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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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Presiding Judge

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Re: Tip's Trailer Park, Inc. v. Township of Fairfield
Docket No. 010489-2011
Docket No. 006801-2012

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matters challenging the assessments on plaintiff's real property for tax years 2011 and 2012. For the reasons stated more fully below, the assessments on the property for both tax years are affirmed.

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I. Procedural History and Findings of Fact

The following findings of fact and conclusions of law are based on the evidence and testimony admitted at trial.

Plaintiff Tip's Trailer Park, Inc. is the owner of four parcels of real property in defendant Fairfield Township, Cumberland County. The parcels, which collectively are known as 868 East Commerce Street, constitute a single economic unit on which plaintiff operates a mobile home park. In this letter opinion the parcels will be collectively referred to as the "subject property."

The approximately 43-acre subject property has 203 pad sites which are rented for mobile homes. The sites, which measure 40 feet by 100 feet, are leased for one-year terms. Each site has electric service, water, a sewer connection and drainage to the street. The property has paved roadways in front of the trailers and alleys which run between rows of trailers. In 2011, plaintiff charged tenants $360 a month for a site. Monthly rent was raised to $400 a month in 2012. It is the tenant's responsibility to provide the mobile home for the rented site. Plaintiff does not own any of the trailers at the subject property.[1]

The trailer park was constructed in several phases beginning in 1950. The water system is antiquated, requiring frequent repairs and replacement of component parts. The park has no laundry room, tennis courts, pool, or club house. The only recreational facility on the subject property is a half basketball court. The present configuration of the trailer sites at the subject property does not allow plaintiff to accept double-wide trailers, which are larger and more modern than the single-wide trailers at the subject. A few of the trailers at the subject property date from the 1950's and were occupied on the relevant valuation dates. The subject property

[1] Tip's Trailer Park Rentals, LLC ("Tips Rentals") owns many of the trailers at the subject property. Those trailers are rented by Tips Rentals to residents. Tips Rentals pays plaintiff monthly rent for the pad sites on which its trailers are located.

has an office, which is a double-wide trailer, several masonry buildings, a shop and three concrete bunk houses. No income is generated by these buildings. It is undisputed that the subject property draws tenants from an economically depressed area.

The trailer park is a family-run enterprise. The masonry buildings, which could generate rental income as storage space for tenants, are used by family members of the owners of the subject property for storage of personal items. A principal of plaintiff is responsible for the day-to-day operation of the trailer park. As a result, plaintiff does not pay a management fee for the operation of the facility.

For tax years 2011 and 2012, the four parcels were assessed by the township as follows:

Block 20, Lot 10

Land	$ 1,677,000
Improvement	$ 139,300
Total	$ 1,816,300

Block 20, Lot 11

Land	$ 1,109,500
Improvement	$ 5,300
Total	$ 1,114,800

Block 20, Lot 12

Land	$ 663,000
Improvement	$ 5,900
Total	$ 668,900

Block 20, Lot 13

Land	$ 112,000
Improvement	$ 0
Total	$ 112,000

When considered together, the assessments total $3,712,000.

Because the municipality implemented a district-wide revaluation for tax year 2011, N.J.S.A. 54:1-35, commonly known as Chapter 123, does not apply and the assessments are presumed to reflect true market value. The average ratio for the municipality for tax year 2012 is 98.56%. The implied equalized value of the parcels for tax year 2012 is $3,766,234.

On April 29, 2011, plaintiff filed a Complaint in this court challenging the tax year 2011 assessments on the parcels.

On May 13, 2011, the municipality filed what it denominated as an "Answer and Cross Complaint." In its "Cross Complaint," the municipality alleges that the "Township of Fairfield alleges that added assessments to be applied (sic) to Blocks and Lots in question as a result of investigation and information received during the course of the tax appeal proceedings." In addition, the "Cross Complaint" alleges that the "Township of Fairfield reserves the right to amend and/or modify this Cross Complaint for added assessment and/or additional assessment based upon Discovery which may be produced during the course of the proceedings."

On March 28, 2012, plaintiff filed a Complaint in this court challenging the tax year 2012 assessments on the parcels.

On April 23, 2012, the municipality filed what it denominated as an "Answer and Cross Complaint" containing the same allegations set forth in its "Answer and Cross Complaint" filed with respect to the 2011 tax year. [2]

The two appeals were consolidated for purposes of trial and this opinion.

Each party presented a licensed real estate appraiser as an expert witness. The parties stipulated to the expertise of the witnesses. After review of the witnesses' professional

[2] At the time that the "Cross Complaints" were filed, the municipality was represented by counsel who withdrew from representation prior to trial.

credentials, training, and experience, the court accepted the parties' stipulation. The parties and the experts also stipulated that the highest and best use of the subject property is its current use as a mobile home park and that the income approach is the most credible method through which to determine the true market value of the subject. The court accepted these stipulations.

The experts offered divergent opinions of the true market value of the subject property on the relevant valuation dates. Plaintiff's expert offered the opinion that the subject property had a true market value of $2,400,000 as of October 1, 2011, the valuation date for tax year 2012. The expert's report did not contain an opinion of value as of October 1, 2010, the valuation date for tax year 2011. Although not addressed in his report, plaintiff's expert testified that he was of the opinion that the true market value of the subject property would not differ for tax year 2011. He did not cite market data to support this opinion.[3]

Defendant's expert, on the other hand, opined that the subject property had a true market value of $4,300,000 as of October 1, 2010, the valuation date for tax year 2011. The expert's report did not contain an opinion of value for tax year 2012. He testified, however, that the market was stable for the subject property from October 1, 2010 to October 1, 2011 and that his opinion of value applied to both tax years. He did not cite market data to support this opinion.[4]

The primary distinction between the opinions of the two experts is that plaintiff's expert relied almost exclusively on the actual income and expense history at the subject property to

[3] In his report, plaintiff's expert indicates more than once that the total assessment for the four parcels is $3,713,200. Both the Complaint and the Answer for both tax years report a combined assessment of 3,712,000. This discrepancy was not explained at trial and will be disregarded by the court.

[4] In his report, defendant's expert did not offer an opinion of value for Block 20, Lot 13, the parcel assessed at $112,000. At trial, the expert testified that he considered that parcel to have incidental value, perhaps as a location for the development of recreational activities. He testified that his overall opinion of value applied to all four parcels as a single economic unit.

reach his value conclusion, while defendant's expert relied on market data regarding income and expenses at trailer home parks to formulate his opinion. This distinction will prove crucial to the court's analysis.

II. Conclusions of Law

The court's analysis begins with the well-established principle that "[o]riginal 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). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

> The presumption attaches to the quantum of the tax assessment. Based on this presumption the appealing taxpayer has the burden of proving that the assessment is erroneous. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be "definite, positive and certain in quality and quantity to overcome the presumption."

Ibid. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985)(citations omitted)).

The presumption of correctness arises from "the view that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Pantasote, supra, 100 N.J. at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, 3 N.J. Tax 439 (Tax 1981)); see also Township of Byram v. Western World, Inc., 111 N.J. 222 (1988). The presumption remains "in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity." Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988)(citation omitted).

"The presumption of correctness . . . stands, until sufficient competent evidence to the contrary is adduced." Township of Little Egg Harbor v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998)(citation omitted); City of Atlantic City v. Ace Gaming, LLC, 23 N.J. Tax 70, 98 (Tax 2006). "In the absence of a R. 4:37-2(b) motion . . . the presumption of validity remains in the case through the close of all proofs." MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 377. In making the determination of whether the presumption has been overcome, the court should weigh and analyze the evidence "as if a motion for judgment at the close of all the evidence had been made pursuant to R. 4:40-1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion." Ibid. The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. Id. at 376 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535 (1995)). 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.'" West 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), certif. denied, 165 N.J. 488 (2000)), aff'd, 18 N.J. Tax 658 (App. Div. 2004).

Only after the presumption is overcome with sufficient evidence at the close of trial must the court "appraise the testimony, make a determination of true value and fix the assessment." Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38 (App. Div. 1982). If the court determines that sufficient evidence to overcome the presumption that the assessment is correct has not been produced, the assessment shall be affirmed and the court need not proceed to

making an independent determination of value. Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-04 (App. Div. 1996).

At trial, the court determined that plaintiff produced sufficient evidence to overcome the presumption of validity attached to the assessments. This decision was based on the fact that, if taken as true, the opinion of plaintiff's expert creates a debatable question regarding the correctness of the assessments in each tax year sufficient to allow the court to make an independent determination of the value of the subject property. Plaintiff's expert opined that on the two relevant valuation dates the subject property was worth $2,400,000. Because Fairfield Township implemented a municipal-wide revaluation for tax year 2011, the combined assessments of $3,712,000 are presumed to reflect 100% of true market value. For tax year 2012, the average ratio for the municipality is 98.56%. When applied to the collective assessments on the subject property the implied equalized value of the parcels for tax year 2012 is $3,766,234. Thus, if taken as true, the opinion of plaintiff's expert supports a conclusion that the subject property was assessed well in excess of its true market value for both tax years.

The court's inquiry, however, does not end here. Once the presumption is overcome, the "court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co., supra, 127 N.J. at 312 (quotations omitted). "[A]lthough there may have been enough evidence to overcome the presumption of correctness at the close of plaintiff's case-in-chief, the burden of proof remain[s] on the taxpayer throughout the entire case . . . to demonstrate that the judgment under review was incorrect." Id. at 314-15 (citing Pantasote, supra, 100 N.J. at 413).

A. Approaches to Valuation.

"There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of income and cost." Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div.)(citing Appraisal Institute, The Appraisal of Real Estate 81 (11th ed. 2006)), certif. denied, 168 N.J. 291 (2001). "There is no single determinative approach to the valuation of real property." 125 Monitor Street, LLC v. City of Jersey City, 21 N.J. Tax 232, 237 (Tax 2004)(citing Samuel Hird & Sons, Inc. v. City of Garfield, 87 N.J. Super. 65, 72 (App. Div. 1965); ITT Continental Baking Co. v. Township of East Brunswick, 1 N.J. Tax 244 (Tax 1980)), aff'd, 23 N.J. Tax 9 (App. Div. 2005). "The choice of the predominant approach will depend upon the facts of each case and the reaction of the experts to those facts." Id. at 238 (citing City of New Brunswick v. Division of Tax Appeals, 39 N.J. 537 (1963); Pennwalt Corp. v. Township of Holmdel, 4 N.J. Tax 51, 61 (Tax 1982)).

The experts stipulated that the income approach is the most credible method of valuing the subject property. The court agrees. The income capitalization approach is the preferred method of estimating the value of income producing property. Parkway Village Apartments Co. v. Township of Cranford, 108 N.J. 266, 270 (1987); Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 79 (Tax 1996). "In the income capitalization approach, an appraiser analyzes a property's capacity to generate future benefits and capitalizes the income into an indication of present value." Appraisal Institute, The Appraisal of Real Estate 445 (13th ed 2008). The income capitalization approach is the best method for determining the value of the subject property, an income-producing mobile home park.

B. Calculation of Value Using Income Approach.

Determining the value of real property pursuant to the income approach can be summarized as follows:

	Market Rent
x	Rentable Units
	Potential Gross Income
-	Vacancy and Collection Losses
	Effective Gross Income
-	Operating Expenses
	Net Operating Income
÷	Capitalization Rate
	Value of Property

See Spiegel v. Town of Harrison, 19 N.J. Tax 291, 295 (App. Div. 2001), aff'g, 18 N.J. Tax 416 (Tax 1999); Appraisal Institute, The Appraisal of Real Estate at 466.

1. Market Rent.

"Central to an income analysis is the determination of the economic rent, also known as the 'market rent' or 'fair rental value.'" Parkway Village Apartments, supra, 108 N.J. at 270. This differs from the actual rental income realized on the property, which may be below market rates. Parkview Village Assocs. v. Borough of Collingswood, 62 N.J. 21, 29-30 (1972). "However, actual income is a significant probative factor in the inquiry as to economic income." Id. at 30. "Checking actual income to determine whether it reflects economic income is a process of sound appraisal judgment applied to rentals currently being charged for comparable facilities in the competitive area." Ibid.

Plaintiff's expert relied solely on the actual income realized at the subject property to determine market rent for the pad sites at the subject. He did not examine market data to

determine if the subject property was generating market rent. Defendant's expert, by contrast, undertook a study of nine comparable mobile home parks in southern New Jersey to determine market rent. Defendant's expert reached the conclusion that $400 per-site monthly rent was market rent for tax year 2011, the only year addressed in his report. In addition, defendant's expert opined that a properly managed trailer park would generate income from a laundry facility, which presumably could be operated in one of the many underutilized buildings at the subject property. He attributed an additional 1% of income for laundry. The court finds defendant's expert's opinion on these points to be the most credible in the record. His opinion on market rent is only one in the record supported by market data.

2. Rentable Units.

There is no dispute that the subject property contains 203 pad sites that may be rented for siting of mobile homes. The court, therefore, accepts the opinion of defendant's expert with respect to potential gross income:

203 pad sites x $400 a month x 12 months	=	$974,400
1% laundry and misc. income	+	$ 9,744
Potential Gross Income		$984,144

3. Vacancy and Collection Rate.

Plaintiff's expert included no vacancy and collection rate in his analysis. He provided little explanation for this approach, other than to say that his reliance on the actual income at the trailer park would implicitly include an actual vacancy and collection rate. Defendant's expert studied nine comparable trailer home parks in southern New Jersey to opine a market vacancy and collection rate of 15%. This generous rate is based on the high end of the figures collected from other mobile home parks. Defendant's expert credibly testified that the characteristics of the subject property – aging infrastructure, small pad sites, aging inventory of trailers, lack of

recreational facilities and distressed economic environment – warranted a relatively high vacancy and collection rate for the subject. The court accepts the 15% rate offered by defendant's expert, as it was tested against market data and appears reasonable for the circumstances. Application of a 15% vacancy and collection rate results in the effective gross income opined by defendant's expert:

Potential Gross Income	$984,144
15% Vacancy and Collection	($147,622)
Effective Gross Income	$836,522

4. Operating Expenses.

Plaintiff's expert accepted the actual expenses incurred at the subject property during 2009, 2010, 2011 and 2012, with a few minor adjustments, as market expenses. He did not, however, refer to any market data to support this conclusion. In addition, he opined a management fee of 10% of net income. The mobile home park at the subject property is a family-run operation. The compensation paid to the manager does not reflect market conditions. Plaintiff's expert opined that garden apartment complexes are often managed for a fee of 5% or 6% of net income. He offered no market data to support this opinion. He further opined that management of a mobile home park requires more intensity than does management of a garden apartment complex. In light of this observation, the expert opined a management fee double that of a market management fee for a garden apartment complex. He cited no market data to support this opinion and no actual management fee agreements in place at a mobile home park.

In addition, plaintiff's expert opined a market reserve for capital improvements or capital repairs. He based his estimate on a Marshall Valuation Service Manual, a source recognized in the appraisal field. The expert opined costs based on the construction of a modern trailer park, based on his opinion that the municipality would require replacements and repairs at the subject

property to be made consistent with modern requirements. He offered no data to support this supposition.

Defendant's expert declined to rely on actual expenses at the subject property to formulate an opinion on market expenses. He opined that the subject property was not well managed on the valuation dates, in light of deferred maintenance, a lack of laundry and recreational facilities, the poor state of many of the trailers, the failure to utilize the non-residential structures on the property to generate storage rental income, and a failure to maintain adequate reserves for capital improvements. He instead opined an overall market expense ratio from his study of nine comparable area mobile home parks and two whitepapers issued by a national mobile home park association. One of the studies examined 2009 income and expense data. The other examined 2010 income and expense data from 79 mobile home parks from across the country. He verified this data with two mobile home operators and two assessors from New Jersey. After consideration of this data, the expert concluded market expenses of 45% of effective gross income for the subject property, inclusive of all expenses, including reserves.

The court concludes that defendant's expert offers the more credible opinion of market expenses. The expert examined data both from southern New Jersey mobile home parks and from national sources. He reached a reasoned opinion that the subject property was poorly managed. Of particular note is the fact that in 2010, 2011 and 2012 the subject property incurred actual expenses in excess of the defendant's expert's opinion of market expenses in part because of plaintiff's failure to make adequate reserves in prior years for expensive infrastructure repairs needed at the subject property. Application of the market expense ratio of defendant's expert to effective gross income resulted in net operating income as follows:

Effective Gross Income	$836,522
45% Operating Expenses	($376,435)
Net Operating Income	$460,087

5. Capitalization Rate.

The overall capitalization rate is an "income rate for a total real property interest that reflects the relationship between a single year's net operating income expectancy and the total property price or value . . . ." Appraisal Institute, The Appraisal of Real Estate at 462. The overall capitalization rate is "used to convert net operating income into an indication of overall property value." Ibid.

Both experts used the Band of Investment technique to calculate an overall capitalization rate. "This technique is a form of 'direct capitalization' which is used 'to convert a single year's income estimate into a value indication.' The technique includes both a mortgage and an equity component." Hull Junction Holding, supra, 16 N.J. Tax. at 80-81 (quoting Appraisal Institute, Appraisal of Real Estate 467 (10th ed. 1992)).

> Because most properties are purchased with debt and equity capital, the overall capitalization rate must satisfy the market return requirements of both investment positions. Lenders must anticipate receiving a competitive interest rate commensurate with the perceived risk of the investment or they will not make funds available. Lenders generally require that the loan principal be repaid through periodic amortization payments. Similarly, equity investors must anticipate receiving a competitive equity cash return commensurate with the perceived risk, or they will invest their funds elsewhere.
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> [Appraisal Institute, Appraisal of Real Estate at 505.]

In "using the Band of Investment technique, it is incumbent upon the appraiser to support the various components of the capitalization rate analysis by furnishing 'reliable market data . . . to the court as the basis for the expert's opinion so that the court may evaluate the opinion.'" Hull

Junction Holding, supra, 16 N.J. Tax at 82 (quoting Glen Wall Assocs., supra, 99 N.J. at 279-80). "For these purposes, the Tax Court has accepted, and the Supreme Court has sanctioned, the use of data collected and published by the American Council of Life Insurance." Id. at 82-83 (citation omitted). "Relevant data is also collected and published by . . . Korpacz Real Estate Investor Survey." Id. at 83. "By analyzing this data in toto, the court can make a reasoned determination as to the accuracy and reliability of the mortgage interest rates, mortgage constants, loan-to-value ratios, and equity dividend rates used by the appraisers." Ibid.

Plaintiff's expert opined a base capitalization rate of 11.52%. He based his opinion of a mortgage rate as follows: first he "assumed that the purchase would be financed with a mortgage loan, at market interest rates, for 70% of the purchase price, the loan having a fifteen-year, monthly, amortization schedule." He further opined that "[c]urrent rates for commercial mortgages in the southern New Jersey area are 275 to 350 basis points above prime." He cites no data in support of these opinions. He continues that for "most banks, mobile-home parks are atypical of general commercial properties" because of a lack of industry standards for expense profiles, the prevalence of owner-operated mobile home parks and the poor credit risks of the tenants in a facility such as the subject property. Because of these factors he concluded that "[w]e assume, that banks will require at least 325 basis points above prime and a mortgage interest rate of 6.5%."

He further opines a return on equity of 14%, which "is equal to prevailing rates for ten- and twenty-year treasury notes and bonds plus 12%." He explained his opinion by stating that "under normal circumstances, a 4% increase above the index rate is allowed for lack of liquidity, investment management requirements and increased risk." However, he opined that at "this time, the reference rates are artificially low because of the national economic crisis and we are

assuming an increase of 6%." He did not explain how a 6% increase was translated into a 12% increase above treasury notes and bonds rates. When plaintiff's expert combined his mortgage rate and equity return rate he reached a capitalization rate of 11.52%.

Plaintiff's expert loaded the tax rate for tax year 2012 into his combined capitalization rate of 11.52%. When the effective tax rate of 2.17 is considered, plaintiff's expert's "loaded" cap rate for the subject property for tax year 2012 is 13.69%. He rounded this figure to 13.5%.

Plaintiff's expert did not offer a capitalization rate for tax year 2011, as his report did not address that tax year. Although he testified that his opinion of value was the same for both tax years, he undertook no analysis of an appropriate capitalization rate for tax year 2011. This includes an absence of the consideration of the effective tax rate for 2011, which would have been different from the tax year 2012 tax rate, and would have had to have been loaded into the base capitalization rate.

Defendant's expert opined with respect to a cap rate for tax year 2011. Relying on a Korpacz 3rd Quarter 2010 study of Mid-Atlantic Region apartment properties and a white paper report from a mobile home industry association, defendant's expert opined a capitalization rate of 8.5% for the subject property. He loaded the 2011 tax rate of 2.26 into that capitalization rate for an overall rate of 10.75%. He offered no opinion with respect to a capitalization rate for tax year 2012 because his report did not address that tax year. Although the expert testified that the market was stable for the two years, he did not offer an opinion with respect to an appropriate capitalization rate for 2012 and his report included no data with respect to capitalization rates beyond the 3rd Quarter of 2010. In addition, defendant's expert did not consider the impact of the 2012 tax rate on a market capitalization rate.

6. Calculation of Value for Tax Year 2011.

As noted above, the court finds credible defendant's expert's opinion of $460,087 net operating income for tax year 2011. The court also finds credible defendant's expert's opinion of an appropriate "loaded" capitalization rate of 10.75% for tax year 2011. His opinion of a market capitalization rate was based on market data from the 3rd Quarter of 2010 from reliable sources. Plaintiff's expert did not offer a 2011 capitalization rate because his expert report addressed only tax year 2012. In the absence of any market-data-supported capitalization rate from plaintiff's expert for tax year 2011, the court accepts the credible capitalization rate opinion offered by defendant's expert.

The court's calculation of true market value as of October 1, 2010 is expressed as follows:

Net Operating Income	$460,087
"Loaded" Capitalization Rate	x .1075
True Market Value	$4,279,879

The court will round this figure to $4,280,000 as the combined value of the four parcels on appeal.

Because the municipality implemented a district-wide revaluation for tax year 2011 Chapter 123 does not apply. N.J.S.A. 54:51A-6d; Brown, supra, 19 N.J. Tax at 373. The assessments on the subject property, therefore, should be 100% of true market value for that tax year. The assessments on the four parcels, when combined, total $3,712,000. This figure is below the true market value of the subject property as of October 1, 2010 as determined by the court. The court, however, cannot raise the assessments in light of the municipality's failure to file a counterclaim.

According to N.J.S.A. 54:3-21(a)(1) "a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district . . . may . . . file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds $1,000,000." The municipality's claim of discrimination may also be filed as a counterclaim after the taxpayer files a timely appeal of an assessment. N.J.S.A. 54:3-21(a)(1); R. 8:4-3(a). It is well established that in a revaluation year, absent a timely appeal or counterclaim by the taxing district, this court may not increase an original tax assessment, unless the taxpayer establishes a discrimination claim or the court finds that the quantum of the assessment is so far removed from true value as to suggest that the original assessment methodology was patently arbitrary or capricious. F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 431 (1985).

Here, the municipality filed what it called an "Answer and Cross Complaint" for tax year 2011. In that document the municipality "alleges that added assessments to be applied (sic) to Blocks and Lots in question as a result of investigation and information received during the course of the tax appeal proceedings." In addition, the "Cross Complaint" alleges that the "Township of Fairfield reserves the right to amend and/or modify this Cross Complaint for added assessment and/or additional assessment based upon Discovery which may be produced during the course of the proceedings." This filing is not a counterclaim.

Rule 8:3-2(b) provides as follows:

> Local Property Tax Cases. In local property tax cases, every defendant may but need not file an answer. There may be counterclaim and an answer to a counterclaim denominated as such. Unless by order of the court, no other pleading is allowed, except in response to amended and supplementary pleadings.

Rule 8:3-7 provides that in real property tax cases "[a] counterclaim shall accord . . . as to contents, with R. 8:3-4 and R. 8:3-5 . . . ." Rule 8:3-4(b) provides:

> Claim for Relief. A pleading which sets forth a claim for relief shall briefly state the factual basis of the claim and the relief sought. Relief in the alternative may be demanded. A request may be made for a change in a real property tax assessment without specifying the amount of such change. A claim for exemption shall be specifically pleaded.

Rule 8:3-5(a)(1) provides with respect to counterclaims that

> [t]he first paragraph of every complaint and counterclaim shall set forth the block, lot and street address of the property. A Case Information Statement in the form specified by the Tax Court shall be attached to the face of the complaint or counterclaim . . . .

The municipality's "Answer and Cross Complaint" does not comply with R. 8:3-2(b) because it is not "denominated " as a counterclaim. By its express terms the document is an "Answer and Cross Complaint." In addition, the document does not comply with R. 8:3-4(b) because it does not "briefly state the factual basis" on which a counterclaim could be established and does not request "a change in a real property tax assessment." The "Answer and Cross Complaint" refers to added assessments that might be justified by discovery. An added assessment, a term of art under New Jersey law, is intended to capture any increase in value that occurs as a consequence of the completion of the erection, addition to or improvement of any building or structure after the October 1st valuation date. American Hydro Power Partners v. City of Clifton, 239 N.J. Super. 130, 138 (App. Div. 1989); N.J.S.A. 54:4-63.2 and N.J.S.A. 4-63.3. "The purpose of the added assessment law is to permit taxation of real property which becomes taxable during the year following the assessment date of October 1 in order to avoid having properties escape taxation until the next assessment date arrives." Snyder v. Borough of South Plainfield, 1 N.J. Tax 3, 7 (Tax 1980). At best, the municipality's "Answer and Cross

Complaint" could be read to assert a claim that an added assessment might be sought by the municipality for tax year 2011. However, no evidence admitted at trial suggests any improvements were made at the subject property after October 1, 2010.

The practical and legal consequences of the Supreme Court's decision in F.M.C. Stores prohibiting this court from raising an assessment in a revaluation year in the absence of a counterclaim were analyzed at length by Judge Axelrad in Campbell Soup Co. v. City of Camden, 16 N.J. Tax 219, 223-24 (Tax 1996). In that case, the taxpayer filed appeals with this court challenging the county board's decisions regarding the assessment on property in two non-revaluation years. 16 N.J. Tax at 221. Although the City filed a timely counterclaim in one of the years, it failed to do so in the other. Ibid. After trial, the taxpayer moved to suppress all evidence submitted by the City suggesting that the original assessments should be increased, arguing that the taxing district's failure to file a counterclaim in the one tax year precluded a judgment from the court increasing the original assessment. Id. at 221-22. The court denied the motion, concluding that Chapter 123 authorized this court to increase an original assessment in a non-revaluation year, even in the absence of a counterclaim, in order to bring the assessment in question into the common level range. The court noted that "[m]uch of the basis for" its decision "turns on [the] distinction" that the assessments before the court in that case were from non-revaluation years and that Chapter 123 applied to the taxpayer's claims. Id. at 226.

The court explained that Chapter 123, which must be applied by the Tax Court when deciding value in a non-revaluation year, N.J.S.A. 54:51A-6, was enacted to address the complex evidentiary questions raised by a taxpayer's claim that property was assessed outside a common level of assessment in non-revaluation years. Id. at 228. Prior to enactment of the statute, the burden of proving a common level of assessment in a non-revaluation year fell on the taxpayer

resulting in a "particularly difficult and expensive undertaking, requiring taxpayers to employ experts to perform complex statistical evaluations of the area." Ibid. (citing Murnick v. City of Asbury Park, 95 N.J. 452, 459 (1984)). In In re Kents 2124 Atlantic Ave., Inc., 34 N.J. 21 (1961), the Supreme Court recognized the issue and invited a legislative response. Ibid. The Legislature responded with the enactment of Chapter 123, which defined "average ratio" and established a "common level range" or corridor allowing for leeway in the assessment. Ibid. (citing Murnick, supra, 95 N.J. at 460). Because, "for obvious reasons, a common level is easily determinable" in revaluation years, id. at 228, Chapter 123 expressly excludes its applicability to years in which a revaluation has been implemented.

"In a non-revaluation year Chapter 123 provides authority for the court to raise an assessment, even in the absence of an affirmative request by the taxing district." Id. at 228. "In this respect Chapter 123 operates substantively in the nature of an automatic counterclaim." Ibid. As Judge Axelrad explained, "[t]he existence of Chapter 123 itself puts taxpayer on notice that its assessment might be increased even in the absence of a municipal counterclaim." Ibid. (citing Weyerhaeuser Co. v. Borough of Closter, 190 N.J. Super. 528, 542 (App. Div. 1983)). "This is the risk taxpayer took when it appealed" an assessment in a non-revaluation year. Ibid.

As Judge Axelrad further explained,

> [i]n a revaluation year, however, where Chapter 123 does not apply, taxpayer is without notice of the possibility of an increase in the assessment. Due to the recent valuation of the subject property by the assessor, taxpayer would have no reason, absent some affirmative claim, to believe the municipality was not standing by its assessment. In order not to disturb taxpayer's justified reliance on the fact its assessment is not being challenged as too low, public policy mandates the Tax Court may not automatically increase an assessment in the absence of a counterclaim.
>
> [Id. at 229.]

Here, the taxpayer was not put on notice that the municipality was seeking an increase in the assessments on the subject property because those assessments were in the municipality's view below true market value. The filing of a Cross Complaint alleging that an added assessment for the subject property might be warranted is not sufficient to put the taxpayer on notice that the municipality felt "discriminated against by the assessed valuation of property in the taxing district." N.J.S.A. 54:3-21(a)(1). The most indulgent reading of the substance of the Cross Complaint, even if the court were to disregard its label as poor draftsmanship, put the taxpayer on notice that the municipality was seeking to impose an added assessment on the subject property. Aware that no improvements had been made to the subject property after either valuation date, the taxpayer could reasonably have concluded that it was not at risk of having the assessment on its property raised for tax year 2011.

Had the municipality been dissatisfied with the assessments placed on the subject property for tax year 2011, it had the obligation to file a timely petition of appeal with the county board of taxation, a Complaint with this court, or a timely counterclaim, denominated as such, alleging that the municipality felt discriminated against by the assessments on the subject property. Having not taken advantage of any of those avenues for judicial redress, the taxing district did not establish jurisdiction in this court to increase the assessments beyond the amount set in the revaluation year. A request for such relief has not been "framed by proper pleadings," F.M.C. Stores Co., supra, 100 N.J. at 430, and is not, therefore, available to the municipality.

The municipality's claim of discrimination having not been timely asserted, and the court finding no evidence in the record that the quantum of the assessment is so far removed from true value that it reflects an arbitrary or capricious assessment methodology, the court cannot enter

Judgment increasing the assessments on the subject property to its true market value for tax year 2011. The court, therefore, will enter Judgment affirming the assessments for tax year 2011.

7. Calculation of Value for Tax Year 2012.

The record contains insufficient credible evidence with which to determine the true market value of the subject property for tax year 2012. As explained above, the opinion of plaintiff's expert, which addresses tax year 2012, is lacking in supporting market data. The expert relied on actual income and expenses at the subject, with the addition of an assumed 10% management fee, which itself was lacking in market-data support, to reach his opinion of value. In addition, the capitalization rate he offered was similarly lacking in objective support.

Defendant's expert, on the other hand, who offered a credible opinion of value for tax year 2011, failed to address tax year 2012 in his report. His testimony with respect to tax year 2012 was limited to his offering an opinion that the market was stable from October 1, 2010 to October 1, 2011. The expert cited no market data to support this conclusion. Nor did defendant's expert testify that the capitalization rate would be the same for tax year 2011 and tax year 2012. The data on which the expert relied to reach his capitalization rate opinion for tax year 2011 was from the 3rd Quarter of 2010, which is entirely appropriate. He did not, however, cite any data from the 3rd Quarter of 2011, the period immediately preceding the valuation date for tax year 2012 or provide support for the conclusion that the market data from that period would lead to the same opinion for a capitalization rate for tax year 2012. Moreover, the capitalization rate applied for tax year 2011 was "loaded" to account for the municipal tax rate for that year. A different municipal tax rate was struck for tax year 2012 and the base capitalization rate, even if the same for tax years 2011 and 2012, would have to be modified for the later tax year.

It is not clear why each expert addressed only one tax year in his report. Nor was it explained why plaintiff's expert addressed tax year 2011 while defendant's expert addressed tax year 2012. The parties did not raise the issue of the divergent reports prior to or at trial. They elected to proceed with expert witnesses who were to some extent moving on paths that crossed only occasionally. It was only at trial that the court raised the issue with each expert during his testimony. Each expert gave what are, in effect, net opinions that their value determinations for one tax year applied to both tax years. The result is a trial record which affords the court an insufficient basis on which to make a value determination for tax year 2012. Because plaintiff failed to meet its burden of proof with respect to the true market value of the subject property for tax year 2012, the court will enter Judgment affirming the assessments for that year.[5]

Very truly yours,

Patrick DeAlmeida, P.J.T.C.

[5] In light of its decision the court need not address the fact that neither expert allocated his final opinion of value among the four parcels or the fact that defendant's expert did not include Block 20, Lot 13 in his analysis. In appropriate circumstances separate lots may be valued as a single economic unit. See City of Atlantic City v. Ginnetti, 17 N.J. Tax 354, 363 (Tax 1998), aff'd, 18 N.J. Tax 672 (App. Div. 2000); Mobil Oil Corp. v. Township of Greenwich, 9 N.J. Tax 123 (Tax 1986). This approach to valuation, however, requires both a determination of the overall value of the combined parcels and an allocation of value to each of the component parcels. Id. at 127. The court also notes that the municipality's Cross Complaint for 2012, if it were to be considered a counterclaim, was filed beyond the statutory deadline for asserting a counterclaim. When a taxpayer files a Complaint on April 1st or during the 19 days next preceding April 1st, a taxing district may file a counterclaim within 20 days of the date of service of the complaint. N.J.S.A. 54:3-21(a)(1). Plaintiff's 2012 Complaint was filed and served on March 28, 2012. Twenty days from March 28, 2012 was April 17, 2012. The Cross Complaint was not filed until April 23, 2012.