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TAX COURT OF NEW JERSEY

PALISADIUM MANAGEMENT CORP.	DOCKET NOS.	005633-2011
		010266-2012
Plaintiff,		008940-2013
v.		
BOROUGH OF CLIFFSIDE PARK,		
Defendant.		

Approved for Publication
In the New Jersey
Tax Court Reports

CARLTON CORP.	DOCKET NOS.	005634-2011
		010274-2012
Plaintiff,		008943-2013
v.		
BOROUGH OF CLIFFSIDE PARK,		
Defendant.		

Decided: May 2, 2016

Michael A., Paff for plaintiffs
(Wilentz, Goldman & Spitzer, attorneys).

Christos J. Diktas for defendant
(Diktas Gillen, P.C., attorneys).

FIAMINGO, J.T.C.

This is the court's opinion after trial in the above-referenced matters challenging the 2011 through 2013 tax year assessments on plaintiffs' property.

The defendant Borough's application of the cost approach to value the subject property, deeming it "unique," is rejected. Neither the location of the subject property, with its admittedly superior views of the Hudson River and New York City skyline, nor the unusual combination of

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uses, qualify it as a "special-purpose" property for which the use of the cost approach to valuation is appropriate. Furthermore, the reliability of the computer software used by both the Borough's expert and plaintiffs' expert to determine value under the cost approach has yet to be demonstrated in any court and thus the valuation conclusions based thereon are rejected. Plaintiffs' expert's use of a hybrid approach to valuation is appropriate but he failed to provide adequate objective evidence to support adjustments made and as a result his valuation conclusion is not credible. Neither party provided the court with competent evidence of value sufficient to overcome the assessments. As a result the assessments are affirmed.

I. Findings of Fact and Procedural History

The court makes the following findings of fact based on the evidence and testimony offered at trial in these matters.

The subject property, commonly known as "the Palisadium," consists of two adjacent tax lots located at 700 Palisadium Drive in the Borough of Cliffside Park (the "Borough"), Bergen County, New Jersey. The subject property is designated as Block 3601, Lots 7 and 9 on the official tax map of the Borough. Plaintiff Palisadium Management Corp. owns Lot 7 and plaintiff Carlton Corp. owns Lot 9 (hereinafter "plaintiffs"). These matters were consolidated for trial.

The assessed values of the subject properties for the years 2011, 2012 and 2013 were as follows:

	Lot 7	Lot 9	Total
Land	$ 3,581,500	$ 1,235,800	$ 4,817,300
Improvements	$ 8,969,000	$ 3,464,700	$12,433,700
Total	$12,550,500	$ 4,700,500	$17,251,000

The Chapter 123 ratios for 2011, 2012 and 2013 are 100.00%, 89.45% and 92.29%, respectively. Thus, the equalized values of the lots for the years under appeal are:

Year	Lot 7	Lot 9	Total
2011	$12,550,550	$4,700,500	$17,251,000
2012	$14,030,743	$5,254,891	$19,285,634
2013	$13,598,981	$5,093,185	$18,692,166

Plaintiffs timely filed direct appeals with the Tax Court challenging the assessments. The Borough timely filed counterclaims for tax years 2011 and 2012 for both lots. No counterclaim was filed for 2013.

The subject property is located at the end of Palisades Drive, a cul-de-sac, which is approximately a quarter mile from the commercial corridor known as Palisades Avenue. It is not visible from Palisades Avenue nor is it directly accessible from that thoroughfare. It is essentially a "destination location." The only improvements accessible from Palisadium Drive are those constructed on the subject property. Substantial residential development is located along the north, south and west of the subject property. Its eastern façade is located at the edge of a cliff facing the Hudson River and Manhattan.

The combined area of the two lots comprises approximately 4.19 acres. The improvement on Lot 7 consists of 74,668 square feet, containing a banquet hall on the upper level and a fitness center and health spa on the lower level. As a result of the topography, both levels have access at grade. Originally constructed in 1976, the building on Lot 7 was most recently renovated and expanded in 2009 when a health spa was added to the fitness center and a restaurant space on the upper level was constructed. Additionally, in 2012 the main entrance to the building was renovated.

The banquet hall (inclusive of the restaurant area) contains approximately 38,021 square feet and is known as "The Palisadium." It contains five banquet rooms of varying sizes and amenities.[1] The various banquet rooms are situated so as to maximize the views of the Manhattan skyline, including the Skyline Ballroom, which features "a panoramic view of the Hudson River and Manhattan skyline, from the George Washington Bridge to midtown."

The fitness center and health spa on the lower level consist of approximately 36,647 square feet. The fitness center includes an indoor pool, spin class room, open gym, training area and dance studio, child daycare room, hair cutting area, men's and women's locker rooms, an office suite, spa (with showers and sauna), juice bar, and an outdoor running track. Portions of the fitness center and the swimming pool also have views of Manhattan, as does the outdoor running track.

The improvement on Lot 9 consists of a four-story parking deck containing 146,880 square feet and parking for 630 cars. None of the nearby residential structures are situated so that parking at the garage would be beneficial to the residents, nor do any of those residential structures require the use of the parking garage for their residents. There are no nearby commercial or other uses for which parking at the garage would be convenient. Therefore, although the use of the parking structure is not officially restricted, the garage serves the banquet hall and fitness center. Although the two parcels are separate lots owned by different taxpayers, they operate as a single economic unit.

The parking garage was constructed in 1988 and has not been renovated since. The first level is below grade. The fourth level is not needed for parking and is used for storage. The rooftop is subject to an easement in favor of a nearby condominium tower that requires it be

[1] The restaurant space ceased operation as a restaurant in about September 2012 and has since been utilized as one of the banquet rooms servicing smaller gatherings.

utilized for "passive recreation."[2] As a result, no cars are parked on the rooftop level, which has been improved with grass and trees.

The subject property is located in an R-5 zone which permits one and two family detached dwellings, multi-family townhouses, high-rise dwellings, accessory building structures or uses, municipally owned or operated facilities, public utility distribution lines and "conditional uses, as permitted by [ ] ordinance and approved by the Planning Board." The R-5 zone requires a minimum lot size of five acres. The combined area of the lots does not meet the current minimum lot size and thus, if vacant, neither lot could be developed without variances. Furthermore, the current uses of the subject property as a banquet hall and fitness center are not permitted within the R-5 zone.

The subject property was originally developed as part of a larger development containing several high-rise condominium buildings dating back some forty years. Originally slated for residential development, the subject was ultimately developed for commercial use in 1976. Upon completion of the fitness center, the Owners' Associations of the nearby condominium and townhouse buildings and the owner of the subject property executed "Additional Recreational Facility Agreements" (ARFAs). These agreements bound the owners of the subject property to make the fitness center available to all residents of the condominium towers and required the Associations to pay membership fees to the fitness center, apparently regardless of actual use by its members.[3] Although the fitness center was not exclusive to the condominium unit owners, the

[2] Neither party introduced a copy of the easement into evidence, nor were any specific details of the easement provided.

[3] Copies of the AFRAs were not introduced and the details of the parties' obligations are not known. While originally intended that all of the residential condominium towers and townhouse developments participate in the obligations to the fitness center, testimony indicated that at least one condominium association litigated its membership obligation and had entered into a financial settlement with plaintiffs terminating its ongoing obligations to the fitness center. Information presented by plaintiffs' expert indicated that three condominium towers with approximately 1,652 residential units are subject to the AFRAs during the years under review.

ARFAs limited the number of memberships that could be offered to the public to no more than 3,500 through December 31, 2070. As of 2011 and 2012, the public membership stabilized in the upper 1750s and has never approached the upper limit allowed by the ARFAs.

A trial in this matter took place over five days: July 20, 21, 22 and 30, 2015 and August 24, 2015. At trial, plaintiffs offered the testimony of a state certified general real estate appraiser, licensed in New Jersey, New York and Pennsylvania. The expert testified that he was an MAI with the Appraisal Institute and graduated from Rutgers University with a Bachelor's of Science. He had previously testified before the Tax Court of New Jersey, various County Boards of Taxation and condemnation proceedings. He had over fifteen years of experience and testified that he had previously appraised multi-tenanted retail establishments, three or four health clubs and a catering facility. While he had not appraised independent parking structures, he testified that there were properties that he had appraised that included a parking deck component. The court accepted the expert over the objection of the Borough.

The Borough offered the expert testimony of a State of New Jersey certified general real estate appraiser and a licensed professional engineer, both of whom were accepted by plaintiffs without objection.

Plaintiffs' expert utilized a "hybrid" approach to valuation – a comparative sales approach to the valuation of the banquet hall and the income capitalization approach regarding the fitness center. He also utilized the cost approach as a "check of reasonableness for the other approaches." The Borough's appraisal expert utilized only the cost approach in determining the fair market value of the subject property. The licensed professional engineer presented by the Borough provided his opinion as to building cost estimates for the improvements on the subject property.

The expert's conclusions as to value are as follows:

Valuation Date	Plaintiffs' Market Value	Defendant's Market Value
October 1, 2010	$12,510,000	$24,055,000
October 1, 2011	$12,850,000	$24,505,000
October 1, 2012	$13,240,000	$24,935,000

II. Conclusions of Law

A. Presumption of Validity

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."
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> [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 Co. v. City of Passaic, 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) (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 v. Borough of Mountain Lakes, 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)).

At the end of plaintiffs' case, the Borough made a motion to dismiss for failure to overcome the presumption of correctness. The court denied the motion and placed its reasons on the record.

Concluding that the presumption of validity has been overcome does not result in a finding that the assessment is in fact erroneous. Once the presumption has been 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. v. Township of Edison,

127 N.J. 290, 312 (1992). The court must be mindful that "although there may have been enough evidence [presented] 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 Co. v. City of Passaic, supra, 100 N.J. at 413). 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).

B. Highest and Best Use

As explained by Judge Andresini in Clemente v. Township of South Hackensack, 27 N.J. Tax 255, 267–69 (Tax 2013), aff'd, 28 N.J. Tax 337 (App. Div. 2015):

> For property tax assessment purposes, property must be valued at its highest and best use. Ford Motor Co. v. Township of Edison, supra, 127 N.J. at 300–01. "Any parcel of land should be examined for all possible uses and that use which will yield the highest return should be selected." Inmar Associates, Inc. v. Township of Edison, 2 N.J. Tax 59, 64 (Tax 1980). Accordingly, the first step in the valuation process is the determination of the highest and best use for the subject property. American Cyanamid Co. v. Township of Wayne, 17 N.J. Tax 542, 550 (Tax 1998), aff'd, 19 N.J. Tax 46 (App. Div. 2000). "The concept of highest and best use is not only fundamental to valuation but is a crucial determination of market value. This is why it is the first and most important step in the valuation process." Ford Motor Co. v. Township of Edison, 10 N.J. Tax 153, 161 (Tax 1988), aff'd o.b. per curiam, 12 N.J. 290 (1992); see also Gen. Motors Corp. v. City of Linden, 22 N.J. Tax 95, 107 (Tax 2005).

The highest and best use of an improved property is the "use that maximizes an investment property's value, consistent with the rate of return and associated risk." Ford Motor Co. v. Township of Edison, supra, 127 N.J. at 301. A strong consideration in the analysis is the actual use of the subject property. Ford Motor Co. v. Township of Edison, supra, 10 N.J. Tax at 167.

Both experts acknowledged that the size of the lots, even if combined, was less than the minimum five-acre requirement and would not comply with the current zone-required lot size. Furthermore the current uses are not permitted uses in the R-5 zone in which the subject property is located. The subject property, individually and as combined, is therefore non-conforming. The Borough's expert opined that as vacant, the highest and best use of the subject property would be for its "assemblage to a contiguous lot," but as improved, the highest and best use was its current use, which is a pre-existing non-conforming use. While plaintiffs' expert made no conclusion as to the highest and best use as vacant, he concluded that the highest and best subject as improved was its current use. The court finds that the highest and best use of the subject property is its current use as a banquet facility and fitness center with parking as a single economic unit.

C. Approaches to Value

a. In general

In valuing property for determining its assessed value, "the search, of course, is for the fair value of the property, the price a willing buyer would pay a willing seller." Aetna Life Insurance Co. v. City of Newark, 10 N.J. 99, 106 (1952). There are three general appraisal methods utilized in determining fair market value: the comparable sales method, capitalization of income and cost. Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div.) (citing Appraisal Institute, The Appraisal of Real Estate 81 (11th ed., 2006)).

> It is recognized that there is no single rule or approach that must be followed in valuing real property. Glen Wall Assoc. v. Township of Wall, 99 N.J. 265 (1985); Samuel Hird & Sons, Inc. v. Garfield, 87 N.J. Super. 65, 72 (App. Div. 1965). The statute does not require or exclude any particular method of assessing true value. Riverview Gardens, Section One, Inc. v. North Arlington, 9 N.J. 167, 175 (1952). "The answer [to the valuation of property] depends upon the particular facts and the reaction to them of experts steeped in the history and hopes of the area." New Brunswick v. Tax Appeals Div., 39 N.J. 537, 544 (1963).
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> [Pantasote Co. v. City of Passaic, supra, 100 N.J. at 414.]

The Borough argued that the cost approach was the only appropriate method to value the subject property. The plaintiffs' expert utilized the sales comparison approach to value the banquet facility component of the subject and income approach to value the fitness center component. See Livingston Mall Corp. v. Township of Livingston, 15 N.J. Tax 505, 508–09 (Tax 1996); Aliotta v. Township of Belleville, 27 N.J. Tax 419 (Tax 2013). He also applied the cost approach to confirm his results. Thus, all three methodologies have been applied in the within matters to some degree.

1, Application of Cost Approach

The court will first address the Borough's argument that the cost approach is the best means of valuation for the subject property.

The cost approach is most effective when the property being valued is new. Worden-Hoidal Funeral Homes v. Borough of Red Bank, 21 N.J. Tax 336, 338 (Tax 2004). The subject properties were constructed more than thirty years before the first valuation date of October 1, 2010. On this basis the cost approach is not an appropriate valuation methodology.

The cost approach is also relied upon "to value special purpose or unique structures for which there is no market." Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 452 (1980), aff'd, 3 N.J. Tax 1 (App. Div. 1981), certif. denied, 88 N.J. 495 (1981). However, simply because a property might be difficult to market does not make it a special purpose property or unique. Ibid. Further a property is not considered special purpose when "it possesses certain features which, while rendering the property suitable to the owner's use, are not truly unique." Ford Motor Co. v. Township of Edison, supra, 127 N.J. at 299 (quoting Sunshine Biscuits, Inc. v. Borough of Sayreville, 4 N.J. Tax 486, 495 (Tax 1982)).

> There are important traits which distinguish special purpose properties. Generally, they will possess the following characteristics: they will be (1) unique and specially built for the purpose for which they are used, (2) without a market or comparable sales, (3) unlikely to be converted without substantial economic

> expenditure, and (4) reasonably expected to be replaced or reproduced if destroyed. (internal citations omitted); Hackensack Water Co. v. Borough of Old Tappan, 77 N.J. 208, 216 (1978) (value of the property depends on continuation of current use and could not be used for any other purpose); Assessors of Quincy v. Boston Consolidated Gas Co., 309 Mass. 60, 34 N.E.2d 623, 627 (1941) (improvement could not be used for any other purpose, and had very little removal value). Special purpose properties are often limited-market properties which have few potential buyers at a given time due to their specialized use, and often include manufacturing plants, railroad sidings, research and development properties, museums, schools, houses of worship, theaters, and sports arenas. The Appraisal of Real Estate, supra, at 27–28, 271 (13th ed. 2008). They often have unique designs or special construction utility which provide a functional utility for the intended use, but have limited conversion potential which restricts utility for other uses. Ibid; General Motors Corp. v. City of Linden, 22 N.J. Tax 95, 127 (Tax 2005). The only means for valuing a special purpose property is via the cost approach because there will be insufficient comparable market transactions. Glen Pointe Associates v. Township of Teaneck, 10 N.J. Tax 380, 388 (Tax 1989) (citing Anaconda Co. v. Perth Amboy, 157 N.J. Super. 42 (App. Div. 1978), vacated and remanded on other grounds, 81 N.J. 55, aff'd, 12 N.J. Tax 118 (App. Div. 1990)).
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> [TD Bank v. City of Hackensack, 28 N.J. Tax 363, 379–80 (Tax 2015).]

The Borough argues that the subject property is "unique" because it serves as a banquet hall and fitness center with "spectacular Manhattan skyline views." According to the Borough, the sales comparison approach is inappropriate because there is a lack of similar multi-use properties "situated on the Palisades overlooking Manhattan." Furthermore, the Borough asserts that the income approach to value is "less reliable" because banquet halls are not typically leased facilities and although fitness centers are typically leased, "they are located in complexes/strip malls with other commercial tenants." Thus, the Borough maintains that the cost approach is the only applicable approach because: (1) no truly comparable sales could be uncovered; (2) there were no leases for comparable banquet halls or fitness centers; and (3) the subject's location "nestled between high-density residential towers on a cliff overlooking New York City with excellent skyline views is very unique."

The Borough's argument does not rest upon the basis that the structure constituting the subject property is itself "special purpose," nor could it make such an argument. Neither a banquet hall nor a fitness center is unique or specially built. While unusual, the combination of those two uses in a single structure does not lead to the conclusion that the structure could not be converted to another use and thus is specially built for its current purposes. Instead, the Borough argues that the natural surroundings of the structure, i.e. the Manhattan skyline view, combined with the multiple use of the subject, imparts unique qualities to it such that the cost approach is the only means by which the subject can be valued.

The court is not persuaded by the Borough's argument. Setting aside, for the moment, the "multi-use" nature of the structure, the court finds that the mere physical location of the structure does not place it in a classification of "special purpose." While it is unquestionable that commanding views of the Manhattan skyline enjoyed by the subject property require special consideration, these views are not exclusive to the subject property and are not truly unique. There are quite a number of structures throughout New Jersey that provide breathtaking views of any number of natural or manmade panoramas. The very number of such structures dictate against the argued "unique" classification urged by the Borough. In fact, there are a number of high-rise condominium structures literally within a stone's throw of the subject property whose views are similar, if not superior, to those at the subject property. Thus, the subject property's view of Manhattan in and of itself, does not impart the unique quality that the Borough argues for.

Nor does the fact that the subject property contains multiple uses provide support for the Borough's argument. Neither use is what might be considered a "special purpose," like a clubhouse, museum, church property, public school, hospital, theater or brewery. See Sunshine Biscuits v. Borough of Sayreville, supra, 4 N.J. Tax at 495. Furthermore, the court finds that the

mere combination of the banquet facility use and the health facility use does not elevate the subject property into the sphere of unique special-purpose properties. There was no testimony supporting a conclusion that conversion of the subject would involve an "extra expense" or "design expertise" such that its conversation would not be economically feasible or practical. See Appraisal of Real Estate, supra, at 269 (14th ed. 2013). Neither the uses nor the view, taken individually or as combined, are "unique" for the purposes of the application of the cost approach to value. This is not a situation where the design of the structure is such that its functional utility is unique for its intended purpose, with limited conversion potential. See T.D. Bank v. Hackensack, supra, 28 N.J. Tax at 379–80.

The court also finds the Borough's assertion that there is a lack of transactions in the market for banquet halls and fitness centers unavailing. Plaintiffs have identified a number of such transactions. While the Borough attacks the comparability of plaintiffs' expert's proofs primarily for their lack of comparable views, it is unquestionable that there is a market for the sale of banquet halls and the lease of health fitness centers. Even the Borough's expert maintained that he had appraised numerous catering facilities and health clubs.

Furthermore, the court takes issue with the manner in which both plaintiffs' expert and the Borough's expert arrived at their replacement costs. Both experts utilized the Marshall and Swift Valuation Service computer program to generate cost estimates. However, neither provided any independent testimony to corroborate the calculations produced by the software. To date there has been no demonstration in any court that the calculations produced by the software are reliable. In order for a new technology to be deemed reliable, there must be "sufficient scientific basis to produce uniform and reasonably reliable results" and a showing that the technology "will

contribute materially to the ascertainment of the truth." State v. Hurd, 86 N.J. 525, 536 (1981) (quoting State v. Cary, 49 N.J. 343, 352 (1967)); see also State v. Chun, 194 N.J. 54, 62–65 (2006).

> The automated valuation software may be useful in terms of streamlining the valuation process, but without more the court is unable to ascertain the underlying data, basis, or reasoning in the generation of such estimates. In other words, without a detailed explanation of the valuation software used, the court has no way to gauge the accuracy or reasonableness of the estimates produced.
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> [Forsgate Ventures IX v. Township of South Hackensack, 29 N.J. Tax 28, 45 (2016)(appeal pending).]

When questioned, the Borough's expert indicated that he "plugged in" the numbers into the program and did not independently check any of the resulting calculations to determine their accuracy vis-à-vis the Marshall & Swift hand calculations historically accepted by the court.[4]

The Borough argues that although its expert relied on the automated software, it introduced evidence of a certified professional engineer who provided cost estimates to support the expert's estimates The engineer produced by the Borough inspected the structure and based on his observations and certain assumptions produced an estimated replacement cost for the structure utilizing the RS Means Construction Cost Data book, as well as the RS Means Square Foot Costs book. The replacement cost estimates he determined were within 3-5% of those produced by the computer software, however, the court was provided with no explanation of the "underlying data, basis or reasoning" utilized by the computer software which produced the estimates employed by the Borough's appraisal expert. Thus, the court is without any basis to determine whether the estimates produced by the software and utilized by the appraisal expert were accurate or reasonable.

[4] On cross-examination, counsel questioned how the expert could verify what he had "plugged in" to the computer. The expert's response was "If you weren't sitting next to me, you wouldn't know what I was plugging in." Issues relating to both the input and the output of the software program abound.

In any event, however, the court has determined that the cost approach is not an appropriate methodology in this matter. Since the Borough's appraisal expert only utilized the cost approach in his valuation conclusion, his opinion of value is rejected.

c. Plaintiffs' Hybrid Approach

Plaintiffs' expert utilized a hybrid approach to value the subject property, applying both the sales comparison and income capitalization approaches. The sales comparison approach was used to value the banquet facility and the income capitalization approach was used to value the health/fitness center.

A hybrid approach to value has been previously approved in the Tax Court. See Livingston Mall Corp. v. Township of Livingston, supra, 15 N.J. Tax 505; see also Aliotta v. Township of Belleville, supra, 27 N.J. Tax 419. In Livingston Mall, the property at issue was a "super-regional mall," containing three anchor stores, 130+ mall retail stores, kiosks and common areas. The anchor stores were all owner occupied, except that the taxpayer owned the land, which it leased to the anchor stores. The non-anchor stores and kiosks were all leased through percentage leases.[5] The court found that the income approach proposed by the plaintiff was an inappropriate methodology to value the anchor stores due to the paucity of "hard income or expense data." Livingston Mall Corp. v. Township of Livingston, supra, 15 N.J. Tax at 519–20. The non-anchor stores, which were leased, were clearly income-producing and the income approach was the preferred method of valuation for those stores. Id. at 522. As a result, in that case the court approved the use of a hybrid approach, which valued the anchor stores via the cost approach[6] and the non-anchor stores via the income approach. Ibid.

[5] Judge Crabtree found that the use of percentage leases to determine economic rent was fatally flawed. However, economic rent was established and the income approach was applied.

[6] Neither party applied the sales approach to value the anchor stores.

In Aliotta, the subject property was a lot improved with a single-family residence. The land behind the house was operated as a contractor's yard and was leased to various commercial tenants for parking of construction vehicles and trailers, and for storage. Also located in the yard were two trailers and a Quonset Hut which were taxable as real property. The court found that the hybrid valuation approach was "reasonable because of the Subject's unique uses." Aliotta v. Township of Belleville, supra, 27 N.J. Tax at 427. The income approach was appropriate for the yard because it was income producing; the cost approach was the most appropriate for the trailers and Quonset Hut. Ibid. The court further found that the residence could have been valued under either the sales approach or the income approach, but utilized the income approach based on the proofs provided at trial. Id. at 464–65.

In the matter before this court, plaintiffs' appraisal expert credibly testified that banquet facilities are usually owner-occupied properties and are not typically leased. He attempted to locate leases for banquet facilities and was unsuccessful. This observation was echoed by the Borough's expert who testified that banquet facilities were owner-operated and "don't lease out." Thus, plaintiffs' expert believed that an income approach for the portion of the subject property operated as a banquet facility was inappropriate and instead that use should be valued via the sales approach. Conversely, plaintiffs' expert testified that he searched for sales of fitness centers and did not locate any, but was able to locate leases for such use. He therefore concluded that valuing the fitness center via the income approach was appropriate.

The court finds that plaintiffs' approach to value—utilizing a hybrid of the sales approach for the banquet facility and income approach for the health fitness center—is the appropriate method of valuing the subject property.

i. Sales Approach – Banquet Hall

In the sales comparison approach an opinion of value is developed 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 . . . of the comparable properties based on relevant market-driven elements of comparison." The Appraisal of Real Estate, supra, at 377 (14th ed. 2013). In this approach, the opinion is based upon comparing properties to the subject property, focusing on "similarities and differences that affect value," including but not limited to the type of rights conveyed, location, financing terms, market conditions, and physical conditions. Id. at 378. "When data is available, this [approach] is the most straight forward and simple way to explain and support an opinion of market value." Greenblatt v. City of Englewood, 26 N.J. Tax 41 (Tax 2011) (citing The Appraisal of Real Estate, supra, at 300 (13th ed. 2008)).

Plaintiffs' expert chose five sales of properties improved as banquet and/or catering facilities in Bergen County, which he testified were similar to the subject in age, construction type, quality/condition and/or utility.

Comparable Sale One, located at 190 Route 46 E in Saddle Brook, New Jersey, is a 29,326 square foot property on approximately a one-half acre lot, which sold on March 29, 2011 for $3,000,000 [$102.30 psf]. The expert testified that, in comparison to the subject, the comparable was in an inferior location, had inferior parking, was similar in quality/condition to the subject and had "average views," whereby the subject property had "above average views." The expert adjusted 10% for location, 20% for parking and 10% for views, resulting an adjusted price per square foot of $143.22.

Comparable Sale Two, located at 111 Rt. 46 W in Lodi, New Jersey, is a 19,463 square foot property situated on a .95 acre lot, which sold August 12, 2010 for $2,460,000 [$126.39 psf]. The expert testified that, in comparison to the subject, the comparable was in an inferior location,

had inferior parking, was inferior in quality/condition and had "average views," whereby the subject property had "above average views." The expert adjusted 10% for location, 10% for parking, 10% for quality/condition and 10% for views, resulting an adjusted sale price of $176.95 per square foot.

Comparable Sale Three, located at 136 Mehrhof Road in Little Ferry, New Jersey, is a 13,796 square foot property on a 1.45 acre lot, which sold on January 30, 2008 for $2,200,000 [$159.47 psf]. The expert adjusted -15% for market conditions resulting in a price per square foot of $135.55. The expert testified that, in comparison to the subject, the comparable was in a similar location, had inferior parking, was similar in quality/condition and had "average views." He made adjustments of 5% for parking and 10% for views, resulting in an adjusted sale price per square foot of $155.88.

Comparable Sale Four, located at 454 Midland Avenue in Garfield, New Jersey, is a 24,478 square foot property on a 2.60 acre lot, which sold in November 2007 for $4,200,000 [$171.58 psf]. The expert adjusted -15% for market conditions, resulting in a price per square foot of $145.85. The expert testified that, in comparison to the subject, the comparable was in a similar location, had similar parking, was similar in quality/condition and had "average views." The expert made adjustments of 10% for views arriving at an adjusted sale price of $160.43 per square foot.

Comparable Sale Five, located at 122 Moonachie Road in Moonachie, New Jersey, is a 17,600 square foot property on a 2.39 acre lot, which sold in September 2002 for $2,900,000 [$164.77 psf]. The expert adjusted upward by 10% for market conditions, resulting in an adjusted price of $181.25. The expert testified that, in comparison to the subject, the comparable was in a

similar location, had similar parking, was similar in quality/condition and had "average views." The expert made a 10% for views, concluding an adjusted sale price of $199.38 per square foot.

Plaintiffs' expert's justification for the time/market adjustment was based on his observation that real estate values for similar facilities in the market increased from 2002 through 2006 at an annual rate of 5% before stabilizing in 2007. From 2008 through 2009, the market dropped precipitously "due to the financial crisis and subsequent recession," resulting in an overall drop of 15%, until 2010 when real estate values stabilized and have remained relatively flat. He provided no documentation or market study to support his observations. He referenced the sales price of his Comparable Sales One and Two, occurring in 2010 and 2011, respectively, being lower than those that took place in 2007 and 2008 (Comparable Sales Three and Four) as partial justification for his market adjustment. At the same time, he acknowledged that "not all of that difference" might be a result of market conditions, but that difference was "in part, the basis for the adjustment."

Plaintiffs' expert observed that Comparable Sale Two had a small parking area, Comparable Sale One required additional parking via an easement with an adjacent property, Comparable Sale Three had a non-contiguous parking lot and Comparable Sale Four leased additional parking on a per diem basis for large events. Further, the expert observed that the subject had superior site size and coverage which enhanced its overall utility. Thus, "various degrees of upward adjustments" were made. On cross-examination, plaintiffs' expert testified that he utilized the comparable sales in a "paired sales analysis" to provide the parking adjustments. He started with Comparable Sale Four, which had "adequate" parking, and compared it to Comparable Sale Three, which had "somewhat substandard" parking, and observed a difference in the sales price of roughly 7.50%. He therefore made a 5% adjustment. Comparable Sale Two

had inferior parking to Sale Three, and an additional 5% adjustment was made. Since Sale One had the worst parking, a greater adjustment was made.

In making adjustments for location, the expert observed that the subject property was a "destination location" and did "not conform to the same principles as other restaurant, retail or hospitality uses. Highway locations allow for a broader market reach, however, limits outdoor activity on site." The expert concluded that comparable properties located on highways merited "upward adjustments." In reaching this conclusion, plaintiffs' expert testified that he again referred to his Comparable Sales as "paired sales," comparing Comparable Sale One to Comparable Sales Three and Four; and then Comparable Sale Two to Comparable Sales Three and Four. Plaintiffs' expert testified that the first paired sale showed a 17–20% adjustment for the highway location and the second showed a 0% adjustment, so he concluded 10%.

Although all of the comparable sales were smaller than the subject, the expert made no adjustment for size because he maintained that there was little divergence between the largest and smallest sales and thus no adjustment was required.

Plaintiffs' expert testified that all of the comparable sales, with the exception of Comparable Sale Two, were in average condition. Thus, only Comparable Sale Two, which required renovations after the sale, was adjusted by 10% to reflect those renovations. Plaintiffs' expert testified that based on his conversations with the broker on this transaction, the estimated renovation costs were about $270,000. He therefore made a 10% adjustment to the price to account for the condition. On cross-examination he acknowledged that he had no idea what the ultimate renovation costs actually were.

The most contentious adjustment was the view adjustment. Plaintiffs' expert testified that none of the comparable sales had the view that the subject enjoyed. In fact, cross-examination

demonstrated that the views of the comparable sales were substantially different than those at the subject property. Comparable Sale One is located on Route 46 surrounded by industrial buildings with scattered residential properties nearby. Comparable Sale Two is adjacent to industrial properties and a strip mall. To the rear of the property is a tractor trailer parking area with an access road along the side of the building. Comparable Sale Three is located in the midst of residential properties. Comparable Sale Four is located is a mixed area of residential and commercial properties. Finally, Comparable Sale Five is located in an area of mixed industrial, office buildings and residential properties.

On the other hand, the subject, while situated among a number of high rise residential properties, is located on a cliff and enjoys unobstructed views of the Hudson River and the Manhattan skyline.

Plaintiffs' expert testified that he determined the view adjustment by contacting the various venues and obtaining the rates they charge during their "busy wedding season." Based on those responses he determined that the subject was charging approximately $175 per person, while the other comparable venues charged between $150 and $170 per person. The expert concluded that the price differential was "directly attributable to the superior views" at the subject. He thus concluded a 10% positive adjustment to each of the sales as a result of the above average view at the subject versus the average view at each of the comparable sales. On cross-examination the expert acknowledged that he did not know what was included in each of the packages offered by the different venues. He testified that he requested the venues' price for their "standard package" and compared each venues standard packages. He did not explain how or why he determined that the price differential could be attributed to the above-average view at the subject and not to some other reason or reasons.

Plaintiffs concluded a sales price per square foot, as of each valuation date, of $160, resulting in a value of $6,083,360 for the banquet hall component of the subject property.

"[A]n expert's reliance on subjective measures for calculation and application of adjustments is unacceptable." TD Bank v. City of Hackensack, supra, 28 N.J. Tax at 382 (citing Greenblatt v. Township of Englewood, 26 N.J. Tax 41, 55 (Tax 2011) ("adjustments must have a foundation obtained from the market" with an "explanation of the methodology and assumptions used in arriving at the[ ] adjustments" otherwise they are entitled to little weight.)) An "opinion of an expert depends upon the facts and reasoning which form the basis of the opinion. Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Id. at 382–83 (citing Dworman v. Tinton Falls, supra, 1 N.J. Tax at 458 (citations omitted)). An expert's opinion is only as good as the data upon which the expert relied. Ibid. (citing Congoleum Corp. v. Township of Hamilton, 7 N.J. Tax 436, 451 (Tax 1985) (adjustments must be adequately supported by objective data.)); Kearny Leasing Corp. v. Township of Kearny, 6 N.J. Tax 363, 376 (Tax 1984), aff'd o.b., 7 N.J. Tax 665 (App. Div. 1985), certif. denied, 102 N.J. 340 (1985)). "An expert's conclusion rises no higher than the data which provide the foundation." Ibid. (quoting Township of West Orange v. Goldman, 2 N.J. Tax 582, 588 (Tax 1981)). "Expert opinion unsupported by adequate facts has consistently been rejected by the Tax Court." Ibid. (quoting Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 98 (Tax 1996)).

The court finds that plaintiffs' expert's time/market adjustment was not credible. The expert justified the adjustment by referring to the sales utilized by him in his comparable sales grid, concluding that those occurring in the later years were lower than those occurring in the earlier years. Contrary to his testimony, the sales provided in his sales grid do not support a conclusion of a 15% adjustment for a drop in values between 2008 and 2009. Furthermore, the

expert acknowledged that not all of the difference in price during the various years was representative of the change in market conditions/time and some of the difference may have been attributable to other factors. Plaintiffs' expert conclusion as to the market conditions/time adjustment is not discernible from the evidence presented to the court, nor is it adequately supported by any objective facts. It is therefore rejected.

With respect to the parking adjustment, plaintiffs' expert testified that he utilized a "paired sales analysis" again referring to his comparable sales' comparison grid. Plaintiffs' expert first made a determination as to the adequacy of the parking at the various facilities utilized in the comparable sales grid and apparently observed a difference in price, which he attributed to the varying degrees of parking sufficiency. The expert again utilized the same comparable sales in yet another "paired sales" analysis to justify a location adjustment, finding that Comparable Sales One and Two, each being located on Route 46, commanded a lower price than Comparable Sales Three and Four, which were not located on highways.

The use of paired sales may be helpful to determine the difference in value of a single difference when two properties are equivalent in all respects but one. "Paired data analysis should be developed with extreme care to ensure that the properties are truly comparable and that other differences do not exist." The Appraisal of Real Estate, supra, at 398 (14th ed. 2013). Care must be taken "when relying on pairs of adjusted prices because the difference measured may not represent the actual difference in value to the characteristic being studied." Id. at 399.

The problems with the expert's "paired sales" analysis is obvious. Having first concluded that the difference in price was attributable to a perceived parking deficiency, the expert then utilized the very same comparable sales to support yet another paired sales analysis based on location. Plaintiffs' expert already concluded that Comparable Sales One and Two required

adjustments for insufficient parking when compared to Comparable Sale Three and Four and concluded that they were not comparable in this regard. Concluding that there is yet another difference in comparability based on location casts doubt on the initial use of the properties for the parking adjustment and vice versa. Thus, the court finds both adjustments based on the plaintiffs' "paired sales" analysis lacking sufficient basis and credibility.

Plaintiffs' expert's adjustment for view is extremely problematic. There is absolutely no objective data supporting the initial conclusion that the reason the subject property was able to command a higher price per plate than his comparable sale properties is a result of its "above average" view. Plaintiffs' expert neither provided financial information for any venue which had "above average" views to substantiate his conclusion, nor any other data to support his conclusion. This court is unable to assess the expert's conclusion that the view is the reason why the subject could command higher prices than the other comparable sales.

Furthermore, the court is unable to assess the plaintiffs' expert conclusion that the subject actually charged higher prices than the other comparable venues. While the prices quoted by plaintiffs' expert are indeed higher than those charged at the comparable venues, plaintiffs' expert provided no testimony as to what was included in each of the "standard packages" being compared. Thus, the court is unable to determine whether in fact the "standard packages" are comparable.[7] As the price per plate is the basis for the adjustment, without knowing what is included makes the comparison, and therefore the adjustment, lacking in any credibility.

The only adjustment with any credibility is the condition adjustment made to Comparable Sale Two. While defendant objects that plaintiffs' expert did not know the actual cost of the repairs

[7] There are any number of items that may affect comparability, including but not limited to what entrée is being served, if it is buffet or sit down dinner, whether a cocktail hour is included and if so what appetizers are included, what type of dessert is included, whether it is an open bar and if so, what level of alcoholic beverages are served. The potential differences between menus and services offered are significant.

needed, it appears that the estimated cost was considered by the parties when the sales price was negotiated. However, in light of the fact that Comparable Sale Two required other adjustments, including the questionable location, parking and view adjustments, the court finds the use of Comparable Sale Two for any purpose unreliable at best.

The court finds plaintiffs' expert's sale comparison approach fraught with problems such that his opinion of value based on the sales approach is rejected. Plaintiffs' expert cost approach is rejected for the reasons expressed above with respect to the Borough's use of the cost approach.[8] The court need not evaluate the expert's income analysis of the health fitness center. Without reliable proof of value of the banquet facility, valuation of the health/fitness facility is meaningless.

The court is aware of its obligation "to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question." Glen Wall Associates v. Township of Wall, supra, 99 N.J. at 280 (1985) (citing New Cumberland Corp. v. Borough of Roselle, 3 N.J. Tax 345, 353 (Tax 1981)). Credible and competent evidence must be in the trial record upon which the court's independent determination of value may be based. F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985).

The court is without reliable proof of both the banquet facility and the health fitness center and thus had insufficient evidence upon which it can make an independent determination of value of the subject property.

III. Conclusion

While plaintiffs overcame the presumption of validity, neither party provided sufficient evidence to support revising the original assessment for any of the years under review.

As a result the assessments are affirmed.

[8] Plaintiffs' expert also deemed the cost approach less reliable for several reasons, including the paucity of good quality sale data of comparable land.