

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0344-13T4

TOMORROW 35 DAVIDSON LP,
220 DAVIDSON R, LLC, and
NBPE 220, LLC,

Plaintiffs-Respondents,

v.

TOWNSHIP OF FRANKLIN,

Defendant-Appellant.

Argued September 15, 2014 – Decided October 14, 2014

Before Judges Simonelli and Guadagno.

On appeal from the Tax Court of New Jersey,
Docket Nos. 1506-2009, 1932-2010, and 6014-
2011.

Richard A. Rafanello argued the cause for
appellant (Shain, Schaffer & Rafanello,
P.C., attorneys; Mr. Rafanello, of counsel;
Nancy Stewart, on the briefs).

Robert D. Blau argued the cause for
respondents (Blau & Blau, attorneys; Mr.
Blau, on the brief).

PER CURIAM

Defendant Township of Franklin (Township) appeals from
three August 8, 2013 Tax Court judgments, which reduced the tax
assessments on a four-story, multi-tenanted office building (the

property) for tax years 2009, 2010 and 2011. The Township contends the record lacks substantial, credible evidence for Tax Court Judge Patrick DeAlmeida's adoption of the 7.5% brokerage commission rate and vacancy rates advanced by plaintiffs' expert. We disagree and affirm.

The following facts inform our review. The Township assessed the property at \$22,092,000 for tax year 2009, and \$19,127,000 for tax years 2010 and 2011. Plaintiff Tomorrow 35 Davidson LP, who acquired title to the property for \$16,880,000 in September 2004, challenged the 2009 assessment; plaintiff 220 Davidson R, (Davidson) who acquired title for \$11,910,658 in August 2009, challenged the 2010 assessment; and plaintiff NBPE 220 (NBPE), who acquired title for \$5,275,000 in June 2010, challenged the 2011 assessment.¹ Their complaints were consolidated for trial.

The only expert evidence presented at trial was that of plaintiffs' expert, James C. Hannoeh, who valued the property as of the first day of October 2008, 2009 and 2010. He ultimately appraised the property at approximately \$9,625,000 for tax year 2009, \$7,075,000 for tax year 2010 and \$5,958,000 for tax year 2011.

¹ We shall sometimes refer to the three plaintiffs collectively as plaintiffs.

In opining on vacancy rates, Hannoeh "explored the regional, county sub-market and local market areas to have an understanding of what was taking place in the market in terms of rent levels, vacancy and occupancy, absorption and new construction." He found that "[a]vailability rates are slightly higher in Somerset County compared to the total Central Jersey region," and studied thirteen buildings within less than a mile of the property in order to develop an understanding of the commercial office space in the neighborhood. He determined the thirteen neighborhood buildings were comparable to the property "for the most part," where some buildings were a "superior product," while others were "very competitive buildings" to the property. He also found that in 2008, the total vacancy rate for the neighborhood was 26.55% of the total space, and increased to 36.66% in 2009, 37.14% in 2010 and 43.27% in 2011. Meanwhile, the property's vacancy rate was 13.5% in 2008, approximately 15% in 2009, more than 35% in 2010 and almost 41% in 2011.²

² In generating a chart of vacancy rates for the neighborhood, Hannoeh relied on "Black's Guide," which he opined was "a noteworthy publication regarding office building occupancies." According to Hannoeh, Black's Guide has since "merged or gone out of business," despite being a recognized source for this information.

Ultimately, after analyzing vacancy rates in the neighborhood, region and base, and predicting the market conditions through the next business cycle, Hannoeh determined that for tax years 2009, 2010 and 2011, the vacancy rates were 15%, 20%, and 25%, respectively. He indicated that a "collection loss factor" must be applied to these rates to account for routine losses attributable to tenants who vacate abruptly, tenants who file for bankruptcy or abandon furnishings, and other costs a landlord must absorb. He also indicated "[t]here is no publication or statistic that you can base this on," since publication appraisers and landlords do not typically have statistics on such losses.

In opining on the property's value, Hannoeh relied on "the income approach," while reviewing several sales from the neighborhood to "check" his opinion. Ultimately, he concluded the economic rent was \$17.50 per square foot for October 1, 2008, \$16.75 for October 1, 2009 and \$16.50 for October 1, 2010. To determine economic rent, he reviewed plaintiffs' leases, as well as several other leases in other neighborhood buildings.

One step of valuation required deduction of brokerage commissions, which Hannoeh ultimately estimated to be 7.5%. In leasing space in the property, plaintiffs used either Colliers Houston & Company (Colliers), Cushman & Wakefield (Cushman),

Zimmel Associates (Zimmel), or CB Richard Ellis, Inc. (CBRE) as their real estate brokers, except for one transaction where plaintiffs and the tenant were unrepresented.

Reviewing the fifteen leases placed in evidence, six were leases of the property, itself. Of those six, three involved two brokers, two involved one broker, and one had no broker. The remaining nine leases were "comparable" leases, where five involved two brokers, and four involved one broker. Overall, of the fifteen leases, eight had two brokers, six had one broker, and one had no broker.

On a commission bill for one transaction, Colliers charged plaintiffs a 7.5% commission. Hannoeh testified it was common for landlords to pay commission on renewals of leases for existing tenants, and that "[a]lmost every lease has a provision that the broker will be paid, if not for one, indefinitely in some cases." Pursuant to an August 10, 2010 listing agreement with Zimmel, the commission rate was 5% for a single broker, and 7% for two brokers. Pursuant to an August 18, 2011 listing agreement with CBRE, the commission rates were 5% for a one broker and 7.5% for dual brokers. Hannoeh also referenced a lease for the property that included a 7.5% commission that was paid on the transaction.

Hannoch deducted 7.5% because "[t]hat is the amount that is paid to [CBRE] under their current agreement in the . . . property." He also commented that 7.5% is "typical of the marketplace," and that "routinely . . . [7.5% is] what the market expects on commissions." Usually the commission rate is 5% for the "procuring broker" and 2.5% for the "override to the house broker." While a single broker may only charge 5%, the comparable leases for the property usually had two brokers involved. The baseline 5% broker commission rate was "uniform," while the building override could "fluctuate" between 2% and 3% depending on the transaction.

On cross-examination, the Township produced Cushman's marketing brochure for the property, which indicated that leasing commissions were a 6.25% blended rate, with 50% of the time there being no outside representation. Hannoch testified that this figure "reflects a [7.5%] commission with two brokers and a [5%] commission with one broker[,] which is . . . [6.25%] blended if you . . . accept[] their assumption that it's 50 percent transactions with two [brokers] and 50% with one [broker]." Hannoch did not accept the marketing brochure's presumption, and elaborated "that in the market place, the majority of the leases were [with] two brokers." He speculated

that Cushman was "trying to reflect the building as good as possible in the attempts to sell the property."

In an August 8, 2013 written opinion, Judge DeAlmeida concluded that plaintiffs produced sufficient evidence to overcome the presumption of validity attached to the tax assessments. The judge found Hannotch credible, and noted that his opinion "create[d] 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] property."

Judge DeAlmeida accepted Hannotch's income approach as the preferred method for determining the property's value. The judge also accepted Hannotch's undisputed calculation of economic rent for the property at \$17.50 per square foot in 2009, \$16.75 in 2010, and \$16.50 in 2011, and used those economic rents when determining the property's true market value.

Judge DeAlmeida accepted Hannotch's undisputed vacancy and collection loss rates. The judge noted that Hannotch had combined vacancy and collection loss rates of 17% for 2009, 22% for 2010 and 27% for 2011, and derived these rates through an "analysis of vacancy statistics for Central New Jersey, Somerset County and the neighborhood in which the subject property is located." The judge elaborated that the Township's cross-

examination of Hannoch "did not meaningfully undermine the credibility of [his] data, which concerned the precise areas directly applicable to the . . . property." The judge found Hannoch's "neighborhood analysis, which included nearly [two] million square feet of office space," to be "particularly telling," and noted the Township "introduce[d] no evidence suggesting that the Franklin Township office rental market had vacancy rates below those found in the expert's neighborhood study." The judge determined that Hannoch's regional and county-specific data supported his vacancy rate conclusion, and there was no evidence disputing the data's accuracy.

On the other hand, Judge DeAlmeida found the Township's reports for vacancy rates were "less precise" than those on which Hannoch relied, and the Township's reports concerned either the wrong region or an area too broad to be credible. Further, the judge did not find the assumption of a 5% vacancy rate in Cushman's marketing brochure to be a meaningful impeachment of Hannoch's opinion, since "a marketing brochure [is] designed to promote the sale of property."³ Accordingly, the judge concluded the Township offered "no evidence that a

³ Judge DeAlmeida added, "[w]hile the court would hesitate to characterize such marketing materials as misleading, it is widely recognized that a marketing brochure will portray the property in the most positive light possible and may contain assumptions based on extraordinary optimism."

purchaser would expect a near-term return to the favorable market conditions" that "preceded the 2008 downturn in the market." As for the collection loss rate, the judge found that the Township did not effectively undermine Hannoeh's opinion and offered no alternative collection loss rate.

Because of the changes in the property's ownership, full records of the actual business expenses were not available for 2009 and 2010. To opine on actual expenses, Hannoeh analyzed expenses of similar office buildings. He then made special adjustments: a 4% management fee of the effective gross income of the property; a 7.5% broker's commission fee of the aggregate rent; a reserve charge of \$0.35 per square foot annually for major repairs; and a \$1.00 per square foot tenant improvement charge. Overall, the judge agreed with Hannoeh's opinion that stabilized operating expenses for the property were \$5.50 per square foot as of each of the valuation dates.

Specifically with regard to the brokerage commission rate, Judge DeAlmeida generally found credible Hannoeh's opinion that "brokerage commissions range from 5% to 8.5%." The record included leases establishing commission for rental transactions at the property to fall between 7.5% and 8.5%. The judge noted that Hannoeh opined a 7.5% commission rate matched the current brokerage contract rate with CBRE. The judge also commented

that Hannoeh "did not include a commission on future rent increases contained in leases, but did include a commission for lease renewals, a concept supported by broker commissions for renewals in leases admitted into evidence."

Judge DeAlmeida also defined "overall capitalization rate" as "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." Ultimately, the parties stipulated to basic capitalization rates for each tax year: 7.75% for 2009; 8.25% for 2010; and 7.75% for 2011. The parties also stipulated that the tax component for each of these years was: 1.86% for 2009; 2.01% for 2010; and 2.10% for 2011. The judge therefore found "the capitalization rates stipulated to by the parties to be credible," and applied those rates when determining the property's true market value.

Judge DeAlmeida concluded that the property's true market values were as follows: (1) tax year 2009: \$9,625,000 as of October 1, 2008; (2) tax year 2010: \$7,075,000 as of October 1, 2009; and (3) tax year 2011: \$5,958,000 as of October 1, 2010. The judge noted that because the Township had implemented a district-wide assessment for each tax year, N.J.S.A. 54:51A-6(d) did not apply and the assessment would be set at 100% of value for each tax year. This appeal followed.

We recognize that "'judges presiding in the Tax Court have special expertise; for that reason their findings will not be disturbed unless they are plainly arbitrary or there is a lack of substantial credible evidence to support them.'" Hackensack City v. Bergen Cnty, 405 N.J. Super. 235, 243 (App. Div. 2009) (quoting Alpine Country Club v. Borough of Demarest, 354 N.J. Super. 387, 390 (App. Div. 2002)). Accordingly, our scope of review "'is limited to determining whether the findings of fact are supported by substantial credible evidence with due regard to the Tax Court's expertise and ability to judge credibility.'" First Republic Corp. of Am. v. Borough of E. Newark, 17 N.J. Tax 531, 536 (App. Div. 1998) (quoting Phillips v. Twp. of Hamilton, 15 N.J. Tax 222, 226 (App. Div. 1995)). "Although the Tax Court's factual findings 'are entitled to deference because of that court's expertise in the field,' we need not defer to its interpretation of a statute or legal principles." Advance Hous. Inc. v. Twp. of Teaneck, 215 N.J. 549, 566 (2013) (quoting Waksal v. Dir., Div. of Taxation, 215 N.J. 224. 231-32 (2013)).

Generally, "'a municipality's original tax assessment is entitled to a presumption of validity[.]'" 1530 Owners Corp. v. Borough of Fort Lee, 135 N.J. 394, 404 (1994) (quoting Pantasote v. City of Passaic, 100 N.J. 408, 412 (1985)). Taxpayers, in challenging an original assessment, "bear the burden of

rebutting the validity of the quantum of [the] assessment." Transcon Gas Pipe Line Corp. v. Bernards Twp., 111 N.J. 507, 517 (1988). The presumption in favor of the tax assessment "'stands until sufficient competent evidence is adduced to provide a true valuation different from the assessment.'" Ibid. (quoting Aetna Life Ins. Co. v. City of Newark, 10 N.J. 99, 105 (1952)). "'Such evidence must be definite, positive, and certain in quality and quantity to overcome the presumption.'" Ibid. (quoting Aetna, supra, 10 N.J. at 105). Even if the municipality utilized a flawed methodology, the presumption remains "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[.]" Ibid. (citing Pantasote, supra, 100 N.J. at 415).

If the taxpayer fails to overcome its burden, the court has no duty to allow the matter to proceed and no obligation to independently determine the true value of the subject property. W. Colonial Enters., LLC v. City of E. Orange, 21 N.J. Tax 590, 595 (App. Div. 2004). However, if the taxpayer demonstrates the original assessment relied upon "a totally deficient valuation methodology, which provides no reliable indication that the quantum of the assessment is itself reasonable, the [t]ax [c]ourt is obligated to exercise its power to make an

independent assessment based on the evidence before it and data properly at its disposal." Transcon Gas Pipe Line Corp., supra, 111 N.J. at 538. "[O]nly when the presumption is overcome does it become incumbent upon the [t]ax [c]ourt to apprise 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). Once the taxpayer defeats the presumption in favor of the assessment, it "ceases to have any artificial probative force." Little Egg Harbor Twp. v. Bonsanque, 316 N.J. Super. 271, 286 (App. Div. 1998).

In conducting an assessment, tax court judges have the authority to accept an expert's opinion. See Romulus Dev. Corp. v. Twp. of Weehawken, 15 N.J. Tax 209, 211-12 (App. Div. 1995). However, tax court judges are not obliged to accept such expert opinions and may make independent assessments based on the evidence before them. Glenpointe Assocs. v. Twp. of Teaneck, 10 N.J. Tax 380, 396 (Tax 1989), aff'd, 12 N.J. Tax 118 (App. Div. 1990). Further, a taxing authority is "under no legal obligation to shore up the weaknesses in [the taxpayers'] proofs by the presentation of independent evidence of value." Glenpointe Assocs., supra, 12 N.J. Tax. at 123 (internal quotation marks omitted). For us to reverse the tax court and order it to reject an expert's testimony, the tax court's

decision must lack substantial credible evidential support from the record. See id. at 126.

There are three traditional methods for appraising the value of property: comparable sales, capitalization of income, and cost. Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div.), certif. denied, 168 N.J. 291 (2001). The income capitalization method utilizes the following formulaic approach for property that generates income through commercial renting:

$$\begin{array}{r} \text{Market Rent} \\ \times \text{ Square Footage } \\ \hline \text{Potential Gross Income} \\ \\ - \text{ Vacancy and Collection Losses } \\ \hline \text{Effective Gross Income} \\ \\ - \text{ Operating Expenses } \\ \hline \text{Net Operating Income} \\ \\ \div \text{ Capitalization Rate } \\ \hline \text{Value of Property} \end{array}$$

[Spiegel v. Town of Harrison, 19 N.J. Tax 291, 295 (App Div. 2001).]

In estimating the broker commission rates, as an element of operating expenses, the tax court typically analyzes comparable leases as well as leases involving the subject property. See River Office Equities v. Twp. of Middletown, 11 N.J. Tax 404, 412 (Tax 1990); Shav Assocs. v. Twp. of Middletown, 11 N.J. Tax 569, 582 (Tax 1991). In River Office Equities, the court used a 4% commission rate after analyzing twelve subject property

leases: nine having a 4% commission rate and three having a 7% commission rate. River Office Equities, supra, 11 N.J. Tax at 412. The court then analyzed five comparable leases and found three had 5% commissions. Ibid. Overall, there were nine leases with a 4% commission rate, three with a 5% rate, three with a 7% rate, and two unknown. Ultimately, the court used the most predominate rate of 4% in the final evaluation. Ibid.

Similarly, in Shav, the court analyzed four subject property leases, finding only two were procured through brokers, to whom 5% commissions were paid. Shav Assocs., supra, 11 N.J. Tax at 582. The court analyzed five comparable leases as well, noting that three involved brokers, two receiving 4% percent and one receiving 7%. Ibid. In total, four had no brokers, two had brokers collecting 5% commissions, two had brokers collecting 4%, and one had brokers collecting 7%. Ibid. Ultimately, the court used a 4% broker commission rate in the final valuation. Ibid.

While River Office Equities and Shav do not appear to establish an exact science to choosing a brokerage commission rate for the income approach, the court apparently chose the rate that was predominant for the leases contained on the record. In River Office Equities, the 4% rate came from the majority of the analyzed leases. River Office Equities, supra,

11 N.J. Tax at 412. In Shav, there was no predominant rate for when brokers were used, but the court chose 4%, which was tied with 5% for most instances. Shav Assocs., supra, 11 N.J. Tax at 582. The only thing that seems clear is that the court did not blend the rates, as the Township claims Judge DeAlmedia should have done in this case.

Here, of the six leases involving the property, three had two brokers, two had one broker, and one had no broker. There were also nine comparable leases, where five had two brokers and four had one broker. In total, of the fifteen leases analyzed, eight had two brokers, six had one broker, and one had no broker. Further, according to the leasing agreements with Zimmel and CBRE, in multiple-broker transactions, the commissions were 7% and 7.5%, respectively.

Taking all this information together as a whole, Judge DeAlmeida used the most recent leasing commission agreements in combination with a dual-broker transaction, the most predominate type of transaction, to adopt Hannoeh's finding that a 7.5% commission rate was applicable to the final calculation. Contrary to the Township's assertion, the judge's finding is amply supported by substantial credible evidence in the record.

The record also amply supports Judge DeAlmeida's findings on the vacancy rates. With specific regard to vacancy and loss,

an appraiser must "project a vacancy and loss allowance over the economic life of the property, using, in some measure, the actual history, but placing more emphasis on the trends in the most recent years." First Republic, supra, 16 N.J. Tax at 580 (emphasis added). "The important principle implicated in the estimate of a vacancy and loss allowance is that the estimate is simply the appraiser's informed judgment of the long-term and durability of the income stream." Ibid. As the tax court has described:

[The] determination involves more than uncritical acceptance of the vacancy rates prevailing in the subject on the valuation dates or, for that matter, the office building vacancy rates prevailing in the subject's market area. Rather, a vacancy allowance must be predicated on an estimate of the long-term quality and durability of the rental income stream.

[Univ. Plaza Realty Corp. v. City of Hackensack, 12 N.J. Tax 354, 369 (Tax 1992), aff'd 264 N.J. Super. 353 (App. Div.), certif. denied, 134 N.J. 481 (1993) (citation omitted).]

In First Republic, the court rejected an expert's vacancy and loss allowance of 20.99% because the expert simply averaged the recent vacancies and failed to "define the vacancy and loss allowance in terms of the long[-]term quality and durability of the income stream." First Republic, supra, 16 N.J. Tax at 573. The court ultimately accepted the opposing expert's vacancy and

collection loss rate of 15% because the expert derived the rate "consistent with the principles of stabilization." Id. at 579-80.

Meanwhile, in University Plaza, the court accepted the expert's vacancy rate because "his predictions appear[ed] to bear a direct relation to the progress of plaintiff's" compliance with a costly asbestos abatement program. Univ. Plaza Realty, supra, 12 N.J. Tax at 369. There, the expert did not review any historical vacancy numbers, but instead focused on the "long-term quality and durability of the rental income stream." See id. at 362, 369. The expert predicted vacancy to be 20% over the first six-year period, followed by a five-year period of gradual improvement until vacancy would stabilize at 5%. Id. at 362. Ultimately, the court applied a 9% vacancy and loss rate to the specific years under review by approximately averaging the expert's projections over a ten-year span with the 5% estimated rate for the remaining life of the building following recovery. Id. at 369.

The Township cites Inwood at Great Noch v. Twp. of Little Falls, 6 N.J. Tax 316 (Tax 1984) and Pine Plaza Assocs. v. Hanover Twp., 16 N.J. Tax 194 (Tax 1996) to argue that Hannoch should not have relied on a single period of time, the post-recession period, when deriving vacancy rates for the valuation.

In Pine Plaza, the tax court considered tax appraisals for a shopping center that was struggling for various specific reasons in an otherwise normal economic period. Pine Plaza, supra, 16 N.J. Tax at 199-200. In analyzing the vacancy rates, the court considered "(i) the history of the subject property, (ii) vacancy rates at other shopping centers which were considered by both [parties'] appraisers, (iii) the negative factors affecting the subject property, and (iv) that 'a vacancy allowance must be predicated on an estimate of the long-term quality and durability of the rental income stream.'" Id. at 205-06 (quoting Univ. Plaza Realty, supra, 12 N.J. Tax at 369). The court rejected both experts' disparate vacancy rates because they were either "unduly influenced by the experience of the subject property during a period of financial turmoil," or "totally ignore[d] the history of the subject property" by utilizing vacancy rates at "highly successful [comparables] which [did] not suffer from the negative factors" particular to the subject property. Id. at 205.

In Inwood, the court rejected an expert's capitalization rate because the expert merely analyzed data from three years and did not analyze market conditions for any time prior to the years to be appraised. Inwood, supra, 6 N.J. Tax at 331-32. Specifically, the expert erroneously "place[d] heavy reliance

upon the precise state of affairs obtaining at or about the assessing date, alluding to the high prime rate, high inflation, the fact that both purchasers and lenders were shunning fixed returns of any sort, and the unavailability of the leverage required by tax motivated investors." Ibid. Ultimately, the court concluded that the plaintiff's expert's proofs were "not probative of any state of facts existing," at the time of the appeal." Id. at 333. The court limited its holding, remarking "[p]ost-assessing date events are not probative of true value unless they corroborate facts in existence on the assessing date or unless such events are reasonably foreseeable on the assessing date." Id. at 332-33 (emphasis added) (citing Fort Lee v. Invesco Holding Corp., 3 N.J. Tax 332 (Tax 1981), aff'd, 6 N.J. Tax 255 (App. Div.), certif. denied, 94 N.J. 606 (1983)).

Decided in 1984, Inwood discussed assessments for tax years 1981 and 1982, id. at 319; years in the midst of the 1981 recession: the "longest and deepest" recession since World War II, and defined by extraordinarily high interest rates. Matt Stoller, The Housing Crash and the End of American Citizenship, 39 Fordham Urb. L.J. 1183, 1200 (2012). In light of these historic economic conditions, and in denying the expert's high capitalization rate, the court remarked "[p]laintiff's [expert's] narrow focus on a constricted time frame proximate to

the assessing date is unsound. The strong public interest in assessment stability and its corollary, stable, predictable municipal revenues, require the tax assessments not be hostage to sharp fluctuations traceable to volatile swings in the financial markets." Inwood, supra, 6 N.J. Tax at 332.

Here, unlike in Pine Plaza, the high vacancy in the property during the appraisal period solely relates to market conditions and not a specific problem with the property itself. Pine Plaza, supra, 16 N.J. Tax at 199-200. Further, the Township's property tax assessments are for tax years 2009, 2010 and 2011, which shortly followed the 2008 recession. Like Inwood, the property's assessments fell within the 2008 recession: "the deepest and longest economic contraction since the Great Depression," defined by "more job losses than any contraction since the Great Depression as well as a painfully slow recovery." Steven A. Ramirez, The Virtues of Private Securities Litigation: An Historic and Macroeconomic Perspective, 45 Loy. U. Chi. L.J. 669, 684-85 (2014). However, unlike Inwood, Hannoeh extrapolated his vacancy rates in consideration of "what's going to happen in the future over the next business cycle [which] usually corresponds to typical lease terms." In this case, the typical lease terms

were three to five years, and the typical holding periods for office buildings were less than ten years.

While the Township demands that more emphasis and information be placed on actual history, "more emphasis [must be placed] on the trends in the most recent years." First Republic, supra, 16 N.J. Tax at 580. Hannoeh explained that over a five- to ten-year period, "the high vacancy rate was not like[ly] to resolve . . . even if economic conditions improve." Judge DeAlmeida identified an increasing vacancy trend following the 2008 recession, and found the property had a vacancy rate of 13.6% in 2008, 14.86% in 2009, 35.75% in 2010, and 40.9% in 2011. Meanwhile, the neighborhood experienced vacancy rates of 26.55% in 2008, 36.66% in 2009, 37.14% in 2010, and 43.27% in 2011.⁴

Therefore, Judge DeAlmeida's adopted vacancy rates of 15% for 2009, 20% for 2010, and 25% for 2011 are not only supported by substantial credible evidence in the record, but instead appear conservative in light of likely future vacancy rates.

⁴ The Township asserts that we should reject the "neighborhood" vacancy rates, and instead adopt the overall Somerset vacancy rates of 14.18% in 2008, 18.41% in 2009, and 20.30% in 2010. These figures from the Black's Guide are not specific to the neighborhood or properties comparable to the property. Further, the Township failed to have an expert testify to these figures and establish their validity as appropriate measurements of vacancy for the property.

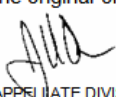
The Township recommended a vacancy rate of 10%, which is below the stabilized vacancy even if the property was suddenly entirely occupied for the next six years. Judge DeAlmeida's adopted rates fall at or below the actual vacancy rates for the property and the neighborhood, and therefore represent a stabilized view of vacancy for the property, taking into account the prospects of recovery from the 2008 recession.

Further supporting Judge DeAlmeida's conservative findings, Hannoeh used the sale from Davidson to NBPE as a check on his valuations. While the Township argues this was a "fire sale" which greatly undervalued the property, Hannoeh's testimony established the sale was conducted "at arm's length," and set "a fair value of the property, the price a willing buyer would pay a willing seller." See New Brunswick v. State Div. of Taxation, 39 N.J. 537, 543 (1963).

Overall, the Township's argument that the vacancy rates Judge DeAlmeida adopted are not supported by substantial, credible evidence lacks merit. The record contains ample support for Judge DeAlmeida's findings and conclusions.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION