

TAX COURT OF NEW JERSEY

TAX COURT MANAGEMENT OFFICE  
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**Corrected Opinion Notice**

**Date: October 10, 2019**

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Lavery, Selvaggie, Abromitis & Cohen, P.C.

**From: Lynne E. Allsop**

**Re: Newark v. Twp. of Jefferson**  
**Docket number: 006324-2016, et al**

**The attached corrected opinion replaces the version released on October 3, 2019. The Opinion has been corrected as noted below:**

Page 12, citation corrected to MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 377 (Tax 1998)

Page 13, citation corrected to N.J.S.A. 54:51-6(a)

10/10/19 – corrected docket numbers to read 009752-2013 and 009753-2013

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF  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

Corrected 10/9/19-pgs. 12 and 13, citations

Corrected 10/10/19-docket number

CITY OF NEWARK,	:	TAX COURT OF NEW JERSEY
	:	DOCKET NOS.: 006324-2016
Plaintiff,	:	007392-2015
	:	007399-2015
v.	:	007940-2014
	:	007937-2014
TOWNSHIP OF JEFFERSON,	:	
	:	
Defendant.	:	
CITY OF NEWARK,	:	TAX COURT OF NEW JERSEY
c/o NWCDC,	:	DOCKET NOS.: 009752-2013
Plaintiff,	:	009753-2013
	:	
v.	:	
	:	
TOWNSHIP OF JEFFERSON,	:	
	:	
Defendant.	:	
CITY OF NEWARK,	:	TAX COURT OF NEW JERSEY
c/o NEWARK WATERSHED CORP.,	:	DOCKET NOS.: 005970-2012
	:	005969-2012
Plaintiff,	:	
	:	
v.	:	
	:	
TOWNSHIP OF JEFFERSON,	:	
	:	
Defendant.	:	
CITY OF NEWARK,	:	TAX COURT OF NEW JERSEY
c/o NEWARK WATERSHED,	:	DOCKET NOS.: 005555-2011
	:	008214-2010
Plaintiff,	:	008215-2010
	:	
v.	:	
	:	
TOWNSHIP OF JEFFERSON,	:	
	:	
Defendant.	:	

Approved for Publication  
In the New Jersey  
Tax Court Reports

_____:	
NEWARK WATERSHED CORP.,	TAX COURT OF NEW JERSEY
:	DOCKET NOS.: 013604-2009
:	013606-2009
Plaintiff,	013601-2009
:	
v.	
:	
TOWNSHIP of JEFFERSON,	
:	
Defendant.	
_____:	

Decided: October 3, 2019

Philip Elberg for plaintiff (Medvin & Elberg, attorneys).

Lawrence P. Cohen for defendant (Lavery, Selvaggi, Abromitis  
& Cohen P.C., attorneys).

BIANCO, J.T.C.

This opinion shall serve as the court’s determination concerning the challenge by plaintiffs, City of Newark and Newark Watershed Corp. (collectively “Newark”), to the 2009,<sup>1</sup> 2010, 2011, 2012, 2013, 2014, 2015, and 2016 local property tax assessments of their watershed property located within the defendant municipality, Township of Jefferson (“Jefferson”) at Holland Mountain Road, County Line, Cozy Lake Road, Chamberlain Road, Berkshire Valley Road and Route 23 South, Township of Jefferson, Morris County, New Jersey (“Subject Property”).<sup>2</sup> For

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<sup>1</sup> For tax year 2009 Block 571, Lot 3; Block 575, Lot 6; and Block 513, Lot 1 were the only parcels appealed. Block 571, Lot 3 and Block 575, Lot 6 did not carry through on subsequent appeals as their assessments were changed in 2010. Block 513, Lot 1 continued to be appealed for the subsequent years.

<sup>2</sup> The Subject Property is designated by Jefferson as Block 575, Lot 6; Block 571, Lot 3; Block 513 Lot 1; Block 513, Lot 13; Block 555, Lot 8; Block 566, Lot 1; Block 567, Lot 29; and Block 569, Lot 1.

the reasons set forth herein, the court affirms the Subject Property's local property tax assessment for each of the tax years at issue.

### **BACKGROUND, FACTS, AND PROCEDURAL HISTORY**

The Subject Property is comprised of eight separate parcels<sup>3</sup> owned by Newark within Jefferson, consisting of approximately 4,036 acres of vacant land. Except for approximately 400 acres of open water, which comprises a portion of one of Newark's reservoirs, the Subject Property is heavily wooded with forests comprising 90-95% of the total area. In addition, the Subject Property has other environmental constraints consisting of steep slopes, rock outcroppings and floodplain areas.

Furthermore, the Subject Property is subject to restrictions pursuant to State law under the provisions of N.J.S.A. 48:3-7 and N.J.S.A. 48:2-23.1. The provisions, as they affect the Subject Property, are commonly known as the Watershed Moratorium Act, which prohibits the sale of land used for the purpose or protection of a public water supply without specific authorization under the Act. Additionally, the Subject Property is designated as a Highlands preserved area under the New Jersey Highlands Protection Act, N.J.S.A. 13:20-1.

The Subject Property is further restricted by conservation easements which were granted under two deeds by the City of Newark to the Department of Environmental Protection of the State of New Jersey. The first deed is dated January 24, 2002, and the second, May 8, 2004. They were conveyed reflecting a per acre value of \$1,000 and \$1,350 respectively.<sup>4</sup> Aside from the descriptions of the properties included in the deeds, the two deeds are identical in the restrictions placed on the Subject Property. According to the terms of the deeds, their purpose was to "assure

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<sup>3</sup> Seven of which are actually in dispute with reference to these appeals.

<sup>4</sup> The weighted average of the deeds is \$1,172 per acre.

the [Subject] Property will be retained forever and predominantly in its natural forested condition and to prevent any use of the [Subject] Property that will impair or interfere with the Conservation Values of the [Subject] Property. . . .”

Furthermore, the deeds prohibit several actions, including subdivision and development, mining, and construction of new roads. Additionally, the deeds prohibit the dumping or placing of trash or waste, and bar activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation. Finally, while the deeds prohibit the clear cutting of timber stands, they allow the selective cutting of timber so long as it is done for certain enumerated purposes under the supervision of a New Jersey State Forester with prior approval by Newark. Furthermore, should the selective harvesting of timber be for any commercial purpose, it must be done on a sustainable basis and in accordance with an approved Forest Management Plan.

Jefferson conducted a town-wide revaluation in 2006. Then, as a result of decreases in property values caused by the recession, Jefferson’s municipal Tax Assessor (“Assessor”), with the permission of the Morris County Board of Taxation (“Board”), performed a reassessment of all of the real property in Jefferson for the 2010 tax year.<sup>5</sup> In 2009, prior to the reassessment, the Subject Property was assessed at \$3,500 per acre. Other than the three lots considered for the 2009 tax year, after the reassessment, the Subject Property was assessed at \$5,000 per acre for tax years 2010 through 2012; and at \$4,000 per acre for tax years 2013 through 2016. The actual assessments for each lot are set forth as follows –

For Block 575, Lot 6, the total assessment of the Subject Property was:

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<sup>5</sup> According to Newark, “[e]very Jefferson land owner except Newark had his/her assessment decreased. The reassessment program decreased the assessments in Jefferson by 13.5% and decreased vacant land assessments by 15%. Newark’s lands were the exception.”

Tax year 2009

Land	628,200.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	628,200.00

For Block 571, Lot 3, the total assessment of the Subject Property was:

Tax year 2009

Land	577,600.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	577,600.00

For Block 513, Lot 1, the total assessment of the Subject Property was:

Tax year 2009

Land	312,200.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	312,200.00

Tax year 2010, 2011, 2012, 2013

Land	47,200.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	47,200.00

Tax year 2014, 2015

Land	37,800.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	37,800.00

For Block 513, Lot 13, the total assessment of the Subject Property was:

Tax year 2010, 2012, 2013

Land	827,800.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	827,800.00

Tax year 2014, 2015, 2016

Land	662,200.00
<u>Improvements</u>	<u>0.00</u>
TOTAL	662,200.00

For Block 555, Lot 8, the total assessment of the Subject Property was:

Tax year 2010, 2011, 2012, 2013

Land	1,301,700.00
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<u>Improvements</u>	0.00
TOTAL	1,301,700.00

Tax year 2014, 2015, 2016

Land	1,041,400.00
<u>Improvements</u>	0.00
TOTAL	1,041,400.00

For Block 566, Lot 1, the total assessment of the Subject Property was:

Tax year 2010, 2011, 2012, 2013

Land	11,861,800.00
<u>Improvements</u>	0.00
TOTAL	11,861,800.00

Tax year 2014, 2015, 2016

Land	9,489,400.00
<u>Improvements</u>	0.00
TOTAL	9,489,400.00

For Block 567, Lot 29, the total assessment of the Subject Property was:

Tax year 2010, 2012, 2013

Land	5,061,000.00
<u>Improvements</u>	0.00
TOTAL	5,061,000.00

Tax year 2014, 2015

Land	4,048,800.00
<u>Improvements</u>	0.00
TOTAL	4,048,800.00

Tax year 2016

Land	4,048,400.00
<u>Improvements</u>	0.00
TOTAL	4,048,400.00

For Block 569, Lot 1, the total assessment of the Subject Property was:

Tax year 2010, 2012, 2013

Land	974,400.00
<u>Improvements</u>	0.00
TOTAL	974,400.00

Tax year 2014, 2015, 2016

Land	779,500.00
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<u>Improvements</u>	<u>0.00</u>
TOTAL	779,500.00

At trial,<sup>6</sup> both parties utilized the services of a licensed real estate appraiser to render an opinion of value for the Subject Property for each year at issue. Newark's appraiser additionally worked in conjunction with a certified forester to render his opinion of value.<sup>7</sup> The parties stipulated that each licensed real estate appraiser was qualified to testify as an expert,<sup>8</sup> and each expert appraiser prepared a written report that was entered into evidence without objection.

Both parties agreed that the key issue in this matter was the highest and best use determination of the Subject Property. Newark's expert appraiser concluded that the highest and best use was for "woodland management," and sale of the Subject Property for the purpose of harvesting timber for sale. The expert appraiser looked to the Farmland Assessment program, the sales of deed-restricted farmland, and the annual reports of the State Farmland Evaluation Advisory Committee for assistance in determining what the Subject Property could be sold for on October 1 of each of the pre-tax years.

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<sup>6</sup> During trial, Newark attempted to bring settlement negotiations into the record claiming that the matter had been settled. The court allowed limited testimony for the sole purpose of determining whether a settlement had in fact been reached and was enforceable. The court is satisfied that there was no settlement between the parties and the testimony was not considered in rendering this opinion.

<sup>7</sup> Newark's expert appraiser incorporated a report prepared by the certified forester when rendering his opinion of value for the Subject Property. The certified forester offered testimony as an expert, without objection, as to his conclusions expressed in his report that were utilized by Newark's expert appraiser.

<sup>8</sup> Newark's expert appraiser testified that he had no prior experience appraising agricultural properties or in using agricultural properties as comparable sales. Jefferson's expert appraiser developed a specialty in appraising vacant land for open space preservation, acquisitions, and for a combination of other purposes. He is also certified as a Green Acres appraiser as well as an appraiser for the State Agriculture Development Committee.



Jefferson's sole witness, its expert real estate appraiser, considered the encumbrances on the Subject Property, and concluded that its highest and best use would be for active/passive recreation, determining the most probable buyer to be a land preservation group or governmental agency.

Both expert appraisers determined that the comparable sales approach was the most appropriate method of valuation in these matters.<sup>9</sup>

Jefferson's expert appraiser determined varying values for each lot based upon a per acre valuation that varied from \$4,500 to \$6,500 per acre. According to him, the Subject Property's true value on the relevant valuation dates was:

For Block 575, Lot 6;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$101,500.00	2009	October 1, 2008

For Block 571, Lot 3;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$22,000.00	2009	October 1, 2008

For Block 513, Lot 1;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$52,000.00	2009	October 1, 2008
\$52,000.00	2010	October 1, 2009

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<sup>9</sup> Newark's expert appraiser also used the revised income approach as a gauge to determine the validity of the value he concluded using the comparable sales approach. With respect to the income approach, however, Newark's expert appraiser recognized during his direct and redirect testimony that his income approach was somewhat speculative. Notwithstanding, he believed it was a reasonable evaluation of the potential forestry income and was capitalized in a manner consistent with the prior decisions of this court.

\$54,000.00	2011	October 1, 2010
\$54,000.00	2012	October 1, 2011
\$56,600.00	2013	October 1, 2012
\$61,400.00	2014	October 1, 2013
\$66,000.00	2015	October 1, 2014
\$71,000.00	2016	October 1, 2015

For Block 513, Lot 13;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$830,000.00	2010	October 1, 2009
\$870,000.00	2011	October 1, 2010
\$910,000.00	2012	October 1, 2011
\$950,000.00	2013	October 1, 2012
\$990,000.00	2014	October 1, 2013
\$1,035,000.00	2015	October 1, 2014
\$1,075,000.00	2016	October 1, 2015

For Block 555, Lot 8;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$1,300,000.00	2010	October 1, 2009
\$1,365,000.00	2011	October 1, 2010
\$1,430,000.00	2012	October 1, 2011
\$1,500,000.00	2013	October 1, 2012
\$1,560,000.00	2014	October 1, 2013
\$1,630,000.00	2015	October 1, 2014

\$1,700,000.00	2016	October 1, 2015
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For Block 566, Lot 1;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$10,675,000.00	2010	October 1, 2009
\$10,675,000.00	2011	October 1, 2010
\$11,270,000.00	2012	October 1, 2011
\$11,270,000.00	2013	October 1, 2012
\$11,860,000.00	2014	October 1, 2013
\$12,450,000.00	2015	October 1, 2014
\$13,050,000.00	2016	October 1, 2015

For Block 567, Lot 29;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$4,550,000.00	2010	October 1, 2009
\$4,550,000.00	2011	October 1, 2010
\$4,800,000.00	2012	October 1, 2011
\$4,800,000.00	2013	October 1, 2012
\$5,060,000.00	2014	October 1, 2013
\$5,300,000.00	2015	October 1, 2014
\$5,570,000.00	2016	October 1, 2015

For Block 569, Lot 1;

<b>Amount</b>	<b>Tax Year</b>	<b>Valuation Date</b>
\$975,000.00	2010	October 1, 2009
\$1,025,000.00	2011	October 1, 2010

\$1,070,000.00	2012	October 1, 2011
\$1,120,000.00	2013	October 1, 2012
\$1,170,000.00	2014	October 1, 2013
\$1,220,000.00	2015	October 1, 2014
\$1,265,000.00	2016	October 1, 2015

If accepted by the court, the conclusions of value reached by Jefferson's expert appraiser would result in a reduction in the assessments for the parcels of the Subject Property under appeal for the 2009 tax year, sustaining the assessments on the Subject Property for tax years 2010, 2011, 2012, and 2013, and increasing the assessments on the Subject Property for tax years 2014, 2015 and 2016.<sup>10</sup>

In contrast, Newark produced four witnesses. One witness was a Director of the Newark Watershed Corporation for a number of years, who provided testimony as to some history, characteristics, and certain aspects of the Subject Property, and also provided certain information to Newark's expert appraiser. The Assessor testified as to the assessment of the Subject Property. The aforementioned certified Forester testified as an expert and consulted with Newark's expert appraiser in the preparation of his report. Newark's expert appraiser was its primary witness.

Newark's expert appraiser concluded that the Subject Property's true value on all relevant valuation dates was \$1,500.00 per acre, which would result in reductions in the tax assessments for all years at issue.<sup>11</sup>

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<sup>10</sup> When applying the Chapter 123 ratio.

<sup>11</sup> Assigning \$1,500 per acre, Newark's appraisal expert valued the entire Subject Property at \$6,054,000 for all the disputed tax years. He made no differential adjustment during any of the seven years under appeal for time or market conditions and concluded that there was no variation in the values of the properties during the years under appeal.

## **CONCLUSIONS OF LAW**

### **A. Presumption of Validity**

If a motion for involuntary dismissal is not made by the defendant at the conclusion of the plaintiff's proofs, then the court must first determine whether the presumption of validity has been overcome before proceeding to decide the appeal based on weighing and analyzing the evidence. See MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 377 (Tax 1998).

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 been long 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.

[Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citations and internal quotation marks omitted).]

Original assessments fixed by a municipal assessor are entitled to a presumption of validity based upon the view that it is presumed that, in tax matters, “governmental authority has been exercised correctly and in accordance with law.” Ibid. (citation omitted). 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. Twp. of Bernards, 111 N.J. 507, 517 (1988) (citation omitted).

The Tax Court may make an independent finding of value “[o]nly if it finds that the presumption has been overcome by cogent evidence, or there are sufficient collateral grounds, such as an assessment totally unrelated to true value or one derived from a patently arbitrary and capricious assessment methodology.” Pantasote Co., 100 N.J. at 417. If the court finds that “the plaintiff has failed to overcome the presumption, and the defendant has not asserted a counterclaim or presented evidence which, on its face, could warrant relief under N.J.S.A. 54:51A-6(a), then the court should enter judgment affirming the assessment.” MSGW Real Estate Fund, LLC, 18 N.J. Tax at 378-79.

In order to overcome the presumption, the plaintiff’s evidence “must be based on sound theory and objective data, rather than on mere wishful thinking.” Id. at 376 (internal quotation marks omitted). Also, 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.” W. Colonial Enters., LLC v. City of E. Orange, 20 N.J. Tax 576, 579 (Tax 2003) (citation and internal quotation marks omitted), aff’d, 21 N.J. Tax 590 (App. Div. 2004).

At the close of Newark’s proofs, Jefferson moved to dismiss the complaints for failure to sustain the burden of proof. The court denied the motion, finding that the testimony and report of Newark’s expert appraiser, if taken as true, raises a debatable question as to the correctness of the assessments in each tax year in issue.

Notwithstanding, the court’s ruling on overcoming the presumption of validity does not equate to a finding by the court that the assessments of the various parcels of the Subject Property are erroneous. Once the presumption has been overcome, “[t]he 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. Twp. of Edison, 127 N.J. 290, 312

(1992) (citation and quotation omitted), *aff'd*, 10 N.J. Tax 153 (Tax 1988). “[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 (citation omitted).

Accordingly, the court will evaluate and weigh the evidence presented to determine if Newark has met the requisite burden of proof to justify any modification to the tax assessments of the Subject Property.

### **B. Highest and Best Use**

The court must determine the highest and best use of the property in order to compute the true value of the property. “Any parcel of land should be examined for all possible uses and that use which will yield the highest return should be selected.” *Inmar Assocs., Inc. v. Twp. of Edison*, 2 N.J. Tax 59, 64 (Tax 1980) (citation omitted). “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. Twp. 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.*, 10 N.J. Tax at 161.

In *Clemente v. Twp. of South Hackensack*, the court found that:

The definition of highest and best use contained in *The Appraisal of Real Estate*, a text frequently used by this court as a source of basic appraisal principles, has remained relatively constant for all of the years under appeal. Highest and best use is defined as . . . “[t]he reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.” Appraisal Institute, *The Appraisal of Real Estate*, 22 (13th ed. 2008).

The highest and best use analysis requires sequential consideration of the following four criteria, determining whether the use of the subject property is: 1) legally permissible; 2) physically possible; 3) financially feasible; and 4) maximally productive. . . . Implicit in this analysis is the assumption that the proposed use is market-driven; in other words, that it is determined in a value-in-exchange context and that there is a market for such use. . . . A highest and best use determination is not based on value-in-use because the determination is a function of property use and not a function of a particular owner's use or subjective judgment as to how a property should be used. . . . 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. . . . Further, the actual use is a strong consideration in the analysis. . . .

Highest and best use is not determined through subjective analysis by the property owner. . . . The proper determination of highest and best use requires a comprehensive market analysis to ascertain the supply and demand characteristics of alternative uses. . . . Additionally, the proposed use must not be remote, speculative, or conjectural. . . . If a party seeks to demonstrate that a property's highest and best use is other than its current use, it is incumbent upon that party to establish that proposition by a fair preponderance of the evidence. . . . Property should be assessed in the condition in which it is utilized and the burden is on the person claiming otherwise to establish differently. . . .

Highest and best use often comprises more than one use for a parcel of land or an improved property. . . . One parcel of land may serve many functions. . . . A single building can have multiple uses as well. . . . The appraiser is guided: if the highest and best use of a property is for more than one use on the same parcel or in the same building, the appraiser must estimate the contributory value of each use. . . . The highest and best use conclusion should specify the optimal use (or uses), when the property will be put to this use or achieve stabilized occupancy, and who would be the most likely purchaser or user of the property.

[27 N.J. Tax 255, 267-269 (Tax 2013), aff'd o.b., 28 N.J. Tax 337 (App. Div. 2015) (citations and internal quotation marks omitted).]

Newark's expert appraiser determined that the residual rights of the use of the Subject Property, after the conservation easements, consisted of three potential uses: (1) conservation; (2)



timbering; and (3) recreation.<sup>12</sup> He concluded that the highest and best use of the Subject Property is for woodland management (timbering operations).<sup>13</sup> The expert appraiser concluded in his report that:

After considering all potential alternatives, I determined woodland management represented the most viable economic use for parcels no. 1-6 & 8 as the demand for solid wood products and paper is expected to continue looking forward into the foreseeable future. The most likely buyers of standing timber ready for harvest include loggers, saw or veneer mill timber buyers and/or brokers of logs or standing timber.

In other words, Newark's expert appraiser determined that the highest and best use of the Subject Property was for the purpose of harvesting the property for wood and selling it to loggers, sawmills, timber buyers, and the like. In determining this highest and best use, he determined that such buyers would buy the actual fee of the Subject Property rather than buying timber or lumbering rights. He concluded that Newark could obtain a financial return that exceeded its expenses by engaging in the kind of forestry management program contemplated by the sale of its development rights.<sup>14</sup>

The expert appraiser testified he then searched the State of New Jersey's records known as "MOD-IVs" to see if there were any sales of land that sold for timbering purposes in the State

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<sup>12</sup> Newark's expert appraiser did not value the Subject Property with conservation as the highest and best use.

<sup>13</sup> Even though Newark hired a certified forester to assist the real estate expert appraiser, the expert appraiser stated that he reached the determination that timbering was the highest and best use prior to talking to the forester.

<sup>14</sup> Newark's witness, a certified forester, estimated that the forests that make up most of the Subject Property would produce a net income of \$105 per acre per year or \$1050 per acre over a ten-year period.

of New Jersey. He could not find one sale in the State of New Jersey of land that sold for timbering purposes and was unaware of any other appraisals in the State of New Jersey that determined the highest use of any property to be timbering. Moreover, he could not provide any market study or estimate of demand of land that sold for timbering purposes in the State of New Jersey.

Newark's fact witness, a licensed landscape architect who was associated as a Director of the Newark Watershed Corporation for a number of years and had a historical background concerning the property, consulted with Newark's expert appraiser in preparation of the appraisal report. He testified that he gave some historic information to Newark's expert appraiser concerning the uses of the Subject Property. He stated that, based upon his general knowledge, forestry in the State of New Jersey was pretty much a dead industry.

Similarly, Jefferson's expert appraiser offered testimony that in twenty-four years as an appraiser, he has never seen a sale in the State of New Jersey where the property was purchased solely for timber value. Jefferson's expert appraiser further expressed that in reaching a conclusion regarding the highest and best use of a property, there must be a market for that particular use and when there are no sales in the market, he is unable to conclude that there is any demand.

"In order to constitute a particular use as the property's highest and best use, the selected use in a value in exchange context must be a probable use for which there must be a demand in the relevant market." WCI-Westinghouse v. Twp. of Edison, 7 N.J. Tax 610, 616 (Tax 1985), *aff'd*, 9 N.J. Tax 86 (App. Div. 1986). "It is not the mere opinion of appraisers as to highest and best use that is important, but rather the activities of buyers and sellers in the market place." Linwood Props., Inc. v. Borough of Fort Lee, 7 N.J. Tax 320, 327 (Tax 1985). "[A] proper highest and best use analysis requires a comprehensive market analysis to ascertain the supply and demand characteristics of alternative uses." Clemente, 27 N.J. Tax at 272. "The determination results from

the appraiser's judgment and analytical skill, i.e., that the use determined from analysis represents an opinion, not a fact to be found." Linwood Props., Inc., 7 N.J. Tax at 327. "[A]n expert's opinion is only as good as the data upon which the expert relied." Greenblatt v. City of Englewood, 26 N.J. Tax 41, 54-55 (Tax 2010).

The court cannot accept the conclusions and opinions of Newark's expert appraiser without any persuasive explanation and supporting market data that establish a clear demand for timberland in New Jersey. The highest and best use of a property "is shaped by the competitive forces within the market where the property is located. Therefore, the analysis and interpretation of highest and best use is an economic study of market forces focused on the subject property." Entenmann's Inc. v. Borough of Totowa, 18 N.J. Tax 540, 545 (Tax 2000) (quoting Appraisal Institute, The Appraisal of Real Estate 298 (11<sup>th</sup> ed. 1996)). In the court's view, once Newark's expert appraiser determined that there were no sales of land in the State of New Jersey for the purposes of timbering, he should have eliminated the timbering as a potential highest and best use for the Subject Property and considered other uses for which there was a demand in the marketplace. Accordingly, the court finds the highest and best use conclusions and opinions of value derived therefrom by Newark's expert appraiser in this regard neither reliable nor credible.

### **C. Newark's Expert Appraiser's Comparable Sales Approach**

Newark's expert appraiser concluded that the best method for determining the value of the Subject Property was the sales comparison approach. The sales comparison approach renders market value "by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract." Appraisal Institute, The Appraisal of Real Estate, 377 (14<sup>th</sup> ed. 2013).

However, the sales comparison approach conducted by Newark's expert appraiser is seriously flawed given that it was predicated on his conclusion of the highest and best use of the Subject Property, which this court found to be without merit. The Appraisal of Real Estate cautions:

To determine highest and best use, the appraiser must analyze data, not just compile it. . . . It is critical that a careful highest and best use analysis precede the application of the approaches to value. Otherwise, there is a high likelihood that serious errors will be made in the valuation process.

[Appraisal Institute, The Appraisal of Real Estate, 277 (13th ed. 2008).]

Because Newark's expert appraiser concluded a highest and best use of the Subject Property for timbering, but was unable to find any sale of property in New Jersey for timbering, he decided to use as comparable sales, twenty properties that were restricted for agricultural purposes (Farmland Assessment). Through cross-examination, Newark's expert appraiser revealed that his twenty sales of restricted agricultural properties only produced crops.<sup>15</sup> None of the alleged comparable properties produced timber. Still, Newark's expert appraiser concluded that the sales of these properties were sufficiently similar to provide a useful comparison to the sale of the Subject Property for his determination that the highest and best use was for timber value.<sup>16</sup>

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<sup>15</sup> Newark's expert appraiser testified that he did not know what type of crops were planted on any of the twenty comparable properties.

<sup>16</sup> Newark's expert appraiser admitted that a type of crop growing on a farm would affect the price of the sale of the farm. Yet, he stated that a type of crop growing on the comparable farms did not make a difference in determining the value of the Subject Property. The court disagrees. Newark's expert appraiser also testified that he did not make a determination that any of the buyers of these farmlands would have also bought timber land like the Subject Property.

“Potentially comparable properties that do not have the same highest and best use are usually eliminated from further analysis.” The Appraisal of Real Estate, at 139 (13<sup>th</sup> ed. 2008). Under the sales comparison approach, property selection cannot be undertaken in a vacuum without regard to a property’s highest and best use. “An appraiser must recognize the difference between the highest and best use of a comparable and the subject, and determine if the sale is an appropriate comparable.” Clemente, 27 N.J. Tax at 273. A “judge may reject a property as a comparable solely because it has a different highest and best use.” City of Atlantic City v. Boardwalk Regency Corp., 19 N.J. Tax 164, 189 (App. Div. 2000). In Newport Center v. City of Jersey City, 17 N.J. Tax 405, 408 (Tax 1998), the court excluded two comparable sales from evidence since they were “so dissimilar to [the] highest and best use” for the subject property “as to render those sales of no assistance to the court in valuing the [subject property].”

The court gives little weight to the twenty allegedly comparable farmland assessed properties chosen by Newark’s expert appraiser, as they were selected in the absence of a proper highest and best use analysis. In the court’s view, Newark’s expert appraiser’s entire sales approach is inapplicable as a matter of law and of little use in attempting to determine the true or fair market value of the Subject Property as of the valuation dates involved herein.

#### **D. Additional Issues with Newark’s Expert Appraiser’s Sales Comparison Approach**

Out of the twenty allegedly comparable farmlands offered by Newark’s expert appraiser, only three were located in North Jersey. All of the other alleged comparable farmlands were located in Southern New Jersey counties, including Salem, Gloucester, Cumberland, Burlington, Atlantic and Ocean. Newark’s expert appraiser used the State Farmland Evaluation Advisory Committee Report to make location adjustments between the Subject Property and his proposed

comparable sales.<sup>17</sup> He examined the relative differences in productivity values between Morris County and the counties in which his alleged comparables were located. He, however, failed to explain why the productivity values between counties should be the sole factor in determining the location adjustments.<sup>18</sup> He also failed to attribute location adjustments based upon the physical location of any of the properties.

Newark's expert appraiser used the information, sales of farmland, located on the State Agriculture Development Committee's website, for his report, but he failed to verify those comparable sales. He testified that he did not verify or discuss any information about any of the specific sales with any of the parties involved in the transactions. In VBV Realty, LLC v. Twp. of Scotch Plains, 29 N.J. Tax 548 (Tax 2017), the court concluded that:

An appraiser must verify the integrity of the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length market considerations. . . . During the data verification process an appraiser must elicit additional information about the property such as buyer motivation, economic characteristics, [and] value component allocations . . . to ensure that comparisons are credible. . . . The process demands an appraiser verify information with a party to the transaction to ensure its accuracy and gain insight into the motivation behind each transaction. . . . An appraiser must endeavor to confirm statements of fact with the principals to the transaction . . . or with brokers, closing agents, or lenders involved.

[Id. at 561 (citation and internal quotation marks omitted).]

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<sup>17</sup> His location adjustments ranged from zero to twenty percent.

<sup>18</sup> Farmland productivity value could be highly affected by the types of soils. Newark's expert appraiser testified that soil is a very important factor in determining the value of farmland properties. While the State Agriculture Development Committee described the soils of the twenty proposed comparable farmlands as "prime," "statewide," and "unique," Newark's expert appraiser considered all twenty comparable farmlands to be "prime" and the Subject Property to be "not prime." In fact, he acknowledged during his testimony that he did not understand what was meant by "statewide" and "unique." The only adjustment for differing productivity that Newark's expert appraiser made was a straight ten-percent between all the sales and the Subject Property.

In VBV Realty, LLC, “plaintiff’s appraiser relied exclusively on information he gathered from the New Jersey Association of County Tax Boards . . . website, Garden State Multiple Listing Service . . . , public tax records, Vitalgov.net, Costar, and discussions he had with municipal tax assessors.” Id. at 562. He had not consulted with the parties who possessed first-hand knowledge of the sale transactions. Ibid. Therefore, the court determined that the plaintiff’s appraiser “failed to abide by the fundamental tenets of the sales comparison approach and the requirements mandated by our Legislature under N.J.S.A. 2A:83-1,” id. at 564, and gave little weight to the alleged comparable sales.

Applying the analyses in VBV Realty, LLC to the facts in the present matter, this court finds that Newark’s expert appraiser failed to perform any verification of his comparable sales. Therefore, even if the court were to accept the Newark’s highest and best use, because Newark’s expert appraiser failed to verify his comparable sales, the court accords little weight to his sales comparison approach and the value conclusions therefrom.

#### **E. Jefferson’s Expert Appraiser’s Valuation**

Considering that the Subject Property is encumbered by the conservation easements, Jefferson’s expert appraiser concluded that the highest and best use of the Subject Property is for active and passive recreation. He stated that there is currently adequate demand for active and passive recreation uses in the area where the Subject Property is located. He concluded that there would not be any reasonably probable use of the site that would generate a higher residual land value than active and passive recreational use due to the easements. In his opinion, the most probable buyer is a land preservation group or governmental agency.

Jefferson’s expert appraiser employed the sales comparison approach to value the Subject Property. He selected sixteen properties as comparable sales where, with the exception of sale

number 10, the purchaser had the same motivation to utilize the land for active and passive recreational purposes and to preserve the property in perpetuity, regardless of whether the property had some limited development potential.<sup>19</sup>

Even if the court accepts Jefferson's expert appraiser's opinion of highest and best use as credible, given the significant differences between the Subject Property and the comparable properties, the court concludes that the conclusion of value of the Subject Property rendered by Jefferson's expert appraiser is not persuasive. In the court's view, the presence of a permanent conservation easement has greater impact than various restrictions that exist on the comparable properties.<sup>20</sup>

Comparable Properties Selected by the Jefferson's Expert Appraiser		
Grantor / Grantee	Zone	Restrictions/Characteristics
Mt. Olive Baptist Church / Mt. Olive Township	Residential	Soil characteristics range from moderate to severe with regard to development potential; the site is not serviced by public sewer or public water; the municipality purchased the property with intention to deed restrict the property.
New Jersey Water Company, Inc. / Borough of Chatham	Manufacturing	The site contains freshwater wetlands and is located within the flood zone; limited development potential due to the physical constraints; the municipality purchased the property for preservation purposes.
Robert F. Giancaterino / NJDEP	Industrial	Un-developable, due to various physical constraints including steep slopes and limited access; the majority of the site is wooded, containing steep slopes and various

<sup>19</sup> Jefferson's expert appraiser testified that none of his sixteen comparable sales were purchased to prevent development potential. According to his report, some of the sales were executed to deed restrict the property.

<sup>20</sup> Jefferson's expert appraiser concluded that the easements on the Subject Property trump all of the other restrictions because they are more restrictive in what can or cannot be done with the Subject Property.



		rock outcrops; the property was encumbered with freshwater wetlands and located within a flood plain; the NJDEP purchased this site for active and passive recreational purposes.
Robert J. Hilbert / Christopher & Kellie Hinds	Conservation	The site is encompassed by areas of wetlands.
Patricia Y.H., Carolyn Y. Schaal, and David Young IV / Morris County Park Commission	Residential	The properties were purchased for active and passive recreation; the properties had no development potential due to limited access, steep slopes and being located in the Highlands Preservation Area.
Christopher & Kellie Hinds / United States of America	Conservation	The site is encompassed by areas of wetlands.
Paulist Fathers, Inc. / NJDEP	Rural Conservation District / Rural Residential (Sparta)	The property is located in the Highlands Preservation Area; constrained by wetlands, steep slopes, a pond, and Category-1 waters.
Dayton G. Geary / County of Morris for Park Purposes	Residential	The property contains varying topography including steep slopes and is mostly wooded; the property is located in the Highlands Preservation Area and was purchased for active and passive recreational use.
Baker Residential Limited Partnership / The Trust for Public Land	Planned Adult Residential Community	The property contains varying topography including steep slopes and areas of potential freshwater wetlands; the property was purchased for active and passive recreational purposes; the purchaser intended on deed restricting the property for active and passive recreation.
Tri-Farms, Inc. / John & Deborah Van Vugt	Residential	The property was subject to a farmland preservation easement on 560 acres of the property with two, three-acre exception areas for the purposes in conjunction with existing agricultural uses.
The Trust for Public Land / Township of Jefferson	Planned Adult Residential Community	The property is located in the Highlands Preservation Area and was purchased for active and passive recreational use.

Lynne R. Timothy / The Land Conservancy of New Jersey	Residential	The property contains areas of varying to steep topography which restricts the development potential of the site in addition to the presence of freshwater wetlands and/or wetland buffers in the southwestern corner of the property; the property is located within the Highlands Preservation Area.
Marjorie Jantzen / County of Morris	Residential	The property contains varying topography including steep slopes and is mostly wooded; the property is located in the Highlands Preservation Area and was purchased for active and passive recreational use.
James Dock, Trustee / County of Morris	Residential	The property was purchased for active and passive recreation as there was no development potential due to limited access, steep slopes and being located in the Highlands Preservation Area.
Mary Goedeke / County of Morris	Residential	The property contains varying topography including steep slopes and is mostly wooded; the property is located in the Highlands Preservation Area and was purchased for active and passive recreational use.
King Enterprises / County of Morris	Residential	The property contains varying topography including steep slopes and is mostly wooded; the property is located in the Highlands Preservation Area and was purchased for active and passive recreational use.

Jefferson's expert appraiser submits that because comparable properties have no development potential like the Subject Property, an adjustment to their sale prices is not required. The court finds, however, that given the differences in the magnitude of restrictions between the easements of the Subject Property and the various restrictions on the comparable properties, there should have been additional adjustments in determining the value of the Subject Property. "[Comparable properties] need not match exactly as do the parts of a jig-saw puzzle, nor is it

necessary to compare for value each and every square rod or acre in this vast tract,” City of Newark v. Twp. of Vernon, 1 N.J. Tax 90, 95 (Tax 1980) (citation and quotation omitted), aff’d, 179 N.J. Super. 332 (App. Div. 1981), however, “property should be valued in the actual condition in which the owner holds it.” Hackensack Water Co. v. Borough of Old Tappan, 77 N.J. 208, 213-14 (1978). See, also, City of Newark, 1 N.J. Tax at 100 (“Where vacant land is zoned for residential or commercial or industrial use, it may be successfully argued that the differences in the permitted uses have no significant effect on value. That argument cannot be made here where the critical issue deals not with the different type of permitted uses but with use and nonuse”).<sup>21</sup>

Unlike the Subject property, some of the comparable properties selected by the Jefferson’s expert appraiser have, at minimum, limited development potential. There is no logical reason that a seller would receive an equal dollar amount for a property that has greater development potential and more possible uses. Accordingly, the court finds that Jefferson’s expert appraiser’s valuation is unreliable.

[A] court may accept an expert’s opinion, may reject an expert’s opinion in total, or may accept part of an expert’s opinion and reject other parts of it. The Judiciary and fact-finding bodies are not bound by the opinions of expert witnesses. The weight to be given to an expert’s opinion depends especially upon the facts and reasoning which are offered as the foundation of his opinion. The weight and value of expert testimony are for the trier of the facts. An expert’s opinion may be adopted in whole or in part or completely rejected.

[City of Atlantic City v. Ginnetti, 17 N.J. Tax 354, 361-62 (Tax 1998) (citations omitted), aff’d, 18 N.J. Tax 672 (App. Div. 2000).]

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<sup>21</sup> The court also finds that one of the adjustments for differences between the comparable properties and the Subject Property, i.e. upward adjustment for the comparable properties for having a road frontage, is erroneous. See City of Newark, 1 N.J. Tax at 99 (“While [road frontage may increase value] to lands zoned for commercial-industrial-residential use, I fail to find its applicability to lands zoned for conservation. More logical in such cases is the contrary argument because, after all, is it not the more remote-type property that is of the greatest interest to conservationists?”).

## **CONCLUSION**

The court rejects the value opinions of both expert appraisers. Newark's expert appraiser's opinion of highest and best use was not credible and his valuation methodologies were flawed. While Newark may have overcome the presumption of the correctness of the assessments, it failed to persuade the court to accept its proofs. "[T]he burden of proof remain[s] on the taxpayer throughout the entire case, and in the face of defendant's proofs to demonstrate that the judgment under review [is] incorrect." Ford Motor Co., 127 N.J. at 314-15. Likewise, Jefferson's expert appraiser's valuation conclusion was not credible.

"When the court rejects the ultimate conclusions as to true value proffered by the parties' experts, it should make an independent determination of true value on the basis of those portions of the experts' testimony which the court finds credible." Pennwalt Corp. v. Twp. of Holmdel, 4 N.J. Tax 51, 55-56 (Tax 1982) (emphasis added). For the reasons set forth above, there is insufficient credible evidence for the court to make an independent determination of true value. Consequently the assessments are affirmed. Final judgments shall be issued consistent with this opinion.