

TAX COURT OF NEW JERSEY



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**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF  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

**April 9, 2014**

*Via facsimile and regular mail*

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**RE: BELVIEW CROSSING L.L.C. v. LOPATCONG TOWNSHIP;  
DOCKET NOS. 015063-2010; 015678-2011 (Vacant Lots Only)<sup>1</sup>**

This letter opinion constitutes the court's determination after trial of the direct appeals filed by the plaintiff, Belview Crossing L.L.C. ("Belview") challenging the 2010 and 2011 property tax assessments of its property located within the defendant municipality, Lopatcong Township ("Township"), commonly known as 2 through 22, and 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, and 46 Highlands Way, Lopatcong Township, Warren County, and designated by the taxing district (although not necessarily respectively) as Block 86, Lots 87 through 101; Block

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<sup>1</sup> These two Belview matters were called for trial along with Baltimore Street Associates, LLC v. Lopatcong Township, Docket Nos. 015105-2010 and 015672-2011; and Morris Park Associates, LLC v. Lopatcong Township, Docket Nos. 015077-2010 and 015791-2011. The parties represented that these appeals contained both vacant lots and improved lots. It was their mutual desire to proceed *first* with the vacant lots in the 2010 and 2011 Belview matters only. Accordingly, this decision is limited to the vacant lot values in the Belview matters without prejudice to all remaining issues in the companion matters.

86.06, Lots 1, 3, and 4; Block 86.07, Lots 1 through 4; and Block 86.08, Lots 3 through 12 (collectively “Subject Property”).

For the reasons set forth herein, the court revises the 2010 and 2011 tax assessments for the Subject Property as set forth below.

The Subject Property is a residential subdivision consisting of 32 vacant building lots, ranging in size from two acres up to seven acres, although most are in the two acre range. The Subject Property is zoned R-2 (Residential); all lots conform to the zoning requirements.

The Subject Property was collectively assessed as follows:

	<b><u>2010</u></b>	<b><u>2011</u></b>
Land (all 32 lots)	\$6,536,500	\$6,536,500
Improvements	\$0	\$0
Total	\$6,536,500	\$6,536,500

Belview offered the testimony of a professional real estate appraiser who was accepted by the court as an expert without objection;<sup>2</sup> the expert prepared an appraisal report that was admitted in evidence, also without objection.<sup>3</sup> According to Belview’s expert, the Subject Property’s true value on the relevant valuation dates was:

<b><u>Amount</u></b>	<b><u>Tax Year</u></b>	<b><u>Valuation Date</u></b>
\$3,520,000	2010	October 1, 2009
\$3,520,000	2011	October 1, 2010

The expert concluded that the highest and best use of the Subject Property is for development of single-family residential dwellings. He relied on the Sales Comparison

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<sup>2</sup> While there was no objection from opposing counsel, the court initially reserved accepting the witness as an expert based upon his prior testimony in other appeals before the court, which resulted in published opinions critical of his skill and ability in real estate appraisal practice. After hearing his testimony in full in the present matter, the court accepted the witness as an expert.

<sup>3</sup> Reports were submitted by Belview and marked in the following companion matters: Baltimore Street Associates, LLC v. Lopatcong Township, Docket Nos. 015105-2010 and 015672-2011; and Morris Park Associates, LLC v. Lopatcong Township, Docket Nos. 015077-2010 and 015791-2011. Since the instant matter is limited to the Belview vacant lot values for the 2010 and 2011 tax years only, the additional reports were not considered here.

Approach to value, concluding it is the most appropriate approach to determine the market value of vacant land. The Township elected not to offer an expert report or testimony, but rather relied on the assessment.<sup>4</sup> The issue before the court is confined to the true value of the Subject Property for the tax years in dispute.

## **Value**

### **(1) Presumption of Validity**

“Original assessments ... are entitled to a presumption of validity.” MSGW Real Estate Fund, LLC v Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). In order to overcome the presumption, the evidence “must be ‘sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.’” W. Colonial Enters., LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff’d, 18 N.J. Tax 658 (App. Div. 2000), certif. denied, 165 N.J. 488 (2000)).

The court finds that the opinion of Belview’s expert and the facts upon which he relied create a sufficient question regarding the validity of Subject Property’s original assessments for tax years 2010 and 2011. Accordingly, Belview has produced sufficient evidence to overcome the presumption of validity of said assessments to allow the court to make an independent determination of value of the Subject Property for each tax year at issue.

### **(2) Sales Comparison Approach**

The expert identified four New Jersey sales which he deemed to be sufficiently

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<sup>4</sup> The Township did not file or serve an expert report in accordance with the court’s pre-trial schedule memorialized in the court’s letter of January 3, 2013. A tentative agreement was reached thereafter between counsel for each party hereto, wherein counsel for the Township confirmed his election not to utilize an expert in this matter, even if the Township’s governing body did not approve the settlement, which was recommended by said counsel with the consent of the Municipal Assessor. See memorializing letter of Belview’s counsel dated April 29, 2013, acknowledged by the Township’s counsel, attached as Exhibit A to Belview’s written summation dated December 2, 2013. When the settlement was not accepted by the Township’s governing body, the Township’s counsel attempted to change his position with regard to having an expert *on the eve of trial*; this was disallowed by the court.

comparable to the Subject Property. All sales were after the October 1, 2009 assessment date except the first sale. The information from his first sale, 342 Lake Shore – High Point Development Project, Montague Township, Sussex County, was compiled from an online site known as CoStar, which can be accessed at [www.costar.com](http://www.costar.com). On direct, the expert testified that he was unable to speak with anyone about the specifics of this sale, and on cross examination, he confirmed that he relied only on CoStar data for this sale. He was unaware whether the sale was in fact a *useable sale*.<sup>5</sup> Furthermore, the expert noted that he gave very little weight to this sale. Accordingly, based primarily on the unreliability of the information provided for this sale, the court does not find the first sale to be reliable or comparable.

The expert's second sale is 41 Flagstone Road, Wantage Township, Sussex County. The expert found this sale to be particularly comparable to the Subject Property. The second sale occurred a few weeks after the first assessment date of October 1, 2009, in which the remaining 20 lots of a 37 lot subdivision were sold by Toll Brothers for a gross price of \$950,000, equaling \$47,500 per lot. Prior to this sale, all street, stormwater, and infrastructural improvements (except for the final road topping) had been installed, facts the expert was unaware of, necessitating an adjustment to his opined final adjusted unit price of \$47,500 to \$87,500. The raw land with approvals but *no improvements* was purchased by Toll brothers in 2005 for a total of \$4,000,000, which amounts to about \$108,000 per lot. Effective cross examination as to the particulars of the second sale leads the court to question its reliability. While the court accepts that market conditions in 2005 were substantially better than October 2009, the expert failed to convince the court that the decline in the market was the sole or primary reason for the sharp drop in sales price of the aforementioned *improved lots* in 2009 compared to the *unimproved lots* in 2005. The dramatic difference in the per lot prices between the 2005 and 2009 sales raise

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<sup>5</sup> The expert provided no SR1A number as required by R. 8:6-1(b)(2).

significant doubt as to the reliability of the expert's second sale. Clearly it remains an open question whether the second sale was in fact an *arms-length* transaction. The expert's testimony in this regard did little to resolve this question.

Furthermore, the expert made no adjustment to account for the fact that the lot sizes in the second sale were smaller (all less than two acres) than the lots in the Subject Property (two acres and larger). He further made no adjustment for the location of the second sale in comparison to the Subject Property. Through the court's questions it became clear that the second sale is located in more remote location than the Subject Property, considering access to interstate highways, airports and other major hubs of transportation, shopping centers, medical facilities, etc. The court does not find the lot sizes and location of the second sale to be comparable to the Subject Property; the expert should have made adjustments for these differences. Without appropriate data, the court cannot speculate as to what those adjustments should be. Accordingly, the court does not find the second sale to be reliable or comparable.

The expert's third and fourth sales provide the court with a reasonable basis by which to determine value.

The third sale is located at Hamilton Road, Hillsborough Township, Somerset County, and, in the court's view, is the most reliable of the four. This sale closed less than two months after the first assessment date, October 1, 2009, and about ten months before the second assessment date, October 1, 2010, and is therefore useful for both dates. The expert did not find it was necessary to make any time adjustment due to stagnant market conditions, which the court accepts as reasonable. The third sale consisted of 17 lots with an average lot size of 0.66 acres. While no specific adjustment was made by the expert for the difference in lot size compared to the Subject Property, he did make a ten percent adjustment for the superior location of the third

sale, which in the court's view, adequately accounts for the lot size difference as well. Hillsborough's proximity to Princeton allows for businesses and residents to utilize the Princeton name and P.O. address and generally contributes to the superior location of the third sale. Moreover, Hillsborough is centrally located and provides easy access to public transportation, interstate highways, shopping, and commercial centers. The expert also made a five percent adjustment to this sale for contingencies since it was necessary for the purchaser to acquire approvals. The court is satisfied that this adjustment accounts for the contingencies and the time required to acquire them. The expert's final adjusted unit price for this sale (after adding \$60,000 per lot for pending improvements) is \$138,234.

The fourth sale is less reliable than the third but does, nevertheless, prove to be useful to the court. This sale took place in September 2010, nearly a year after the October 1, 2009 assessment date but only two weeks before the October 1, 2010 assessment date. The underlying property was a 36 lot subdivision on twenty acres located at 31 Gudz Road, Lakewood Township, Ocean County. The average lot size amounted to a little more than 0.55 acres, significantly smaller than the two plus acre lots of the Subject Property. The expert made no adjustments whatsoever to the fourth sale. Nevertheless, as with the third sale, that court finds that no adjustment for time is necessary because of the stagnant market conditions. Further, the court finds the location of the fourth sale to be relatively comparable to the Subject Property, thus requiring no adjustment. However, the court finds that the some adjustment for at least lot size, and perhaps financing,<sup>6</sup> would have been appropriate. The expert's final adjusted unit price for this sale (after adding \$60,000 per lot for pending improvements) is \$128,056.

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<sup>6</sup> For the fourth sale, the price was negotiated several years before closing and financed in part by a purchase money mortgage.

### **(3) Conclusions of Value**

Because of the expert's failure to make some reasonable adjustments to the fourth sale, the court will place the most emphasis on the third sale in determining the value of the Subject Property. Accordingly, as of October 1, 2009 and October 1, 2010, the court concludes that 27 of the 32 lots of the Subject Property, all being smaller than 2.50 acres, are valued at \$135,000 per lot. The remaining five lots shall be valued as follows: Lots 96 and 99 in Block 86 shall each be valued at \$137,500; Lots 97 and 101 in Block 86 shall each be valued at \$142,500; and Lot 98 in Block 86 shall be valued at \$150,000.<sup>7</sup>

### **(4) Revised Assessments - Tax Years 2010 & 2011**

Based upon the court's conclusions above, both the 2010 and 2011 assessed values of \$6,536,500 exceed the total true value of the Subject Property, which is \$4,355,000. Accordingly, the court shall apply the 2010 average ratio of 100.54 percent, say 100 percent, and the 2011 average ratio of 104.93 percent, say 100 percent, to the total true value of \$4,355,000, to arrive at a total revised assessment for both years of \$4,355,000. The individual per lot breakdown is attached as Appendix A.

The Tax Court Clerk/Administrator is directed to issue judgment consistent with this letter opinion.

Very truly yours,

***ss/ Vito L. Bianco, J.T.C.***

Hon. Vito L. Bianco, J.T.C.

VLB:tms

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<sup>7</sup> These five lots range from 2.66 acres to 7 acres for which some reasonable increase in value is justified.

**APPENDIX A**

Property	2010 & 2011 Revised Assessments		
	Land	Improvements	Total
<b>TOTAL (ALL 32 LOTS)</b>	\$4,355,000	\$0	\$4,355,000
<b>INDIVIDUALLY</b>			
Block 86, Lot 87	\$135,000	\$0	\$135,000
Block 86, Lot 88	\$135,000	\$0	\$135,000
Block 86, Lot 89	\$135,000	\$0	\$135,000
Block 86, Lot 90	\$135,000	\$0	\$135,000
Block 86, Lot 91	\$135,000	\$0	\$135,000
Block 86, Lot 92	\$135,000	\$0	\$135,000
Block 86, Lot 93	\$135,000	\$0	\$135,000
Block 86, Lot 94	\$135,000	\$0	\$135,000
Block 86, Lot 95	\$135,000	\$0	\$135,000
Block 86, Lot 96	\$137,500	\$0	\$137,500
Block 86, Lot 97	\$142,500	\$0	\$142,500
Block 86, Lot 98	\$150,000	\$0	\$150,000
Block 86, Lot 99	\$137,500	\$0	\$137,500
Block 86, Lot 100	\$135,000	\$0	\$135,000
Block 86, Lot 101	\$142,500	\$0	\$142,500
Block 86.06, Lot 1	\$135,000	\$0	\$135,000
Block 86.06, Lot 3	\$135,000	\$0	\$135,000
Block 86.06, Lot 4	\$135,000	\$0	\$135,000
Block 86.07, Lot 1	\$135,000	\$0	\$135,000
Block 86.07, Lot 2	\$135,000	\$0	\$135,000
Block 86.07, Lot 3	\$135,000	\$0	\$135,000
Block 86.07, Lot 4	\$135,000	\$0	\$135,000
Block 86.08, Lot 3	\$135,000	\$0	\$135,000
Block 86.08, Lot 4	\$135,000	\$0	\$135,000
Block 86.08, Lot 5	\$135,000	\$0	\$135,000
Block 86.08, Lot 6	\$135,000	\$0	\$135,000
Block 86.08, Lot 7	\$135,000	\$0	\$135,000
Block 86.08, Lot 8	\$135,000	\$0	\$135,000
Block 86.08, Lot 9	\$135,000	\$0	\$135,000
Block 86.08, Lot 10	\$135,000	\$0	\$135,000
Block 86.08, Lot 11	\$135,000	\$0	\$135,000
Block 86.08, Lot 12	\$135,000	\$0	\$135,000