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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida  
Presiding Judge



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Re: Seaboard Landing, LLC v. Borough of Penns Grove  
Docket No. 000091-2009  
Docket No. 000093-2009  
Docket No. 009264-2011

Seaboard Landing, LLC and Republic First Bank v.  
Borough of Penns Grove  
Docket No. 011382-2012

Dear counsel:

This letter constitutes the court's opinion after trial challenging omitted added assessments on the subject property for two months of tax year 2007 and all of tax year 2008, as well as the assessments on the property for tax years 2011 and 2012. For the reasons explained more fully below, all of the challenged assessments are reduced.

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### I. Findings of Fact and Procedural History

The following findings of fact are based on the evidence and testimony admitted at trial and submitted with respect to a pretrial motion. The essential facts are not in dispute; nor is the complicated procedural and substantive history relating to this property.

The subject property consists of 10.542 vacant acres along the Delaware River at the end of West Main Street in Penns Grove Borough, Salem County. The property is designated in the records of the municipality as Block 57, Lot 1.<sup>1</sup>

From 2000 to 2007, the property was owned by Fenwick Commons, LLC (“Fenwick”). Fenwick obtained the property, along with several other nearby parcels of vacant waterfront land and riparian rights, with the intention of developing “The Riverwalk at Penns Grove,” a 191,000-square-foot, riverfront entertainment center with retail, dining, hotel and marina facilities. The project’s purpose was to redevelop a struggling commercial area of the township. The proposed project included a 30 feet by 770 feet walkway along the Delaware River secured by a decorative bulkhead. The walkway was intended to accommodate car shows, craft shows and public gatherings and to provide public access to the waterfront. In addition, the walkway would complement the commercial buildings intended for the property. The bulkhead both supports the walkway and protects the remainder of the parcel from the river.<sup>2</sup>

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<sup>1</sup> Municipal records with respect to the acreage included in the assessments on Block 57, Lot 1 for the years at issue are not precise. The court concludes that the assessments apply to 10.542 acres and do not include Block 57, Lot 6.01, the pier and riparian area near the subject.

<sup>2</sup> A long, dilapidated pier extends from the uplands at the subject into the Delaware River. At trial, it was established that the property is in the portion of New Jersey in which the boundary between Delaware and New Jersey is at the low water mark on the New Jersey shore of the river. See New Jersey v. Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L.Ed. 2d 847 (1934) (resolving boundary dispute between New Jersey and Delaware). The riparian areas adjacent to the subject, and the dilapidated pier, are, therefore, in Delaware. The evidence adduced at trial

In 2001, the borough adopted a redevelopment plan for the parcels owned by Fenwick, including the subject property. The Penns Grove Planning Board issued final site approval for The Riverwalk at Penns Grove in 2003. The municipality and Fenwick entered into a redevelopment agreement in 2005, naming Fenwick as the redeveloper of the property. In accordance with the agreement, the borough rezoned the waterfront area, created marina districts, and worked to secure necessary funding for construction of portions of the project. In order to fund the bulkhead and walkway, the municipality obtained a Green Acres loan, Green Acres grant monies, and a Transportation Enhancement grant. The borough also adopted bond ordinances to appropriate municipal funds for the project.

On October 15, 2002, Fenwick and the borough executed a Revised Lease Agreement with respect to the proposed bulkhead and walkway. In the agreement, Fenwick leases to the borough for an annual rent of \$1 an area of .612 acres consisting of a portion of Block 57, Lot 1 and a portion of adjoining Block 59, Lot 17 to permit the construction of “recreational improvements.” The lease provides that “[t]his property is intended to be subdivided by the Planning Board of the Borough of Penns Grove, in order that this tract of land thirty (30) feet in width, adjoining the Delaware River, shall become ‘The Riverwalk of the Borough of Penns Grove.’” The subdivision never took place.

The borough solicited and awarded contracts for the construction of the bulkhead and walkway through the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq. When there was a

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suggests that the redevelopment plans for the parcel were predicated, in part, on the prospect of Delaware approving a riverboat casino to be docked at the pier at the subject. Delaware has not approved riverboat gambling at the subject. In addition, the evidence suggests that the riparian areas are included in the borough’s tax map and have been subject to local property taxes by the municipality, even though those lands are in Delaware. The court makes no findings with respect to the taxation or value of the riparian areas in Delaware.

shortfall in available monies, the borough adopted an ordinance to allow for the borrowing of additional funds. Fenwick agreed to repay the borough those additional borrowed funds.

During construction of the bulkhead and walkway, plaintiff Seaboard Landing, LLC (“Seaboard”) purchased the subject property and development rights from Fenwick. At the time of the purchase, Seaboard assumed responsibility for Fenwick’s financial obligations to the borough. As of November 1, 2007, construction of the bulkhead and walkway was completed.

The commercial development of the property has not taken place. As a result, the bulkhead and walkway line an approximately 10-acre vacant lot in a distressed commercial and residential area of the municipality. Although the parties submitted no evidence with respect to public use of the bulkhead and walkway, they are in agreement that the walkway is open to the public. There does not appear to be any concerted effort to attract public use of the facility.

Seaboard has not made payments to the borough to repay the Green Acres loan for the bulkhead and walkway construction. Nor does plaintiff expect any payments to be made, as The Riverwalk at Penns Grove project appears to no longer be financially feasible.

On or about October 10, 2008, defendant’s tax assessor issued added assessments for Block 57, Lot 1 in the amount of \$1,250,000 attributable to “bulkhead.” The added assessment was prorated for the last two months of tax year 2007 (\$208,333) and applied for the entire tax year 2008 (\$1,250,000).<sup>3</sup>

The Chapter 123 average ratio for the municipality for tax year 2007 is 60.71. When the average ratio is applied to the added assessment, the implied equalized value of the full added

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<sup>3</sup> The assessments are properly characterized as omitted added assessments, given the timing of their imposition. See N.J.S.A. 54:4-63.12. This distinction is not material here.

assessment for tax year 2007 is \$2,058,969. The implied equalized value of the two-month prorated assessment for 2007 is \$343,162.

The Chapter 123 average ratio for the municipality for tax year 2008 is 54.00. When the average ratio is applied to the added assessment, the implied equalized value of the added assessment for tax year 2008 is \$2,314,815.

At trial, the municipal tax assessor explained that she calculated the omitted added assessments by using an engineer's estimate for construction of the bulkhead and walkway on file with the municipal clerk's office. The total construction cost estimated in that document was \$2,063,012. Although she acknowledged that many of the itemized entries on the estimate were "difficult to understand," the assessor testified that the estimate was the best evidence she had available with respect to the value of the improvements. The assessor equalized her estimate of value of the improvements using the tax year 2007 Chapter 123 average ratio ( $\$2,063,012 \times .6071 = \$1,252,456$ ). She used the same value for tax year 2008, even though the Chapter 123 average ratio for that year was 54%.

Prior to December 1, 2008, plaintiff filed an appeal of the added assessments with the Salem County Board of Taxation. After a hearing, the board dismissed the appeals, finding that plaintiff had not paid the taxes attributable to the added assessments.

On January 12, 2009, plaintiff filed two Complaints in this court, one challenging the two-month, pro-rated omitted added assessment for tax year 2007 and one challenging the omitted added assessment for tax year 2008. In addition to challenging the quantum of the assessments, plaintiff also alleged that the portion of the subject property on which the bulkhead and walkway are located is exempt from taxation pursuant to N.J.S.A. 54:4-3.3, as property owned by a municipality and used for a public purpose.

On January 11, 2011, plaintiff moved for summary judgment seeking an Order declaring Block 57, Lot 1 to be exempt pursuant to N.J.S.A. 54:4-3.3 and cancelling the added assessments on the property for tax years 2007 and 2008. On February 22, 2011, the municipality cross-moved for summary judgment for an Order declaring Block 57, Lot 1 not be exempt from taxation pursuant to N.J.S.A. 54:4-3-3.

The court thereafter issued a letter opinion concluding that the walkway did not satisfy the criteria for exemption in N.J.S.A. 54:4-3.3 for tax years 2007 and 2008. The court subsequently entered an Order denying plaintiff's partial summary judgment motion and granting the municipality's cross-motion for summary judgment on the exemption question.<sup>4</sup>

A municipality-wide revaluation was undertaken for tax year 2009. Plaintiff did not file an appeal of the assessments on the subject property for tax years 2009 and 2010.

On March 31, 2011, plaintiff filed a Complaint challenging the tax year 2011 assessment on the subject property. For tax year 2011, the property was assessed as follows:

Land	\$2,113,100
Improvements	<u>\$1,250,000</u>
Total	\$3,363,100

The Chapter 123 average ratio for the municipality for tax year 2011 is 98.69. When the average ratio is applied to the assessment, the implied equalized value of the subject property for tax year 2011 is \$3,407,741.

Plaintiff challenged the assessment on the subject property for tax year 2012 before the Salem County Board of Taxation. For tax year 2012, the assessment remained as follows:

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<sup>4</sup> The court also concluded that plaintiff's petitions of appeal should not have been dismissed by the county board in light of the fact that N.J.S.A. 54:4-63.11, which authorizes the filing of an appeal from an added assessment, does not contain a tax payment requirement. See BDB Enterps. v. Township of Brick, 16 N.J. Tax 22 (Tax 1996).

Land	\$2,113,100
Improvements	<u>\$1,250,000</u>
Total	\$3,363,100

The Chapter 123 average ratio for the municipality for tax year 2012 is 100.87%.

On May 30, 2012, the county board issued a Judgment affirming the 2012 assessment. On June 8, 2012, plaintiff filed a Complaint in this court challenging the county board Judgment.

On November 24, 2014, the municipality moved to dismiss the tax years 2011 and 2012 appeals for failure to pay taxes and because the taxpayer lacked standing to pursue the appeals. The borough's motion was based a series of developments relating to the subject property. The motion papers established that plaintiff had been delinquent in paying taxes on the added assessments, resulting in the sale of a tax sale certificate in 2009. The holder of the tax sale certificate paid taxes on the property from 2009 through 2012. In 2012, Republic First Bank took title to the subject property through a deed in lieu of foreclosure because of the property owner's failure to fulfill its payment obligations to the bank on financing agreements. The bank did not record the deed. Subsequent to the transfer of title to the bank, the tax sale certificate holder continued to pay the taxes on the subject property, until, later in 2012, it filed a foreclosure action on the tax sale certificate.

In a bench opinion issued on January 16, 2015, the court denied the municipality's motion to dismiss. The court directed plaintiff to implead Republic First Bank as a plaintiff in the tax year 2012 matter, to serve a copy of all Complaints on the holder of the tax sale certificate, and to advise that party of the scheduled trial date on the valuation question. On

January 26, 2015, plaintiff filed an Amended Complaint in the 2012 matter, naming Republic First Bank as a plaintiff.<sup>5</sup>

Each party presented a licensed real estate appraiser as an expert witness at trial. Plaintiff's expert used the cost approach to valuation to offer the opinion that the subject property, including the bulkhead and walkway, had a true market value of \$876,000 as of October 1, 2011, the valuation date for tax year 2012. He offered no detailed analysis of the true market value of the subject property as of the date of the completion of the improvements for purposes of the omitted added assessments or as of October 1, 2010, the valuation date for tax year 2011. The totality of his written analysis for those years is as follows:

We note that we have been asked to comment on the value under appeal for prior years, including 2008, 2009 and 2011. It would be our opinion that the value conclusion would be the same for these prior years in question.

The opinion offered by plaintiff's expert is based on his conclusion that the relevant parcel is 13.26 acres, including the pier and riparian areas adjacent to the subject.

The municipality's expert offered the opinion that the subject property had a true market value of \$2,420,000 as of the completion of the improvements. In addition, he opined that the subject property had a true market value of \$1,820,000 as of October 1, 2010 and October 1, 2011, the relevant valuation dates for tax years 2011 and 2012. His opinions were based on his

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<sup>5</sup> No party paid the taxes on the subject property for tax year 2013. On July 3, 2013, plaintiff filed a Complaint in this court challenging a county board Judgment affirming the 2013 assessment on the property. On August 22, 2014, after issuing a bench opinion on the municipality's motion to dismiss, this court dismissed the tax year 2013 Complaint for failure to pay taxes pursuant to N.J.S.A. 54:51A-1(b). An appeal of the court's Judgment with respect to tax year 2013 is pending in the Superior Court, Appellate Division. In addition, in 2014, the Superior Court entered a Judgment of Foreclosure in the action brought by the holder of the tax sale certificate. An appeal of the Judgment of Foreclosure is also pending in the Superior Court, Appellate Division. The municipality has also filed an in rem foreclosure action in the Superior Court. That matter is pending.

conclusion that the subject parcel was 12.12 acres and does not include the pier and riparian areas adjacent to the subject. The expert reached these opinions using the comparable sales approach.

## 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).

During its case-in-chief, plaintiff admitted into evidence the opinions of value of both its appraisal expert and the municipality's appraisal expert. Both experts opined that the true market value of the subject property was significantly below its assessed value on all of the relevant valuation dates. According all favorable inferences to plaintiff's evidence, as is required by law, the court concluded at trial that plaintiff overcame the presumption of correctness because it raised a debatable question regarding the correctness of the assessments on the subject property.

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 dates.

"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 (11<sup>th</sup> 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 (12<sup>th</sup> 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 (12<sup>th</sup> ed 2001). The court concludes that the comparable sales approach is the most credible method for determining the true market value of the subject property on the relevant valuation dates. The municipality’s expert took the comparable sales approach in reaching his opinion of value.

The weight to be given to an expert’s opinion depends especially upon the facts and reasoning which are offered as the foundation of his [or her] opinion. Ocean County v. Landolfo, 132 N.J. Super. 523, 528, 334 A.2d 360 (App. Div. 1975). The weight and value of expert testimony are for the trier of fact. Robbins v. Thies, 117 N.J.L. 389, 398, 189 A. 67 (E & A 1937). An expert’s opinion may be adopted in whole or in part or completely rejected. Middlesex County v. Clearwater Village, Inc., 163 N.J. Super. 166, 174, 394 A.2d 390 (App. Div. 1978), certif. denied, 79 N.J. 483, 401 A.2d 239 (1979).

[Marina Dist. Dev. Co., LLC v. City of Atlantic City, 27 N.J. Tax 469, 524 (Tax 2013)(internal quotations omitted), aff'd, \_\_\_ N.J. Tax \_\_\_ (App. Div. 2015).]

Defendant's expert offered a thoughtful analysis of comparable sales of vacant, waterfront land along the Delaware River in the general vicinity of the subject property. The comparable properties each have the highest and best use opined by both experts for the subject property: future mixed-use, commercial and residential development. The court concludes that this opinion of highest and best use is credible. Defendant's expert made adjustments to the sales prices of his comparable sales to account for material differences between the comparable properties and the subject. Those adjustments were based on the expert's analysis of market data and the relative market value of the properties' characteristics, location, development approvals, and conditions. The court concludes that the opinions of value offered by defendant's expert are credible with the adjustments described in the following paragraphs.<sup>6</sup>

Defendant's expert relied on four comparable sales: (1) the 2009 sale of 4 acres in Carney's Point Township with a deed restriction allowing only the development of housing for residents 55 years old and over; (2) the 2002 sale of 105 acres in Cinnaminson Township with approvals for high-density, residential and commercial development; (3) the 2000 sale of the subject property, along with the riparian areas, prior to implementation of the redevelopment plan, redevelopment agreement, and zoning changes discussed above; and (4) the 2007 sale of

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<sup>6</sup> The court does not find the opinion offered by plaintiff's expert to be credible. With respect to the added assessments and tax year 2011, the expert engaged in no substantive analysis. He offered the net opinion that his value conclusion for tax year 2012 would apply to the prior years as well. This opinion stands in stark contrast to the expert's time adjustments to the comparable sales prices he used for tax year 2012. Those adjustments were based on market fluctuations. He did not explain why those market fluctuations would permit his opinion of value for 2012 to apply to all prior years without adjustments for market conditions. In addition, the court concludes that the expert's opinion with respect to tax 2012 lacks credibility because, in part, he opined that the bulkhead and walkway, constructed in 2007, depreciated 75% in value in just five years. This figure included 25% physical depreciation. Yet, he offered no evidence of any physical deterioration of the improvements, instead basing this adjustment on "the tough weather/water conditions of being a riverfront improvement."

the subject property, along with riparian areas, after implementation of the development plan, redevelopment agreement, and zoning changes discussed above.

1. Tax Years 2007 and 2008.

For tax years 2007 and 2008, the expert applied adjustments to the per-acre sales prices of the comparable sales for the deed restriction on the Carney's Point property, market conditions, location, economies of scale, and site improvements (primarily the bulkhead and walkway). The resulting calculations resulted in adjusted per-acre sales prices of: (1) \$124,315; (2) \$112,253; (3) 124,770; and (4) \$461,099.

The fourth adjusted sales prices is from the 2007 sale of the subject. The expert described this sale as having taken place

at a time in the real estate market where historical prices were being realized for all types of properties due to readily available money and a general market attitude that values were going to continue to escalate.

As a result, the expert gave this sale "little weight" but "felt is should be presented as it did represent a willing buyer and seller."

After weighing the four adjusted sales prices, the expert reached the opinion that the subject property, with the bulkhead and walkway improvement, had a true market value of \$200,000 per acre upon its completion and for tax year 2008. He applied that amount to his factual assumption that the parcel was 12.12 acres to reach an opinion of value of \$2,420,000 ( $\$200,000 \times 12.12 = \$2,420,000$ ). The court concludes that the expert gave too much weight to the 2007 sale of the subject and concludes that the value per acre of the subject with improvements upon completion and for tax year 2008 was \$140,000 per acre. In addition, the court has held that the assessments for the subject property apply to 10.542 acres. The court

concludes that the true market value of the subject property with improvements upon completion and for tax year 2008 was \$1,475,000 ( $\$140,000 \times 10.542 = \$1,475,000$  (rounded)).

A. Tax Year 2007 Calculation of Taxable Value of Omitted Added Assessment.

“Having . . . found the true value of property” for which there has been an added assessment, “the sole remaining function of the Tax Court [is] to determine, and direct the entry of a judgment fixing, the amount of the added assessment for the tax year . . . pursuant to the formula prescribed therefor in the applicable statute, viz., N.J.S.A. 54:4-63.3.” Borough of Fort Lee v. Invesco Holding Corp., 6 N.J. Tax 255, 257 (App. Div.), certif. denied, 94 N.J. 606 (1983). According to the statute, when improvements are completed on property after the October 1<sup>st</sup> valuation date,

the assessor shall . . . determine the taxable value of such parcel of real property as of the first of the month following the date of . . . such completion, and . . . if such value so determined exceeds the assessment made as of October 1 preceding, the assessor shall enter an assessment, as an added assessment against such parcel . . . which assessment shall be determined as follows: by multiplying the amount of . . . such excess by the number of whole months remaining in the calendar year after the date of . . . such completion, and dividing the result by 12.

[N.J.S.A. 54:4-63.3.]

For tax year 2007, the court determined that the true market value of the subject property, with the improvements completed as of November 1, 2007 was \$1,475,000. The assessed value of the property prior to the improvements for that year was as follows:

Land	\$482,200
Improvements	<u>\$ 0</u>
Total	\$482,200

As noted above, the Chapter 123 average ratio for Penns Grove Borough for tax year 2007 was .6071. The implied equalized assessed value of the property before completion of the

improvements, therefore, was \$794,268 ( $\$482,200 \div .6071 = \$794,268$ ). The increase in value as a result of the improvement was \$680,732 ( $\$1,475,000 - \$794,268 = \$680,732$ ). The taxable value of the added assessment for tax year 2007 is \$113,455 ( $\$680,732 \times 2 = \$1,361,464 \div 12 = \$113,455$ ). The average ratio for tax year 2007 must be applied to the taxable value of the added assessment, as it would not be appropriate to assess the added value at 100% where a lower average ratio exists for the municipality. The appropriate added assessment, therefore, is \$68,880 ( $\$113,455 \times .6071 = \$68,879$ ). Judgment will be entered accordingly.

**B. Tax Year 2008 Calculation of Taxable Value of Omitted Added Assessment.**

For tax year 2008, the court determined that the true market value of the subject property, with the improvements was \$1,475,000. The assessed value of the property for tax year 2008 prior to the improvements was as follows:

Land	\$482,200
Improvements	<u>\$ 0</u>
Total	\$482,200

As noted above, the Chapter 123 average ratio for Penns Grove Borough for tax year 2008 was .54. The implied equalized assessed value of the property before completion of the improvements, therefore, was \$892,963 ( $\$482,200 \div .54 = \$892,963$ ). The increase in value as a result of the improvement was \$582,037 ( $\$1,475,000 - \$892,963 = \$582,037$ ). The taxable value of the added assessment for tax year 2008 is \$582,037 ( $\$582,037 \times 12 = \$6,984,444 \div 12 = \$582,037$ ). The average ratio for tax year 2008 must be applied to the taxable value of the added assessment, as it would not be appropriate to assess the added value at 100% where a lower average ratio exists for the municipality. The appropriate added

assessment, therefore, is \$314,300 ( $\$582,037 \times .54 = \$314,299$ ). Judgment will be entered accordingly.

2. Tax Years 2011 and 2012.

For tax years 2011 and 2012, the expert used the same four comparable sales. He applied the adjustments described above. The resulting calculations resulted in adjusted per-acre sales prices of: (1) \$138,128; (2) \$114,275; (3) \$126,940; and (4) \$355,047. Again, the fourth figure represents the adjusted sales price of the 2007 sale of the subject. After weighing the four adjusted sales prices, the expert reached the opinion that the subject property, with the bulkhead and walkway improvement, had a true market value of \$150,000 per acre for tax years 2011 and 2012. He applied that amount to his factual assumption that the parcel was 12.12 acres to reach an opinion of value of \$1,820,000 ( $\$150,000 \times 12.12 = \$1,820,000$  (rounded)). The court again concludes that the expert gave too much weight to the 2007 sale of the subject and concludes that the value per acre of the subject with improvements for tax years 2011 and 2012 was \$140,000 per acre. In addition, the court has held that the assessments for the subject property apply to 10.542 acres. The court, therefore, concludes that the true market value of the subject property with improvements for tax years 2011 and 2012 was \$1,475,000 ( $\$140,000 \times 10.542 = \$1,475,000$  (rounded)).

A. Tax Year 2011 Calculation of Taxable Value.

Pursuant to N.J.S.A. 54:51A-6(a), 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 Penns Grove Borough for 2011. The formula for determining the subject property's ratio is:

$$\text{Assessment} \div \text{True Value} = \text{Ratio}$$

Here, that equation is represented as follows:

$$\$3,363,100 \div \$1,475,000 = 2.28$$

The Chapter 123 common level ratio for Penns Grove Borough for tax year 2011 is .9869 with an upper limit of 1.00 and a lower limit of .8389. The ratio for the subject property for this exceeds 1.00. "If the average ratio is below the county percentage level (1.00) and the ratio of the assessed value of the subject property to its true value exceeds the county percentage level, the tax court shall enter judgment revising the taxable value of the property by applying the average ratio to the true value of the property." N.J.S.A. 54:51A-6(b).

The taxable value of the subject property for tax year 2011, therefore, is \$1,460,000 ( $\$1,475,000 \times .9869 = \$1,460,000$  (rounded)). The court will enter Judgment setting the assessment for tax year 2011 as follows:

Land	\$ 900,000
Improvements	<u>\$ 560,000</u>
Total	\$1,460,000

B. Tax Year 2012 Calculation of Taxable Value.

The equation for determining the property's assessed value to its true value for 2012 is as follows:

$$\$3,363,100 \div \$1,475,000 = 2.28$$

The Chapter 123 common level ratio for Penns Grove Borough for tax year 2012 exceeds 1.00. The ratio for the subject property for this exceeds 1.00. "If both the average ratio and the ratio of the assessed value of the subject property to its true value exceed the county percentage

level, the tax court shall enter judgment revising the taxable value of the property by applying the county percentage level to the true value of the property.” N.J.S.A. 54:51A-6(c). Because the county percentage level is 1.00, the taxable value of the subject property for tax year 2012 is \$1,475,000. The court will enter Judgment setting the assessment for tax year 2012 as follows:

Land	\$ 900,000
Improvements	<u>\$ 575,000</u>
Total	\$1,475,000

Very truly yours,

/s/ Hon. Patrick DeAlmeida, P.J.T.C.