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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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Re: Union Manor Associates v. Borough of Rutherford

Docket No. 005303-2006

Docket No. 003081-2007

Docket No. 003224-2008

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matters challenging the assessment on plaintiff's property for tax years 2006, 2007 and 2008. For the reasons stated more fully below, the court will enter Judgments revising the assessment on the property for all of the tax years in question.

\*

### I. Procedural History and Findings of Fact

Plaintiff Union Manor Associates is the owner of real property located in defendant Rutherford Borough, Bergen County. The property is designated by the borough as Block 23, Lot 1 and is commonly known as 270 Union Avenue. For tax years 2006, 2007 and 2008, the subject property was assessed as follows:

Land \$ 960,000

Improvement \$ 1,416,500

Total \$ 2,376,500

Because the municipality implemented a district-wide reassessment for tax year 2006 the ratio is presumed to be 100% for that tax year. See N.J.S.A. 54:1-35a. The Chapter 123 ratio for the borough for tax year 2007 is 102.15%, resulting in an equalized value of \$2,326,481 ( $\$2,376,500 \div 1.0215 = \$2,326,481$ ). The Chapter 123 ratio for the borough for tax year 2008 is 96.01%, resulting in an equalized value of \$2,475,263 ( $\$2,376,500 \div .9601 = \$2,475,263$ ).

Plaintiff filed timely Complaints in this court challenging the assessments on the property for the three tax years in question. The municipality filed timely counterclaims with respect to tax years 2006 and 2007. No counterclaim was filed with respect to tax year 2008.

The subject property is improved with a three-story, walk-up apartment building containing 32 units constructed in approximately 1940. There is no elevator service. The building has 9 studio apartments, 22 one-bedroom apartments, and 1 two-bedroom unit. There are a total of 89 rooms in the apartments. A one-bedroom apartment located in the basement is occupied by the superintendent, who pays no rent and receives a modest salary. The basement also includes a laundry room with two coin-operated washing machines and two coin-operated dryers.

The building is located on a corner lot of approximately .23 acres in a fully developed urban setting. The property has no on-premise parking or garage space. Overnight parking is not permitted in front of the building. The municipality permits overnight, curbside parking elsewhere in the neighborhood, including along the one street that adjoins the building. The area in which overnight, curbside parking is permitted is developed with residential housing, the residents of which compete for parking spaces. The overall condition of the building is good.

Typical lease terms are for one or two years. Tenants are supplied by the property owner with heat and hot water and are responsible for the cost of gas used for cooking and electricity. The apartments are furnished with standard kitchens featuring Formica counters, wooden cabinets and standard appliances. Approximately one-third of the tenants have installed their own kitchen appliances. The apartments have standard, three-fixture, tiled bathrooms.

The building has a courtyard entrance and operating security system. The common areas of the building are painted and well-maintained. Two sides of the building – the front and one side – have newly installed windows, which improve the exterior appearance of the structure and conserve energy. The property owner does not provide air conditioning, although tenants are permitted to install individually owned air conditioning units in apartment windows. The building has minimal landscaping and abuts concrete sidewalks. The building is within walking distance to downtown Rutherford and a train station with commuter service to New York City.

The apartments are subject to a municipal rent control ordinance. During the tax years in question at the conclusion of a lease term the landlord was permitted to increase the rental rate by no more than 4% annually. The permitted annual increase is limited to 2.5% with respect to tenants who are 65 or older, or disabled, and who meet certain income requirements. Where an apartment that has been subject to rent control for a period of 36 months is vacated, the landlord is free to charge market rent to the new tenant. The new rental rate, however, is thereafter subject to the 4% annual increase cap until the apartment is again vacated after a 36-month period of rent control. The ordinance establishes a procedure through which a landlord may seek an annual increase beyond 4% (or 2.5%) based on the cost of capital improvements and in cases of extreme hardship. Rutherford, N.J., Code § 83A-1 to -19.

Each party presented an expert appraiser to opine on the value of the subject property. Their opinions, which are based on the income approach to valuation, are detailed as follows:

Tax Year Valuation Date Value

2006 10/1/2005 Plaintiff's Expert: \$1,750,000

Defendant's Expert: \$2,650,000

2007 10/1/2006 Plaintiff's Expert: \$1,750,000

Defendant's Expert: \$2,700,000

2008 10/1/2007 Plaintiff's Expert: \$1,750,000

Defendant's Expert: \$3,000,000

The reasons for the differences in opinion are explained more fully below.

## II. Conclusions of Law

The court's analysis begins with the well-established principle that "[o]riginal assessments . . . are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, [18 N.J. Tax 364](#), 373 (Tax 1998). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

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

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

The presumption of correctness arises from the view "that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Pantasote, *supra*, [100 N.J.](#) at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, [3 N.J. Tax 439](#) (Tax 1981)); see also Byram Twp. 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).

“The presumption of correctness . . . stands, until sufficient competent evidence to the contrary is adduced.” Little Egg Harbor Twp. v. Bonsangue, [316 N.J. Super. 271](#), 285-86 (App. Div. 1998)(citation omitted); Atlantic City v. Ace Gaming, LLC, [23 N.J. Tax 70](#), 98 (Tax 2006). “In the absence of a R. 4:37-2(b) motion . . . the presumption of validity remains in the case through the close of all proofs.” MSGW Real Estate Fund, LLC, *supra*, [18 N.J. Tax](#) at 377. In making the determination of whether the presumption has been overcome, the court should weigh and analyze the evidence “as if a motion for judgment at the close of all the evidence had been made pursuant to R. 4:40-1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion.” *Ibid.* The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. *Id.* at 376 (citing Brill v. Guardian Life Ins. Co. of Am., [142 N.J. 520](#), 535 (1995)). In order to overcome the presumption, the evidence “must be ‘sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.’” West Colonial Enters, LLC v. City of East Orange [20 N.J. Tax 576](#), 579 (Tax 2003)(quoting Lenal Props., Inc. v. City of Jersey City [18 N.J. Tax 405](#), 408 (Tax 1999), *certif. denied*, [165 N.J. 488](#) (2000)), *aff’d*, [18 N.J. Tax 658](#) (App. Div. 2004).

Only after the presumption is overcome with sufficient evidence at the close of trial must the court “appraise the testimony, make a determination of true value and fix the assessment.” Rodwood Gardens, Inc. v. City of Summit [188 N.J. Super. 34](#), 38-39 (App. Div. 1982). If the court determines that sufficient evidence to overcome the presumption that the assessment is correct has not been produced, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. 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](#), 703-04 (App. Div. 1996).

The court finds that plaintiff produced sufficient evidence to overcome the presumption of validity attached to the assessment. If taken as true, the opinion of plaintiff’s expert and the facts upon which he relied create a debatable question regarding the correctness of the assessment in each of the tax years sufficient to allow the court to make an independent determination of the value of plaintiff’s property. As noted above, plaintiff’s expert opined, based on evidence he explained during trial, that the subject property was worth \$1,750,000 on each of the relevant valuation dates. The subject property is assessed at \$2,376,500 for each of the tax years in question. Because the municipality implemented a district-wide reassessment for tax year 2006 the ratio is presumed to be 100% for that tax year. *See N.J.S.A.* 54:1-35a. The Chapter 123 ratio for the borough for tax year 2007 is 102.15%, resulting in an equalized value of \$2,326,481 ( $\$2,376,500 \div 1.0215 = \$2,326,481$ ). The Chapter 123 ratio for the borough for tax year 2008 is 96.01%, resulting in an equalized value of \$2,475,263 ( $\$2,376,500 \div .9601 = \$2,475,263$ ). If taken as true, the opinion of plaintiff’s expert supports a conclusion that the property has been assessed in excess of its true market value in each tax year and that plaintiff is entitled to relief.

Of course, a finding that plaintiff has overcome the presumption of correctness does not equate to a finding that the assessment is erroneous. To the contrary, plaintiff’s overcoming the presumption merely permits the court to address the question of what value should be accorded to the subject property. Once the presumption is overcome, the “court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence.” Ford Motor Co., *supra*, [127 N.J.](#) at 312 (quotations omitted). “[A]lthough there may have been enough evidence to overcome the presumption of correctness at the close of plaintiff’s case-in-chief, the burden of proof remain[s] on the taxpayer throughout the entire case . . . to demonstrate that the judgment under review was incorrect.” *Id.* at 314-15 (citing Pantasote, *supra*, [100 N.J.](#) at 413).

#### A. Approach to Valuation

“There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of income and cost.” Brown v. Borough of Glen Rock [19 N.J. Tax 366](#), 376 (App. Div.)(citing Appraisal Institute, The Appraisal of Real Estate 81 (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 predominate 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 income capitalization approach is the preferred method of estimating the value of income producing property: Parkway Village Apartments Co. v. Township of Cranford, [108 N.J. 266](#), 270 (1987); Hull Junction Holding Corp. v. Borough of Princeton [16 N.J. Tax 68](#), 79 (Tax 1996). “In the income capitalization approach, an appraiser analyzes a property’s capacity to generate future benefits and capitalizes the income into an indication of present value.” Appraisal Institute, The Appraisal of Real Estate 445 (13<sup>th</sup> ed 2008). The court finds that the income capitalization approach is the best method for determining the value of the subject property, an income-producing apartment building. This conclusion is well-supported by precedent. Parkway Village Apartments, supra; Helmsley v. Borough of Fort Lee, [78 N.J. 200](#) (1978), app. dis., [440 U.S. 978](#), [99 S. Ct. 1782](#), [60 L. Ed.2d 237](#) (1979); Parkview Village Apartments v. Borough of Collingswood, [62 N.J. 21](#) (1972); Double R Entrps. v. Township of Bordentown, [12 N.J. Tax 455](#), 464-469 (Tax 1992).<sup>1</sup>

#### B. Calculation of Value Using Income Approach

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

Market Rent

x Rental Units

Potential Gross Income

- Vacancy and Collection Losses

Effective Gross Income

- Operating Expenses

Net Operating Income

÷ Capitalization Rate

Value of Property

See Spiegel v. Town of Harrison, [19 N.J. Tax 291](#), 295 (App. Div. 2001), aff’g, [18 N.J. Tax 416](#) (Tax 1999); Appraisal Institute, The Appraisal of Real Estate 466 (13<sup>th</sup> ed 2008).

##### 1. Market Rent

“Central to an income analysis is the determination of the economic rent, also known as the ‘market rent’ or ‘fair rental value.’” Parkway Village Apartments, supra, [108 N.J.](#) at 270. This differs from the actual rental income realized on the property, which may be below market rates. Parkview Village Assocs., supra, [62 N.J.](#) at 29-30. However, actual income is a significant probative factor in the inquiry as to economic income. Id. at 30. “Checking actual income to determine whether it reflects economic income is a process of sound appraisal judgment applied to rentals

currently being charged for comparable facilities in the competitive area.” Ibid.

The experts differed with respect to the calculation of the subject property’s market rent. Plaintiff’s expert calculated market rent based on his application of the holding in Parkview Village Assocs., supra, which established a presumption in appeals of local property assessments that apartment houses are well managed and that the actual rents realized represent market rent. In that case, the taxpayers challenged the assessments on four apartment buildings. All experts agreed that the income approach to valuation was the appropriate method for determining the true market value of the properties. The parties’ experts offered competing views of the fair rental value, or economic rent, for the property and whether actual rents at the properties represented economic rents. After consideration of the competing evidence, the court established a general rule for determining economic rent:

In the absence of convincing evidence to the contrary the current ongoing income scale of a large, well-managed apartment project like this, functioning as customary with leases of relatively short length, should be deemed prima facie to represent its fair rental value for purposes of the capitalized income method of property valuation. A court or taxing agency should be most hesitant to find that the tenants of a residential property being operated commercially are being charged inadequate rent. That approach, we believe, conduces to the objective of relative stability of assessments which we have heretofore held to be basic to sound tax assessment policy. Readily to be distinguished is the case of a taxpayer owning commercial property tied to a long term lease made long before the current assessing date, where the present rent may well be out of line with current fair rental value.

[62 N.J. at 34-35 (citations omitted).]

The Parkview presumption was reaffirmed by the Supreme Court in Parkway Village Apartments, supra. In that case, the owner of a large, well-managed apartment complex with one-year leases challenged the assessment on the property. The income approach was used to determine true market value. The taxpayer’s expert, relying in the holding in Parkview testified that the actual rent charged for the apartments should be accepted as economic rent. The municipality’s expert imputed to all apartments on the property the most recent rent charged for an apartment of that type. The most recent rent for each apartment type was higher than the actual rent for some apartments. Id. at 269.

The Court explained that its holding in Parkview “was based on the belief that landlords of well-managed apartment complexes maximize their profits and minimize their expenses.” Id. at 271. The court also noted that the holding in Parkview had “been consistently followed.” Ibid. (citing Glen Wall Assocs. v. Township of Wall, 99 N.J. 265, 275-76 (1985)). After reviewing several opinions in which the Parkview holding had been applied, the Court held that “[w]e reaffirm the Parkview rule that in the absence of convincing evidence to the contrary, the actual rent of a well-managed apartment complex functioning with customary leases of relatively short length is prima facie representative of economic rent for the purpose of capitalized income of property valuation.” Id. at 276.

Nothing in the record suggests that the subject property was not well managed. For the most part, rents at the subject property were limited to a 4% annual increase. The permitted increase is capped at 2.5% in certain circumstances. No evidence was produced that the property owners failed to secure the maximum increases permitted under the rent control ordinance. In addition, in the instances in which an apartment became vacant after 36 months of rent control, the property owner was permitted to reset the rent at market rates. Again, no evidence was produced to suggest that the property owner failed to obtain market rent on those occasions when permitted to do so by the ordinance.

Defendant’s expert offered market rent higher than actual rent based on his opinion that studio apartments, which comprise a large percentage of the units at the subject property, historically experience high turnover rates. Thus, the expert opined, it is likely that a purchaser would be able to set market rent for these units more frequently than other apartments. The flaw in this position is that the expert pointed to no data during his testimony to support the conclusion that tenants at studio apartments are more likely to terminate their leaseholds sooner than any other tenants. Nor did the expert appear to take into account the fact that the property owner is permitted by set market rent only in those instances in which an

apartment becomes vacant after 36 months of being subject to rent control. If, for example, a tenant in a studio apartment vacates just short of 36 months of tenancy and the next tenant does the same, the property owner would not be permitted to set market rent on the unit for nearly 6 years. It is not clear whether this period of rent control would be markedly shorter than could reasonably be expected for a tenant in a one-bedroom apartment.

The court concludes that the actual rents realized at the subject property, as calculated by plaintiff's expert using an averaging and stabilization analysis, are the best evidence in the record of market rent at the subject property. The court notes that defendant's expert included in his calculation market rent for the basement apartment provided to the superintendent at no cost. Plaintiff's expert did not include the superintendent's apartment when calculating market rent. The parties agree that the property owner is not required by law to have an on site superintendent for a building this size, although doing so appears to be a good management practice. Defendant's expert's view is not unreasonable, given that a purchaser might well elect to rent the basement apartment and hire a superintendent to visit the property periodically. However, were the court to include the superintendent's apartment when calculating market rent, the court would have to add to expenses the cost of providing an apartment to the superintendent or a market cost for the services of a superintendent who does not live on site. Having arranged to provide its superintendent with free living space, plaintiff incurred minimal expenses for superintendent services (approximately \$2,150 per year for de minimus salary, payroll tax and cellular phone). The record contains no direct evidence with respect to the market rate for superintendent services where living space is not included in compensation. The court concludes that the actual experience at the subject property – excluding the superintendent's apartment from market rent and minimal expenses for superintendent services – is the best evidence in the record for determining market rent at the subject property.

The opinions of the two experts with respect to potential rental income are set forth in the schedules attached to this opinion. Plaintiff's expert includes a modest amount of income from the coin-operated laundry at the property. The court accepts his opinion as credible. The court adopts the opinion of potential rental income based on actual rents offered by plaintiff's expert, excluding the superintendent's basement apartment, as follows:

Tax Year 2006 \$320,644

Tax Year 2007 \$327,744

Tax Year 2008 \$332,844

## 2. Rental Units

There is no dispute with respect to the number of rental units at the subject property, apart from the experts' differing opinions with respect to the treatment of the superintendent's basement apartment.

## 3. Vacancy and Collection Rate

Plaintiff's expert offers a lower vacancy rate than does defendant's expert for each of the tax years in question. The court adopts the rate offered by plaintiff's expert, which is supported by the testimony in the record. The court concludes that the appropriate vacancy and collection rates are as follows:

Tax Year 2006 3.0%

Tax Year 2007 2.5%

Tax Year 2008 2.5%

#### 4. Operating Expenses

Plaintiff's expert calculated expenses for each tax year based on the actual experience of the property owner. His expense figures were derived primarily from the tax returns of the property owner with some modifications for purposes of stabilization. Defendant's expert departed from actual expenses and offered an opinion of expenses based on market data. The details of the experts' proffered expenses are set forth in the attached schedules.

The primary area of disagreement between the experts with respect to expenses is with respect to maintenance and repairs. Plaintiff's expert opines maintenance expenses to be \$40,000 for tax year 2006, and \$45,000 for tax years 2007 and 2008. These figures were derived from an averaging of the expenses reported on the property owner's tax returns. Plaintiff's expert does not include an expense each year for reserves for capital improvements. He does, however, provide for approximately \$6,000 per year for painting and appliance replacement. Together these categories total approximately \$46,000 in tax year 2006 and \$51,000 in tax years 2007 and 2008. Defendant's expert opines approximately \$24,000 per year for maintenance and repairs and an additional approximately \$7,000 per year for capital reserves. Together these expenses total approximately \$31,000 per year. The court concludes that the opinion of defendant's expert with respect to this expense is credible and supported by the evidence in the record. While it may be true that plaintiff reported higher amounts on its tax returns for maintenance and repairs, the court concludes those expenses included what would ordinarily be attributed to long-term capital improvements. The court adopts as credible the testimony of defendant's expert that long-term capital improvements are appropriately accounted for through an annual allocation to a reserve fund. The court, therefore, will reduce the maintenance and repairs expense offered by plaintiff's expert by \$31,000 per year, which will include \$24,000 for maintenance and repairs and \$7,000 for reserves. The expert's painting and appliance replacement expenses will be excluded, as having been included in the \$31,000 per year maintenance and repairs expense accepted by the court.

With respect to the remainder of expenses, the court adopts the opinion of plaintiff's expert, which the court finds to be credible based on the evidence in the record. He proffered expenses based on the actual experience of the property owner at the subject property. In each year, the ratio of operating expenses to gross income was within the range for similar buildings reported in statistical studies included in plaintiff's expert's report. The court having reduced the maintenance and repairs category, as explained above, the ratio of expenses to gross income would be less than offered by plaintiff's expert, but still within the appropriate statistical range.

Based on the above-stated findings of fact and conclusions of law, the court determines that the appropriate expenses for the subject property for the relevant tax years are as follows:

Tax Year 2006 \$124,762 Offered by Plaintiff's Expert

(\$45,965) Expenses revised by court

(\$40,000 + \$4,835 + 1,130 = \$45,965)

\$31,000 Allowed by court for maintenance and reserves

\$109,797 Adopted by court

Tax Year 2007 \$129,882 Offered by Plaintiff's Expert

(\$50,965) Expenses revised by court

(\$45,000 + \$4,835 + 1,130 = \$50,965)

\$31,000 Allowed by court for maintenance and reserves

\$109,917 Adopted by court

Tax Year 2008 \$131,617 Offered by Plaintiff's Expert

(\$50,965) Expenses revised by court

(\$45,000 + \$4,835 + 1,130 = \$50,965)

\$31,000 Allowed by court for maintenance and reserves

\$111,652 Adopted by court

## 5. Capitalization Rate

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

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

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

[Appraisal Institute, Appraisal of Real Estate 505 (13<sup>th</sup> ed 2008).]

In "using the Band of Investment technique, it is incumbent upon the appraiser to support the various components of the capitalization rate analysis by furnishing 'reliable market data . . . to the court as the basis for the expert's opinion so that the court may evaluate the opinion.'" Hull Junction Holding supra, 16 N.J. Tax at 82 (quoting Glen Wall Assocs., supra, 99 N.J. at 279-80). "For these purposes, the Tax Court has accepted, and the Supreme Court has sanctioned, the use of data collected and published by the American Council of Life Insurance." Id. at 82-83. "Relevant data is also collected and published by . . . Korpacz Real Estate Investor Survey." Id. at 83. "By analyzing this data in toto, the court can make a reasoned determination as to the accuracy and reliability of the mortgage interest rates, mortgage constants, loan-to-value ratios, and equity dividend rates used by the appraisers." Ibid.

Plaintiff's expert opined an overall capitalization rate of 10.75% for tax year 2006, and 10.94% for tax years 2007 and 2008. These rates were based on a base capitalization rate of 8.98% for each tax year derived from investor surveys and the expert's experience. Application of the effective tax rate for each year resulted in the overall capitalization rates noted above.

Defendant's expert offered an overall capitalization rate of 9.21% for tax year 2006, 9.40% for tax year 2007 and 9.54% for tax year 2008. These rates were based on a base capitalization rate of 7.44% for tax year 2006 and 7.58% for tax years 2007 and 2008. Application of the effective tax rate for each year resulted in the overall capitalization rates noted above. The details of the two experts' base rate calculations are set forth in the attached schedules.

While the experts for both parties presented reasonable opinions of the appropriate capitalization rates, the court finds the capitalization rates

proposed by defendant's expert to be more credible. Both experts are well versed in the market for apartment buildings in Bergen County and have extensive experience. Defendant's expert, however, is also actively involving in banking industry, including with respect to financing purchases of income producing properties in the area. The court found persuasive the expert's testimony with respect to the expectations of investors in the marketplace and adopts as credible the capitalization rates he offered. The figures proposed by defendant's expert are well supported by the record and commensurate with the investment risk that is likely to attract investors to the subject property.

#### 6. Calculation of Value

Tax year 2006

Potential Rental Income \$ 320,664

-

Vacancy & Coll. Loss 3%

\$ 311,044

+

Laundry Commissions \$ 1,500

Effective Gross Income \$ 312,544

-

Operating Expenses \$ 109,797

Net Income \$ 202,747

÷

Cap Rate 9.21

Value \$2,201,379

Rounded to \$2,200,000

Tax year 2007

Potential Rental Income \$ 327,744

-

Vacancy & Coll. Loss 2.5%

\$ 319,550

+

Laundry Commissions \$ 1,800

Effective Gross Income \$ 321,350

-

Operating Expenses \$ 109,917

Net Income \$ 211,433

÷

Cap Rate 9.40

Value \$2,249,287

Rounded to \$2,250,000

Tax year 2008

Potential Rental Income \$ 332,844

-

Vacancy & Coll. Loss 2.5%

\$ 324,523

+

Laundry Commissions \$ 1,800

Effective Gross Income \$ 326,323

-

Operating Expenses \$ 111,652

Net Income \$ 214,671

÷

Cap Rate 9.54

Value \$2,250,220

Rounded to \$2,250,000

C. Applying Chapter 123

1. Tax Year 2006

Because the municipality implemented a district-wide reassessment for tax year 2006 the ratio is presumed to be 100%. The assessment on the property, therefore, will be set at 100% of value. See 54:51A-6.

A Judgment establishing the assessment for the subject property for tax year 2006 will be entered by the court as follows:

Land \$ 960,000

Improvement \$ 1,240,000

Total \$ 2,200,000

2. Non-Revaluation Tax Years

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 values determined above must, therefore, be compared to the common level ratio for Rutherford Borough for the non-revaluation tax years. The formula for determining the subject property's ratio is:

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

a. Tax Year 2007

$$\$2,376,500 \div \$2,250,000 = 1.056$$

The chapter 123 common level ratio for Rutherford for tax year 2007 is 102.15 According to N.J.S.A. 54:51A-6(c), where both the average ratio for the municipality and the ratio of the assessed value of the subject property to its true value exceed the county percentage level (which is 100%), the court shall enter judgment revising the taxable value of the subject property by applying the county percentage level (100%) to the true value of the property.

Consequently, a Judgment establishing the assessment for the subject property for tax year 2007 will be entered by the court as follows:

Land \$ 960,000

Improvement \$ 1,290,000

Total \$ 2,250,000

b. Tax Year 2008

$$\$2,376,500 \div \$2,250,000 = 1.056$$

The chapter 123 common level ratio for Rutherford for tax year 2008 is .9601. According to N.J.S.A. 54:51A-6(b), where the average ratio for the municipality is below the county percentage level (which is 100%) and the ratio of the assessed value of the subject property to its true value exceeds the county percentage ratio (which is 100%), the court shall enter judgment revising the taxable value of the subject property by applying the average ratio for the municipality to the true value of the property.

Consequently, the court will determine the assessment for the subject property for tax year 2008 by multiplying the true value by the Chapter 123 ratio for Rutherford for that tax year:

$$\$2,250,000 \times .9601 = \$2,160,225$$

A Judgment establishing the assessment for the subject property for tax year 2008 will be entered as follows:

Land \$ 960,000

Improvement \$ 1,200,000

Total \$ 2,160,000

Very truly yours,

Patrick DeAlmeida, P.J.T.C.

Union Manor Associates v. Borough of Rutherford

Tax Year 2006

Income and Expenses

Plaintiff/Defendant Variance

Total Income \$ 320,664 \$345,000 \$ 24,336

Coll. Loss 3% 5% 2%

327,750 \$ 16,706

Commissions \$ 1,500 \$ 0 \$ 1,500

Gross Income \$ 312,544 \$327,750 \$ 15,206

Expenses

16,517 \$ 9,832 \$ 6,685

Owner \$ 9,443 \$ 9,443

Gas \$ 30,883 \$ 32,775 \$ 1,892

Rent

00

Gas \$ 100

\$ 2,149

Gas \$ 40,000 \$ 22,942 \$17,058

835 \$ 4,835

Gas \$ 1,310 \$ 1,310

Gas \$ 15,625 \$ 16,388 \$ 763

Fees \$ 4,000 \$ 4,000

5,555 \$ 6,555

ses \$ 124,762 \$ 88,492 \$36,270

\$ 187,782 \$ 239,258 \$51,476

1,75 9.21

6,800 \$2,597,807 \$851,007

\$1,750,000 \$2,600,000 \$850,000

Union Manor Associates v. Borough of Rutherford

Tax Year 2006

Capitalization Rate Calculation

aintiff Defendant

5% 75%

25%

terest 7.00% 6.25%

arm 20 yrs 25 yrs

onstant 9.30% 7.92%

n 8.00% 6.00%

) 6.98% 75% @ 7.92 5.94%

) 2.00% 25% @ 6.00 1.50%

ate 8.98% 7.44%

ax Rate 1.77% 1.77%

Rate 10.75% 9.21%

Union Manor Associates v. Borough of Rutherford

Tax Year 2007

Income and Expenses

Plaintiff/Defendant Variance

Total Income \$ 327,744 \$364,200 \$ 36,456

Coll. Loss 2.5% 5% 2.5%

345,990 \$ 26,440

Commissions \$ 1,800 \$ 0 \$ 1,800

Gross Income \$ 321,350 \$345,990 \$ 25,550

Expenses

15,783 \$ 10,379 \$ 5,404

Owner \$ 6,745 \$ 6,745

Gas \$ 33,833 \$ 34,599 \$ 766

Rent

00

Utilities \$ 100

1

\$ 2,311

Repairs \$ 45,000 \$ 24,219 \$20,781

835 \$ 4,835

Depreciation \$ 1,310 \$ 1,310

Net \$ 16,065 \$ 17,299 \$ 1,234

Fees \$ 4,000 \$ 4,000

7,284 \$ 7,284

ses \$ 129,882 \$ 93,780 \$36,102

\$ 191,468 \$ 252,210 \$60,742

1.94 9.40

0,200 \$2,683,085 \$932,885

\$1,750,000 \$2,685,000 \$935,000

Union Manor Associates v. Borough of Rutherford

Tax Year 2007

Capitalization Rate Calculation

Plaintiff Defendant

75%

25%

Interest 7.00% 6.50%

Term 20 yrs 25 yrs

Constant 9.30% 8.10%

8.00% 6.00%

6.98% 75% @ 8.10 6.08%

2.00% 25% @ 6.00 1.50%

Rate 8.98% 7.58%

Tax Rate 1.96% 1.82%

Rate 10.94% 9.40%

Union Manor Associates v. Borough of Rutherford

Tax Year 2008

Income and Expenses

Plaintiff/Defendant Variance

Total Income \$ 332,844 \$383,400 \$ 60,556

Coll. Loss 2.5% 5% 2%

364,230 \$ 39,707

Commissions \$ 1,800 \$ 0 \$ 1,500

Gross Income \$ 326,323 \$364,230 \$ 37,907

Expenses

15,542 \$ 10,926 \$ 4,616

Owner \$ 7,008 \$ 7,008

Gas \$ 35,387 \$ 36,423 \$ 1,036

Rent

00

Gas \$ 100

\$ 2,220

Insurance \$ 45,000 \$ 25,496 \$19,504

835 \$ 4,835

Interest \$ 1,310 \$ 1,310

Total \$ 16,315 \$ 18,211 \$ 1,896

Fees \$ 4,000 \$ 4,000

7,285 \$ 7,285

ses \$ 131,617 \$ 98,341 \$33,276

\$ 194,706 \$ 265,889 \$71,183

1,949,54

9,800 \$2,787,096 \$1,007,296

\$1,780,000 \$2,785,000 \$1,005,000

Union Manor Associates v. Borough of Rutherford

Tax Year 2008

Capitalization Rate Calculation

aintiff Defendant

5% 75%

25%

terest 7.00% 6.50%

arm 20 yrs 25 yrs

onstant 9.30% 8.10%

n 8.00% 6.00%

) 6.98% 75% @ 8.10 6.08%

) 2.00% 25% @ 6.00 1.50%

ate 8.98% 7.58%

ax Rate 1.96% 1.96%

Rate 10.94% 9.54%

1Defendant's expert also used the comparable sales approach. The sales comparison approach is "[t]he process of deriving a value indication for the subject property by comparing similar properties that have recently sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sales prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-driven elements of comparison." The Appraisal of Real Estate, *supra*, at 297. This approach usually provides the primary indication of market value of "properties that are not purchased primarily for their income-producing characteristics." *Id.* at 300. A 32-unit apartment building would, the court concludes, be purchased in the marketplace primarily, if not solely, based on its income-producing characteristics. See Parkview Village, *supra*; Parsippany Hills Assocs. v. Township of Parsippany-Troy Hills, 1 N.J. Tax 120, 123 (Tax 1980)(holding that "it is to be noted that it can only be through the capitalization of income approach that the effect of rent control can be reflected."). Because the record contains sufficient, reliable evidence to determine the value of the subject property based on the income approach, the court gives little weight to the sales comparison analysis. This opinion, therefore, does not provide a detailed description of the ten comparables sales upon which defendant's expert relied or the adjustments he applied.

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