NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge

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Re: Hovbros Cinnaminson Urban Renewal, LLC v.
Township of Cinnaminson
Docket No. 016828-2011

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matter. Plaintiff challenges the tax year 2011 assessments on 181 parcels approved for the construction of age-restricted residential condominium units as part of a municipality-sponsored redevelopment plan. Because of a downturn in the economy, the residential units, although fully approved by the municipality, were not constructed. On the relevant valuation date, the parcels were vacant. The property, however, contained site improvements, including roadways, curbing,

utilities, drainage systems, and partial sidewalks. Whether the true market value of the improvements must be included in the assessments on the parcels was subject to dispute at trial.

For the reasons explained more fully below, the court concludes that the true market value of the site improvements must be included in the assessments on the undeveloped parcels. The court also concludes that the true market value of each of the parcels on the relevant valuation date was $35,000. The court will enter Judgment setting the assessments at that amount.

I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law based on the evidence introduced at trial. R. 1:7-4.

Plaintiff Hovbros Cinnaminson Urban Renewal, LLC is an urban renewal entity created pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq. On May 17, 2006, plaintiff and defendant Cinnaminson Township executed a Redevelopment Agreement with respect to what it described as "The Section #2 Redevelopment Area on Route 130." In the contract plaintiff agreed to redevelop various parcels the municipality intended to obtain along Route 130. After execution of the agreement, the township obtained title to the subject property, which was, at that time, a series of contiguous parcels.

Plaintiff obtained title the subject property on July 31, 2006 by transfer from Cinnaminson Township. A deed consolidating the lots was filed by plaintiff on June 26, 2007.[1]

As contemplated by the Redevelopment Agreement, the municipality approved the development of the 16.48-acre property into 205 residential condominium units in twelve

[1] Plaintiff obtained the property under the name Hovbros Cinnaminson, LLC. Plaintiff's name was later changed to Hovbros Cinnaminson Urban Renewal, LLC.

buildings. The approvals contain the express provision that the residential units are restricted to residents 55 years old and older. The 205 units, which are part of a single Master Deed, are designated in the records of the municipality as separate parcels under Block 2102, Lot 55.01. Each parcel contains a distinct qualifier that matches the intended unit number. Each parcel has an address on Siena Drive with a street number matching its unit number.

The property sits along Route 130, a six-lane, divided highway in a retail commercial area of the township. A supermarket and shopping center, also a township redevelopment project, is located across the highway from the subject property. The rear portion of the property borders Branch Pike, a largely residential street, which takes on a more commercial nature as it approaches its intersection with Route 130 near the subject property. The planned development has access to both Route 130 and Branch Pike. Siena Drive runs from Branch Pike through the property.

Sales and construction commenced on the project after transfer of title to plaintiff. As of October 1, 2010, the relevant valuation date, plaintiff had installed significant site improvements at the subject property. Those improvements include Siena Drive, parking lots, curbing, utilities, a roadway and parking lot drainage system, detention basins, and partial sidewalks. Because of weakening economic conditions, plaintiff marketed and constructed one building at a time. As of the valuation date, 24 units had been sold and two buildings had been constructed on the subject property. The constructed units are not the subject of this appeal. The remaining 181 units, to be situated in ten, two-story buildings, were not constructed as of the valuation date. The assessments on those units are before the court.

For tax year 2011, each of the 181 parcels was assessed for local property tax purposes as follows:

Land	$40,000
Improvements	$ 00
Total	$40,000

The Chapter 123 average ratio for Cinnaminson Township for tax year 2011 was 1.033, which is considered to be 100%.

On March 29, 2011, plaintiff filed a Petition of Appeal with the Burlington County Board of Taxation challenging the assessment on each of the 181 parcels.

On August 19, 2011, the county board issued 181 Judgments reducing the assessment on each parcel as follows:

Land	$35,000
Improvements	$ 00
Total	$35,000

On October 3, 2011, plaintiff filed a Complaint in this court challenging the Judgments of the county board.

At trial, each party relied solely on the testimony of an expert real estate appraiser. The experts agreed that the highest and best use of the subject property is its development as age-restricted residential housing in accordance with the redevelopment agreement and applicable zoning. Both also agreed that the market for this type of housing was weak as of the valuation date, suggesting that a purchaser in the marketplace as of October 1, 2010 would expect to experience a holding period before development of the property.

Plaintiff's appraiser used the sales comparison approach to reach an opinion of the true market value of the undeveloped parcels. The expert examined six sales of vacant parcels of land with approvals for the development of residential housing. He determined a value per approved unit for each comparable sale, made adjustments to those values, and reached an opinion that the subject parcels had a true market value of $7,000 each on the relevant valuation

date. The expert did not attribute a value to the significant site improvements in place at the subject property on the valuation date. He opined that the improvements had limited value in the marketplace.

The municipality's appraiser also used the sales comparison approach to reach an opinion of value for the undeveloped parcels. He examined six vacant parcels with approvals for construction of residential housing. He determined a price per approved unit for each comparable sale, made adjustments to those prices per unit, and reached the opinion that the subject parcels had a true market value of $27,000 each as of the relevant valuation date. The expert departed from the approach of plaintiff's expert, however, by also determining a market value for the site improvements at the property. He used the cost approach to reach the opinion that the improvements had a per-unit of value of $13,800. He combined the two values to reach a total true market value of $41,000 as of October 1, 2010.

After careful consideration of the experts' testimony, the court concludes that the municipality's expert took the more credible approach to determining value. The court is convinced that the site improvements at the subject property have value in the marketplace. The value of those improvements must be included in the assessments on the undeveloped parcels. The court, however, does not adopt the overall opinion of value of the municipality's expert. The court concludes, instead, that each of the undeveloped parcels had a true market value of $35,000 on October 1, 2010.

II. Conclusions of Law

The court's analysis begins with the well-established principle that "[o]riginal assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373

(Tax 1998). 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).

"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), aff'd, 18 N.J. Tax 658 (App. Div.), certif. denied, 165 N.J. 488 (2000)).

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, 38-39 (App. Div. 1982)(citations omitted). If the court determines that sufficient evidence to overcome the presumption has not been produced, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992); Global Terminal & Container Serv. v. City of Jersey City, 15 N.J. Tax 698, 703-704 (App. Div. 1996).

According all favorable inferences to plaintiff's evidence, as is required by law, the court concludes that plaintiff raised a debatable question regarding the correctness of the assessments on the subject property. Plaintiff's expert relied on six comparable sales of vacant land with development potential, to which the expert applied various adjustments, to offer an opinion that the subject property had a true market value of $7,000 per parcel on the valuation date. This figure is below the assessment. The court is cognizant of the fact that plaintiff's expert failed to include the value of the site improvements in his opinion of value. This is a fatal flaw in his

analysis. The expert, however, testified at trial that the site improvements had minimal value in the marketplace. Although the court ultimately rejects this aspect of the expert's opinion, for purposes of determining whether the presumption has been overcome, the court will consider the opinion of plaintiff's expert on this point to be credible.

This determination alone does not end the court's inquiry. Having found that the presumption of correctness was overcome, it is the court's obligation to determine the true market value of the subject property on the valuation date.

"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 comparable sales approach is the principal approach used to determine the value of vacant land. City of Atlantic City v. Ginnetti, 17 N.J. Tax 354, 362 (Tax 1998), aff'd, 18 N.J. Tax 672 (App. Div. 2000); Appraisal Institute, The Appraisal of Real Estate, 419 (12th ed 2001)(the comparable sales approach "usually provides the primary indication of market value in

appraisals of properties that are not usually purchased for their income-producing characteristics."). This method of valuation has been defined as "[a] set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sales prices of the comparables based on the elements of comparison." Appraisal Institute, The Appraisal of Real Estate, 417 (12th ed 2001). Both experts took this approach to determine the value of the subject property without improvements. The court adopts this approach as credible.

Plaintiff's expert relied on six comparable sales of vacant land in southern New Jersey. All of the transactions took place several years before the valuation date. The sales ranged from September 2004 to February 2008. Two sales were of land approved only for the construction of age-restricted housing. Another sale was the purchase of two parcels over a two-year period as an assemblage for the construction of age-restricted housing. The other three sales were of land for non-age-restricted townhomes.

The municipality's expert relied on five comparable sales of vacant land from southern and central New Jersey and one contract for the sale of vacant land. The sales were closer in time to the relevant valuation date then were those considered by plaintiff's expert. The sales ranged from May 2007 to June 2012. Two of the sales post-dated the relevant valuation date.

The court finds that all but one of the sales upon which plaintiff's expert relied lack credibility as evidence of the true market value of the subject property. The sales from 2004 and 2005, plaintiff's comparable sales Nos. 1, 2 and 3, took place five or six years prior to the valuation date. They are too remote in time to be reliable evidence of value. This is particularly true because the record suggests the real estate market was in a period of ascendency from 2005

to 2007 followed by a period of decline to the valuation date. These sales would require an upward adjustment for market conditions for a period of time followed by a downward adjustment for market conditions, rendering them unreliable as evidence of value in this case.

Two other comparable sales of plaintiff's expert lack credibility for other reasons. The expert's comparable sale No. 4 is actually two sales that took place a year apart. The grantor of the second sale was the Township of Pennsauken, suggesting that the later transaction may have been influenced by the municipality's desire to redevelop the assembled parcels, a factor that could have an effect on the purchase price. The expert's comparable sale No. 5 lacks credibility because the seller was a shareholder of the limited liability company that purchased the property. Because of the relationship between the parties, the municipal tax assessor marked the sale as not usable for purposes of the annual ratio study of the Director, Division of Taxation. The expert testified that he verified the sale as an arm's length transaction. He provided no details of that verification. In light of the conflicting evidence with respect to the reliability of the sale, the court will not consider it when determining the true market value of the subject property.

The court will rely on plaintiff's expert's comparable sale No. 6.

The court finds that two of the comparable sales relied upon the municipality's expert are not credible evidence of value. Defendant's comparable sale No 1 is, in fact, not a sale. The expert described the transaction as being a contract for the sale of property which was not consummated as of the time of trial. The expert described the contract as having been signed "prior to 2011," but provided no firm date on which there was a meeting of the minds with respect to the purchase price. Because there is evidence of reliable sales in the trial record, the court will not rely on the unconsummated sale offered by defendant's expert.

Defendant's comparable sale No 4 is also lacking in credibility. There is no recorded deed for the transaction. This is so because the transaction was a component of an agreement between the seller and the buyer to enter a joint venture to develop the property. These circumstances undermine the reliability of the sales price as evidence of true market value, as it is likely that the joint venture agreement contained terms that could have had an effect on the reported purchase price for the property.

The court will rely on the remaining comparable sales of defendant's expert, his comparable sales Nos. 2, 3, 5 and 6.

The reliable comparable sales in the record are summarized as follows:

Plaintiff's comparable sale No. 6 took place in February 2008. This sale of 2.14 acres in Mount Ephraim, Camden County, was of a lumberyard with approvals for the construction of a 41-unit, not age-restricted, townhouse project. The sales price, adjusted a relatively small amount to account for the demolition of existing structures prior to development, was $1,246,000, or $30,390 per unit.

Defendant's comparable sale No. 2 took place in June 2012. This sale in West Windsor Township, Mercer County, was of 13.70 acres with approvals for a 120-unit apartment complex in several three-story, walk-up buildings. Of the approved units, 96 are approved for market rate sales. The sales price originally was agreed upon in 2007 at $3,640,000 or $37,917 per unit. Due to deteriorating market conditions, the contract was amended to contain a selling price of $3,533,000 or $36,802 per unit.

Defendant's comparable sale No. 3 took place in September 2011. The 41.98-acre site was approved for the development of 52 townhouses and 332 apartments in Franklin Township, Somerset County. At the time of the sale the clubhouse was partially completed, as were the

foundations for all 384 units. The parties to the transaction allocated $1,000,000 of the $18,000,000 purchase price to the existing site improvements. The remaining $17,000,000 purchase price equates to $44,271 per unit of approved development.

Defendant's comparable sale No. 5 took place in May 2007. The sale involved a 9.60-acre parcel approved for the development of 118 age-restricted condominium units in seven, three-story buildings in Eatontown Borough, Monmouth County. Of the approved units, 105 are market rate. The $4,750,000 purchase price translates to $45,238 per unit.

Finally, defendant's comparable sale No. 6 took place in April 2007. The 37.47-acre parcel was approved for a 216-unit apartment complex, including a clubhouse, pool and garage areas in Tinton Falls, Monmouth County. Of the approved units, 183 are market rate. The $7,750,000 purchase price equals $42,350 per unit.

The unadjusted per-unit sales prices are summarized as follows:

Plaintiff's Comparable Sale No. 6:	$30,390
Defendant's Comparable Sale No. 2:	$36,802
Defendant's Comparable Sale No. 3:	$44,271
Defendant's Comparable Sale No. 5:	$45,238
Defendant's Comparable Sale No. 6:	$42,350

Both experts opined as to appropriate adjustments to the comparable sales. Plaintiff's expert made a 15% negative adjustment to his comparable sale No. 6 because he views properties approved for age-restricted development, such as the subject, to be inferior to properties approved for development without age restriction. The expert based this opinion on his observation that the "market for age-restricted dwellings has slowed greatly over the past several years as economic conditions suffered, those potential buyers, could no longer sell their existing homes and demand for these age-restricted units was greatly reduced." As for the quantification of the adjustment at 15%, the expert conceded that he did not rely on market data

but instead reached an opinion based on discussions with market participants and "getting a feel that there is no market demand" for age-restricted housing. Defendant's expert also made a 15% adjustment to a sale of land approved for townhomes without an age restriction, opining that such home are likely to generate a higher price.

The court concludes that an adjustment for an age-restriction on development is appropriate. The testimony of plaintiff's expert that the market for age-restricted housing was depressed around the time of the valuation date is credible. The history of the subject property is itself evidence of the difficult market for age-restricted housing in the period immediately preceding the valuation date. The developers of the subject property were unable to sell enough units to construct more than two buildings, leaving 181 parcels vacant.

The court's conclusion is also bolstered by the legislative finding in 2009 that the

> shortage of affordably priced workforce housing has been exacerbated in recent years by a municipal preference for age-restricted housing which has resulted in an oversupply of age-restricted housing approvals . . . .
>
> [N.J.S.A. 45:22A-46.3(e), eff. July 2, 2009.]

In order to address this problem, the Legislature created a mechanism for converting age-restricted development approvals to approvals for the construction of affordable housing. N.J.S.A. 45:22A-46.1, et seq.

The court will apply a 15% downward adjustment to each comparable sale that involved land approved for development without an age restriction.

The court will also adopt the remaining adjustments offered by the experts for their respective comparable sales. Plaintiff's expert applied a negative 5% per year adjustment for a declining market. The court finds this adjustment reasonable for the period beginning in early

2008 to the valuation date. The court will apply this adjustment to plaintiff's comparable sale No. 6 and defendant's comparable sales Nos. 5 and 6. For each sale a negative 10% adjustment is appropriate. The remaining credible comparable sales took place in a stable market.

Plaintiff's expert made a 10% negative adjustment to comparable sale No. 6 for its superior location. The adjustment was based on the subject property's adjacency to a highway. The court finds this adjustment to be credible, given the negative influence of a six-lane, divided highway on residences, particularly housing for residents 55 and over. The municipality's expert made negative location adjustments of either 20% or 25% to his credible comparable sales for similar reasons and based on demographic factors. The court accepts those adjustments.

Finally, defendant's expert made adjustments for the size of the approved development for comparable sales Nos. 3 and 5. The expert opined that a smaller development is likely to sell for more per unit than would a larger development, given economies of scale in construction. The expert applied a positive 5% adjustment to comparable sale No. 3, which had 384 approved units and a negative 5% adjustment to comparable sale No. 5, which had only 118 approved units. The court adopts these adjustments, finding the expert's testimony on this point to be credible.

Application of these adjustments to the comparable sales the court found to be credible, leads to adjusted sales prices per unit as follows:

	Unadjusted	Age Rest.	Market	Loc.	Size	Adjusted
P No. 6:	$30,390	-15%	-10%	-10%		$19,754
D No. 2:	$36,802	-15%		-20%		$23,921
D No. 3:	$44,271	-15%		-20%	+5%	$30,990
D No. 5:	$45,238		-10%	-25%	- 5%	$27,143
D No. 6:	$42,350	-15%	-10%	-25%		$21,118

The court gives roughly equal weight to each of the comparable sales and concludes that the vacant land at the subject property had a true market value of $22,100 as of October 1, 2010.

With respect to the site improvements in place at the subject property, the court rejects the opinion of plaintiff's expert that those improvements have minimal market value. There is no doubt in the court's mind that the site improvements had value in the marketplace on October 1, 2010. It is elementary that a parcel with new curbing, streets, a drainage system, detention basis, sidewalks, parking and utilities is more valuable than a vacant parcel with no improvements. A purchaser in the marketplace intending to complete the project approved for the subject property would place a value on not having to expend resources on the extensive site improvements necessary to support the project. Defendant's comparable sale No. 3 corroborates this finding. That parcel, approved for development, sold with the clubhouse and building foundations in place. The parties to the transaction allocated $1 million of the purchase price to the site improvements.

The only evidence of value for the site improvements in the record is the testimony of defendant's expert. He took the cost approach to reach an opinion of value on this component of the subject property. "The cost approach is normally relied on to value special purpose property or unique structures for which there is no market." Borough of Little Ferry v. Vecchiotti, 7 N.J. Tax 389, 407 (Tax 1985); Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 452 (Tax 1980), aff'd, 180 N.J. Super. 366 (App. Div.), certif. denied, 88 N.J. 495 (1981). The cost approach "involves a replication, through the use of widely accepted cost services . . . of the cost of the components of the building to be valued, less . . . depreciation[s]." Gale & Kitson Fredon Golf, LLC v. Township of Fredon, 26 N.J. Tax 268, 283 (Tax 2011)(quotations omitted). "A cost approach has two elements – land value and the reproduction or replacement cost of the

buildings and other improvements." International Flavors & Fragrances, Inc. v. Borough of Union Beach, 21 N.J. Tax 403, 417 (Tax 2004). From the estimated reproduction cost is deducted depreciation from all causes. Depreciation is defined as a loss in value from three causes: physical depreciation, functional obsolescence and external economic factors. The cost approach is most effective when the property being valued is new, in light of the difficulties in accurately estimating the various components of depreciation. See Worden-Hoidal Funeral Homes v. Borough of Red Bank, 21 N.J. Tax 336, 338 (Tax 2004).

Here, defendant's expert testified that attempts to secure evidence of the actual cost of the site improvements during discovery were fruitless. His testimony was not disputed by plaintiff. The parties did not engage in pretrial motion practice with respect plaintiff's failure to produce this evidence. In the absence of evidence of actual costs, defendant's expert relied on three categories of evidence to determine the cost of the site improvements: (1) estimates contained in performance bonds filed by plaintiff with the municipality; (2) actual and estimated site development costs from similar developments; and (3) cost estimates from recognized cost manuals regularly used in the industry and by appraisers.

As a condition of its site plan approval, plaintiff was required to post a performance bond guarantee for all future site improvements. The bonds are reduced over time as the site improvements are completed. Plaintiff's original performance bond for the subject property was $3,405,431, effective August 15, 2007. The bond was reduced to $2,245,901 on January 23, 2008 and later to $1,422,878 on August 20, 2008. There were no further reductions. The total reduction equals $1,982,553, or $9,671 per residential unit. This includes hard costs only, and does not include soft costs, such as engineering expenses or entrepreneurial profit.

The expert examined costs for site improvements at four developments of apartments and townhouses in New Jersey. Two of the figures are based on actual costs, one is based on an estimate and one is based on the amount budgeted for site improvements. The figures ranged from $18,197 per residential unit to $35,000 per residential unit. Finally, the expert consulted the Marshall Valuation Service manual for information on subdivision site development cost estimates. This source is well recognized in both the construction industry and the real estate appraisal field as a reliable source to estimate costs. Using this tool the expert determined a total cost for site improvements of $2,188,096, or $12,089 per unit.

After weighing this evidence, the expert offered an opinion that the total cost of the site improvements in place at the subject property on valuation date was $12,000 per unit. The court finds this estimate to be credible and based on reliable evidence. Given that there is no other opinion of value for the improvements in the record, the court adopts defendant's expert's opinion on this point.

The expert opined that no depreciation applied. The improvements are relatively new, have largely not been used because no residential units have been constructed near most of the improvements and the improvements suffer from no functional or economic obsolescence. The court agrees with this opinion. Nothing in the record suggests that the improvements were worn, substandard or in any way insufficient for the approved development on the subject property.

To his opinion of cost per unit, the expert added an entrepreneurial profit. New Jersey courts include entrepreneurial profit in determining the market value of property under the cost approach when "the developer or owner-occupier makes improvements to property with the anticipation of realizing a profit on its subsequent resale." Westwood Lanes, Inc. v. Borough of Garwood, 24 N.J. Tax 239, 249 (Tax 2008)(citing Lawrence Assocs. v. Township of Lawrence,

5 N.J. Tax 481, 535 (Tax 1983)). "New Jersey courts do not consider the status of the builder (as developer or owner-operator) dispositive to the determination of whether to include entrepreneurial profit within market value." Westwood Lanes, supra, 24 N.J. Tax at 250 (citing Beneficial Facilities Corp. v. Borough of Peapack & Gladstone, 11 N.J. Tax 359, 381 (Tax 1990), aff'd, 13 N.J. Tax 112 (App. Div.), certif. denied, 130 N.J. 397 (1992)). It "is necessary to include a figure which reflects the time, effort and incidental expense of the owner in the development of the property." McGinley Mills v. Town of Phillipsburg, 9 N.J. Tax 508, 517 (Tax 1988). These precedents call for the application of entrepreneurial profit here.

Defendant's expert estimated entrepreneurial profit at 15% of the replacement cost of the site improvements, or $1,800 per unit. The court will adjust this percentage to 7.5% or $900 per unit. In light of the evidence in the record of the distressed condition of the age-restricted market in New Jersey, the court concludes that a developer of the site improvements at the subject property would not reasonably expect to profit from site improvements at the high rate offered by defendant's expert. The value per unit of the site improvements, therefore, is $12,900 ($12,000 + $900 = $12,900).

The court will add the true market value of the land per unit ($22,100) to the value per unit of the site improvements ($12,900) to reach a true market value of the of $35,000 per unit, attributable to land value.

Pursuant to N.J.S.A. 54:51A-6a, commonly known as Chapter 123, in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range. The common level range is defined by N.J.S.A. 54:1-35a(b) as "that range which is plus or minus 15% of the average ratio" for the municipality in which the subject property is located.

The true value determined above must, therefore, be compared to the average ratio for Cinnaminson Township for 2011. The formula for determining the subject property's ratio is:

Assessment ÷ True Value = Ratio

Here, that equation, for each of the parcels before the court, is represented as follows:

$40,000 ÷ $35,000 = 1.14

The chapter 123 average ratio for Cinnaminson Township for tax year 2011 exceeds 100%. Where both the average ratio for the municipality and the ratio of the assessed value of the property to its true value exceed 100%, the court will entered Judgment revising the assessment at 100% of the subject property's true market value. N.J.S.A. 54:51A-6c.

As a result, the court will enter Judgment setting the assessment on each of the parcels for tax year 2011 as follows:

Land	$35,000
Improvements	$ 00
Total	$35,000

Very truly yours,

Patrick DeAlmeida, P.J.T.C.