\$4.48 x 216 SF	968
Guest/Carriage House (with floor area multiplier)	\$103.19 x 1,492 SF	\$ 153,959
Guest House Att. Garage <sup>71</sup>	\$ 49.75 x 414 SF	20,597
Shared Wall		(2,624)
Guest House BIG <sup>72</sup>	\$43.66 x 690 SF	30,125
Shared Wall/Roof		(13,718)
Greenhouse <sup>73</sup>	\$40.38 x 1,152 SF	\$ 46,518
Greenhouse basement <sup>74</sup>	\$21.00 x 576 SF	12,096
Total Replacement New Direct Costs		\$4,411,248
x CCM	1.05	\$ 4,631,810
x LCM	1.17 x \$ 4,631,810	\$ 5,419,218
Total Cost New Adjusted		\$ 5,419,218
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost		\$ 270,961
		\$ 5,690,179
Add: Entrepreneurial Profit at 10%		\$ 569,018
		\$ 6,259,197
Less: Depreciation (at 33%)		\$ 2,065,535
TOTAL DEPRECIATED COST (1)		\$ 4,193,662
Outdoor Pool <sup>75</sup>		\$
90,225		

<sup>69</sup> Only Plaintiff's appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>70</sup> Only Plaintiff's appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>71</sup> Plaintiff's appraiser's \$49.75 PSF is from the August 2016 M&S data for detached garages – Class D-Masonry Veneer, Type "Good" for a 400 SF garage. The Borough's appraiser's \$77 PSF is for Class C, "excellent" type detached garage sized 400 SF in August 2016 and 2017 M&S data. The photographs support Plaintiff's appraiser's lower cost.

<sup>72</sup> This item appears only in Plaintiff's appraiser's report, which the court accepts based on testimony of the Subject's improvements, and that the Borough's appraiser was unable to inspect the guest house/carriage house.

<sup>73</sup> The M&S data as of March 2016 shows a range \$31.50-\$49.25 PSF for 1,000 SF. The publication states that "[t]he low end of the cost range represents wood or cheap aluminum greenhouses with plain stem walls while the high end is a weather proofed, concealed connection, tubular framed structure." The photographs evidence the Subject's greenhouse falling within the latter description. Plaintiff's appraiser's \$40.38 PSF represents a mid-ground of the range, while the Borough's appraiser's \$52.25 PSF is slightly more than the top of range, however his description was for greenhouse with basement. Whereas, Plaintiff's appraiser provided a separate lower PSF number for the basement. See *infra* n. 74. Therefore, the court will use Plaintiff's appraiser's number for the greenhouse portion.

<sup>74</sup> Only Plaintiff's appraiser included a cost to the greenhouse basement and used the base costs he used for the unfinished basement in the main house. The court finds this reasonable.

<sup>75</sup> Plaintiff's appraiser used \$90,225 unit-in-place cost. The Borough's appraiser used \$65.80 PSF and showed the outdoor (gunite) pool as being 1,800 SF. The August 2015 M&S data states that residential swimming (gunite) pools over \$1,000 SF will cost between \$46.75-\$53.50 PSF. Plaintiff's appraiser's provision would appear to be at \$50.12 PSF, which is within that range, while the Borough's appraiser's provision appears to exceed the provided range. The court will therefore use Plaintiff's appraiser's number.

Indoor Pool <sup>76</sup>			41,300
Spa <sup>77</sup>			17,950
Cabana <sup>78</sup>		\$105 PSF x 784 SF	82,320
Landscaping, Lighting etc. <sup>79</sup>			813,971
Total Replacement New Direct Costs			\$ 1,045,766
x CCM	1.05	\$ 1,098,054	
x LCM	1.17 (\$1,098,054 x 1.17)	\$ 1,284,732	\$ 1,284,732
Total Adjusted Cost New			\$ 1,284,732
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost			\$ 64,237
			\$ 1,348,969
Add: Entrepreneurial Profit at 10%			\$ 134,897
			\$ 1,483,866
Less: Depreciation (at 50%)			\$ (741,933)
TOTAL DEPRECIATED COST (2)			\$ 741,933
TOTAL DEPRECIATED COST (1) + (2)			\$ 4,935,595
Add: Land Value			\$11,500,000
Total Value of Land & Improvements			\$16,435,595
Rounded to			<b>\$16,435,000</b>

**TAX YEAR 2019** (more than 50 cents rounded to a dollar)

Main House (with floor area multiplier)	\$329.03 x 9,600 SF	\$ 3,158,688
Main House (with floor area multiplier)	\$335.82 x 1,775 SF	596,081
Finished Basement	\$ 99.40 x 4,471 SF	444,417
Unfinished Basement	\$ 21.66 x 889 SF	19,256

<sup>76</sup> Plaintiff's appraiser used \$41,300 while the Borough's appraiser used \$40,350. Both fall within the ranges shown in the December 2015 M&S data for aquatic exercise pools (depending on the depth). The court will use the higher number of \$41,300 based on the picture of the lap pool which shows it as being in excellent condition.

<sup>77</sup> Plaintiff's appraiser used \$9,725 and the Borough's appraiser used \$17,950. The December 2015 M&S data for Spas/Hot tubs show the cost for exterior ones which are "attached" to pool (\$6,750-\$12,700) or "detached" to pool (\$9,150-\$25,500). For interior installations, it requires addition of 5% to 15%. The Subject's spa/hot tub is indoors and from the pictures, detached. Therefore, the Borough's appraiser's cost is more appropriate.

<sup>78</sup> Plaintiff's appraiser used \$58 PSF for what he itemized as "shed" of 784 SF, which per May 2017 M&S data, is for Class C secure storage modular shed building-Average Type. The Borough's appraiser used \$190.99. This number is shown under Bath House, Class C-Excellent Type as of August 2016. The court will use \$105 PSF for all tax years. See supra n. 40.

<sup>79</sup> Plaintiff's appraiser included \$200,000 for "As-Is Site Improvements." The Borough's appraiser included \$813,971 for "landscaping, lighting, etc." Cost for site improvements such as lighting etc. is a generally recognized provision. The Borough's appraiser's amount is more credible given the high quality of the exterior improvements as evidenced by the photographs.

Attached Garage <sup>80</sup>	\$ 73.02 x 352 SF	\$ 25,703
Shared Wall AG <sup>81</sup>		(6,897)
Canopy <sup>82</sup>	\$ 24.40 x 484 SF	11,810
Carport <sup>83</sup>	\$13.48 x 560 SF	7,549
Patio <sup>84</sup>	\$15.05 x 4,142 SF	62,337
Brick Terrace <sup>85</sup>	\$18.60 x 1,458 SF	27,119
Fireplaces <sup>86</sup>	\$16,848.00 x 3	50,544
Elevator <sup>87</sup>	\$27,180	27,180
Open Porch <sup>88</sup>	\$21.38 x 66 SF	1,411
Roof Deck <sup>89</sup>	\$4.48 x 216 SF	968
Guest/Carriage House (with floor area multiplier)	\$109.98 x 1,492 SF	\$ 164,090
Guest House Att. Garage <sup>90</sup>	\$ 53.00 x 414 SF	21,942
Shared Wall		(2,800)
Guest House BIG <sup>91</sup>	\$45.25 x 690 SF	31,223
Shared Wall/Roof		(14,669)
Greenhouse <sup>92</sup>	\$42.25 x 1,152 SF	\$ 48,672

<sup>80</sup> The August 2018 M&S data includes cost information for “detached garage” and shows \$79.50 PSF for Class D, type excellent, 400 SF sized garage. The Subject’s garage is 352 SF. Plaintiff’s appraiser used \$73.02 PSF. The Borough’s appraiser provided \$53 PSF. The court will use Plaintiff’s appraiser’s number.

<sup>81</sup> Only Plaintiff’s appraiser used this deduction. It is appropriate since the M&S data requires the same.

<sup>82</sup> This item appears only in the Borough’s appraiser’s report, and the cost appears for steel frame light false-mansard, “Good” type in the M&S August 2018 data, therefore, the court will use the same.

<sup>83</sup> This item appears only in Plaintiff’s appraiser’s report. The August 2018 M&S data relating to carports notes that “open individual carports with concrete floors” cost \$9-\$17.95 PSF. The court will accept Plaintiff’s appraiser’s number since it is within the cost range.

<sup>84</sup> The costs are under “paving-decking” and the most appropriate one for the Subject appears to be “Brick on concrete base, grouted, flat” for which the range is \$11.50-\$18.60 PSF. The photographs evidencing a high quality of the patio (front and rear), the court will use the Plaintiff’s appraiser’s cost of \$15.05 PSF as opposed to the Borough’s appraiser’s provision of \$14.40 PSF.

<sup>85</sup> Plaintiff’s expert used \$15.05 PSF while the Borough’s appraiser used \$18.60 PSF. Given the excellent condition of this item, as evidenced by the photographs, the court will use the higher number.

<sup>86</sup> The Borough’s appraiser used \$52,800 for three fireplaces, thus \$17,600 per fireplace. This number does not show in the M&S data under any category. Plaintiff’s appraiser’s number (\$16,848) approximates the cost shown for “Custom or oversized one-story” of “good” quality in the August 2018 M&S data, therefore, the court will use this. However, he only accounted for one fireplace not for the three in the Subject, hence the cost is multiplied by 3.

<sup>87</sup> Plaintiff’s appraiser appears to have used the August 2018 M&S costs for “excellent” type, but after 60% depreciation as required by M&S for “small residential elevators” (the “lumpsum costs” therein being for an “apartment type elevator”). The court was unable to verify the Borough’s appraiser’s \$4.96 PSF cost for elevator from the data (which he added to the base PSF cost of the main house).

<sup>88</sup> Only Plaintiff’s appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>89</sup> Only Plaintiff’s appraiser used this item and cost, with M&S data support, which the court accepts.

<sup>90</sup> Both Plaintiff’s and Borough’s reports stated \$53 PSF, which is between Class D “Good” type and “Very Good” type for 400 SF on August 2018 M&S data. The court accepts this number.

<sup>91</sup> This item appears only in Plaintiff’s appraiser’s report, which the court accepts based on testimony of the Subject’s improvements, and that the Borough’s appraiser was unable to inspect the guest house/carriage house.

<sup>92</sup> The M&S data as of August 2018 shows a range \$33-\$51.05 PSF for 1,000 SF. The publication states that “[t]he low end of the cost range represents wood or cheap aluminum greenhouses with plain stem walls while the high end is a weather proofed, concealed connection, tubular framed structure.” The photographs evidence the Subject’s

Greenhouse basement <sup>93</sup>	\$22.45 x 576 SF	12,931
Total Replacement New Direct Costs		\$ 4,687,555
x CCM	1.03	\$ 4,828,182
x LCM	1.15 x \$ 4,828,182	\$ 5,552,409
Total Cost New Adjusted		\$ 5,552,409
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost		\$ 277,620
		\$ 5,830,029
Add: Entrepreneurial Profit at 10%		\$ 583,003
		\$ 6,413,032
Less: Depreciation (at 36.67%)		\$ 2,351,659
TOTAL DEPRECIATED COST (1)		\$ 4,061,373
Outdoor Pool <sup>94</sup>		\$
93,600		
Indoor Pool <sup>95</sup>		42,700
Spa <sup>96</sup>		17,950
Cabana <sup>97</sup>	\$105 PSF x 784 SF	82,320
Landscaping, Lighting etc. <sup>98</sup>		895,370
Total Replacement New Direct Costs		\$ 1,131,940
x Current CM	1.03	\$ 1,165,898
x Local CM	1.15 (\$ 1,165,898 x 1.15)	\$1,340,783

greenhouse falling within the latter description. Plaintiff's appraiser's \$42.25 PSF represents a mid-ground of the range, while the Borough's appraiser's \$103.50 PSF is more than the top of range, however his description was for greenhouse with basement. Whereas, plaintiff's appraiser provided a separate lower PSF number for the basement. See infra n. 93. Therefore, the court will use plaintiff's appraiser's number for the greenhouse portion.

<sup>93</sup> Only Plaintiff's appraiser included a cost to the greenhouse basement and used the base costs he used for the unfinished basement in the main house. The court finds this reasonable.

<sup>94</sup> Plaintiff's appraiser used \$93,600 unit-in-place cost. The Borough's appraiser used \$82.50 PSF and showed the outdoor (gunite) pool as being 1,800 SF. The December 2017 M&S data states that residential swimming (gunite) pools over 1,000 SF will cost between \$48.50- \$55.50 PSF. Plaintiff's appraiser's provision would appear to be at \$52 PSF, which is within that range, while the Borough's appraiser's provision appears to be in excess of the provided range. The court will therefore use Plaintiff's appraiser's number.

<sup>95</sup> Both Plaintiff's and Borough's appraisers used \$42,700. Both fall within the ranges shown in the December 2017 M&S data for aquatic exercise pools (depending on the depth). The court will use this number.

<sup>96</sup> Plaintiff's appraiser used \$10,100 and the Borough's appraiser used \$17,950. The December 2017 M&S data for Spas/Hot tubs show the cost for exterior ones which are "attached" to pool (\$7,000-\$13,200) or "detached" to pool (\$9,500-\$26,400). For interior installations, it requires addition of 5% to 15%. The Subject's spa/hot tub is indoors and from the pictures, detached. Therefore, the Borough's appraiser's cost is more appropriate.

<sup>97</sup> Plaintiff's appraiser used \$58 PSF for what he itemized as "shed" of 784 SF, which per May 2017 M&S data, is for Class C secure storage modular shed building-Average Type. The Borough's appraiser used \$172.50. This number is in the middle range for Class D Bath House Good to Excellent (\$142-\$203) as of August 2018. The court will use \$105 PSF. See supra n. 40.

<sup>98</sup> Plaintiff's appraiser included \$200,000 for "As-Is Site Improvements." The Borough's appraiser included \$895,370 for "landscaping, lighting, etc." Cost for site improvements such as lighting etc. is a generally recognized provision. The Borough's appraiser's amount is more credible given the high quality of the exterior improvements as evidenced by the photographs.

Total Adjusted Cost New	\$ 1,340,783
Add: Indirect or Soft Costs at 5% of Total Adjusted Cost	\$ 67,039
	\$ 1,407,822
Add: Entrepreneurial Profit at 10%	\$ 140,782
	\$ 1,548,604
Less: Depreciation (at 50%)	\$ (774,302)
TOTAL DEPRECIATED COST (2)	\$ 774,302
TOTAL DEPRECIATED COST (1) + (2)	\$ 4,835,675
Add: Land Value	\$13,275,000
Total Value of Land & Improvements	\$18,110,676
Rounded to	<b>\$18,111,000</b>

For assessment stability purposes, the court concludes \$16,460,000 as the value for tax years 2015-2018, and \$18,111,000 for tax year 2019.

Generally, after the court has found a property’s true or fair market value, it must then then determine the “proper tax assessment of the property . . . after the application of that portion of chapter 123 . . . codified at N.J.S.A. 54:51A-6,” the Chapter 123 ratio being the “average ratio”). See Passaic Street Realty Assoc., Inc. v. City of Garfield, 13 N.J. Tax 482, 484, 485 n.1 (Tax 1993). Here, the Director. Division of Taxation’s (Director) published Chapter 123 (or average) ratio for the Borough for each tax year was as follows:

- 2016 - 95% (lower limit 80.75%; upper limit 109.25%)
- 2017 - 90.80% (lower limit 77.18%; lower limit 104.42)
- 2018 – 97.89% (lower limit 83.21%; lower limit 112.57%)
- 2019 – 81.80% (lower limit 69.53%; lower limit 94.07%)

However, for each tax year, the Director included the Borough on his list of “Approved Revaluations and Reassessments” because the Borough had conducted a “reassessment,” thus, was “verified for compliance with N.J.A.C. 18:12A-1.14(g) and,” therefore, the Borough was

“recognized in the . . . DIRECTOR’S TABLE OF EQUALIZED VALUATIONS for implementation of a Revaluation/Reassessment.”<sup>99</sup>

Plaintiff asked that the average ratio be applied to the court’s value determinations. The Borough resisted application of the same claiming the ratio does not apply to taxing districts in Monmouth County because the county is a participant in the Real Property Assessment Demonstration Program (ADP), see N.J.S.A. 54:1-101 to 1-106.<sup>100</sup> Although the Director published the average ratio, it appears that he overruled the same by his annual lists. The court will therefore conduct a hearing in this connection to decide whether the average ratio should apply. This of course does not disturb the court’s findings of true value of the Subject for each tax year at issue.

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<sup>99</sup> Note that for tax years 2018 and 2019 the Borough’s “activity type” was labeled “annual reassessment” whereas for the prior two tax years the “activity” was labeled “reassessment.”

<sup>100</sup> The Borough, during trial, confirmed with its appraiser that his value determinations showed that the Subject was over-assessed for each tax year. The appraiser agreed and stood by his value determinations.