

HOT TOPICS 2022



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TREATMENT OF TENANT IMPROVEMENTS AND LEASING COMMISSIONS

- Include in the Expenses or Reflected in the Cap Rate?



Net Operating Income Formula

$$\begin{array}{r} \text{Potential Rental Income} \\ - \text{Vacancy and Credit Losses} \\ \hline \text{Effective Rental Income} \\ + \text{Other Income} \\ \hline \text{Gross Operating Income} \\ - \text{Operating Expenses} \\ \hline \text{Net Operating Income} \end{array}$$

3 UNIVERSITY PLAZA SPE, LLC V. CITY OF HACKENSACK

2019 RULING

Market Rent		\$21.75/Sq. Ft.
Tenant Electric		\$1.75/Sq. Ft.
Vacancy & Collection		14% of PGI
Operating Expenses		7.50/Sq. Ft.
Management		3% of EGI
Reserves for Replacements		1.5% of EGI
Leasing Commissions		5% of EGI
Tenant Improvement Allowance		\$2.17/Sq. Ft.
Base Captilization Rate		6.65%

FREEZE ACT



Freeze Act

Statute

- Section 18:12A-1.13 - Freeze Act **(a)** When an assessment is subject to the "freeze" provisions of 54:51A-8 or 54:3-26, there shall be no increase in the assessment for any tax year subject to such "freeze" except upon petition first filed with and granted by the county board of taxation or the Tax Court. **(b)** If the taxing district alleges that there has been a change in the value of the property since the date of a county board of taxation judgment that is subject to the Freeze Act, the taxing district shall file a petition with the board together with proof of service thereof upon the owner of the property to increase the amount of the assessment. Such petition shall specifically set forth the nature of the changes relied upon as a basis for the claim that there has been a change in value of the property. A copy of the petition shall be served upon the owner of the subject property prior to the filing of the petition with the board. **(c)** A judgment entered by a county board of taxation which is not further appealed by a party shall be deemed to be binding and conclusive upon the municipality and municipal tax assessor for the tax year in question and the two tax years immediately thereafter unless a revaluation, reassessment, or change in value has occurred subsequent to the assessing date. If as of October 1 of the pre-tax year, the property in question has been the subject of an addition qualifying as an added assessment, a condominium or cooperative conversion, a subdivision or a zoning change, the conclusive and binding effect of such judgment shall terminate with said pre-tax year. **1.** If the assessor increases the assessment or fails to reflect on the tax duplicate a county board of taxation or Tax Court judgment issued prior to the final preparation of the tax duplicate in either of the two years following the year for which the judgment of the county board of taxation was rendered, and if said judgment is a final judgment not further appealed, the burden of proof shall be on the taxing district to establish that the assessor acted reasonably in increasing the assessment. If the county board of taxation finds that the assessor did not act reasonably in increasing the assessment or failed to reflect said judgment on the tax duplicate, the county board of taxation shall award to the taxpayer reasonable counsel fees, appraisal costs, and other costs which shall be paid by the taxing district. **(d)** A taxpayer may waive the application of the Freeze Act for one or both of the tax years affected and such waiver of the freeze shall be reflected in a judgment entered by the county board of taxation. **(e)** A taxpayer may apply to the county board of taxation within a reasonable period of time upon proper notice to the municipality seeking the enforcement of the Freeze Act with regard to a judgment previously entered by the county board of taxation. *N.J. Admin. Code § 18:12A-1.13*
- Amended by 49 N.J.R. 271(a), effective 2/6/2017

Summary

- Covers judgements from County Board of Taxation and the Tax Court of New Jersey
- Notably, this could also include an affirmance. Which could matter in an annual reassessment town if the market is appreciating.
 - Language carves out application if revaluation or reassessment has occurred but question as to whether that applies to rolling.
 - Legislature could clarify.
 - A workaround to AWOP is to stipulate to original assessment and include language that the Freeze Act does not apply.

BLOOMINGDALE'S INC V. HACKENSACK AUGUST 2022

- At trial, Bloomingdale's counsel informed the court that in addition to issues of property valuation and discrimination, it contended that no presumption of validity should attach to the subject property's tax assessments under Hackensack's annual reassessment program. Bloomingdale's argued that because Hackensack was ineligible to conduct an annual reassessment program, all tax assessments determined in accordance therewith were invalid, arbitrary, and flawed.
- Judge bifurcated the Trial, with Presumption of Validity argument being Phase 1 and Value and Discrimination being Phase 2

BLOOMINGDALE'S ASSESSMENT HISTORY

2016 = FULL REVALUATION

2017 = ANNUAL REASSMENTS

2016	\$41,221,500
2017	\$47,969,600
2018	\$51,098,000
2019	\$70,000,000
2020	\$70,000,000

Plaintiff Argued that Assessments for 2017-2020 should revert back to 2016 Level, Calling 2017-2020 “Spot Assessing”

ANNUAL REASSESSMENTS



TOPICS OF CONCERN

- CROSS APPEALS AND ARE THEY PROPER?
- CONSEQUENCES OF UNANSWERED OR LATE ANSWERED CHAPTER 91'S
- SLIDING ECONOMY, WHAT TO EXPECT?

CROSS APPEALS

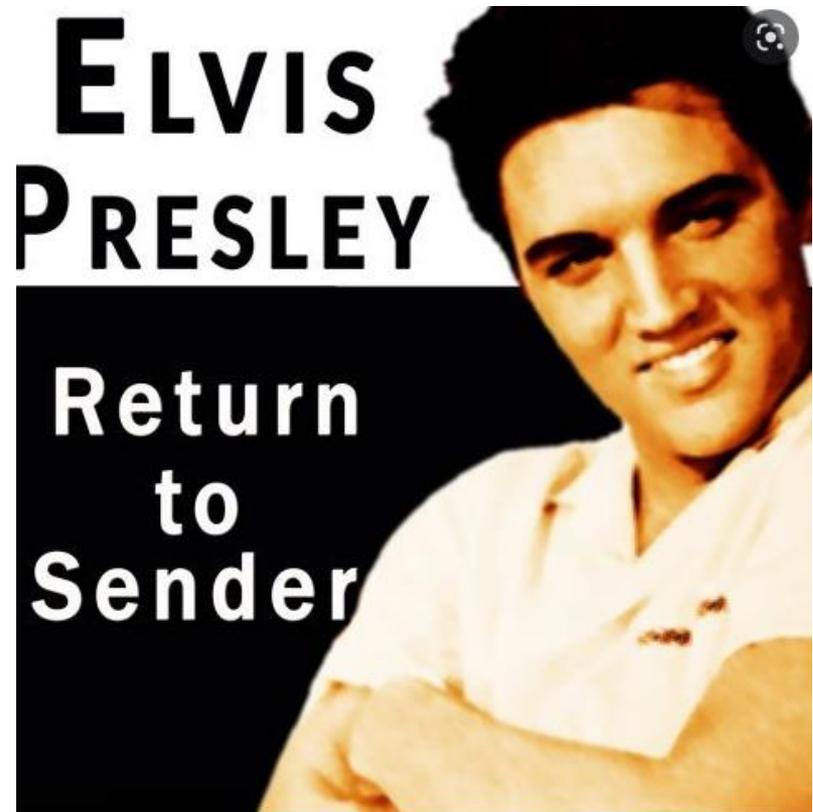
- Is it proper to appeal an assessment that was just set?
 - Who has authority to file the appeal?

CHAPTER 91 DURING REASSESSMENT

- MARKET RENT USED WITHOUT ACTUALS
- WHEN CAN CHAPTER 91 BE SUBMITTED AND APPEAL STILL HAVE STANDING?
- CONSEQUENCES:
 - ASSESSMENTS BASED UPON INACCURATE DATA

BRIGANTINE MARINE SUPERSTORE, INC. V. BRIGANTINE

- Fact Pattern- Chapter 91 sent via certified mail only, NOT also by regular mail. Certified mail was returned marked “Return to Sender-Not Deliverable As Addressed- Unclaimed”.
- Findings- The court noted that the assessor has three obligations:
 - 1) Letter must include a copy of the statute;
 - 2) Must be sent Certified Mail; and
 - 3) Must spell out the consequences of failure to comply (dismissal of appeal)
- The court then considered the Due Process Clause finding that “the touchstone of Due Process is fair notice and an opportunity to be heard. The door to tax appeals cannot be closed unless the municipality has given the property owner fair notice of the Chapter 91 obligations.”
- Holding- In certain circumstances, under a balance test (sending notice also via regular mail with the loss of right to file an appeal) the Due Process Clause can require MORE than the Chapter 91 statute because of the Constitutional requirement for notice. Further FMC Stores requires the town turn “square corners”.



Cap Rate Discussion

Interest Rates and Cap Rates

Do they always move in tandem?

- From 2013 to 2018 the average spread for cap rates to the US 10- year for “all properties” (hard to accurately track) was 290-BP. That spread has narrowed to 250-BP but is expected to normalize back to 280-300- BP.
- Current 10 Yr is sitting at 3.144
 - Five year range is low of .5 in June of 2020 and high of 3.24 in late 2018 (original taper tantrum) and June 2022.
 - Fed is widely expected to raise the Federal Funds Rate (The federal funds rate is the interest rate at which depository institutions trade federal funds (balances held at Federal Reserve Banks) with each other overnight and generally moves other rates, including the 10 yr.
- The inflow of capital to Real Estate is just as important as interest rates to help determine the rate of return that investors will accept.

Other factors

- Potential for rent increases has buoyed the market in some asset classes (industrial and multi-family).
- 1031 exchange placement peaked in Q1 2022 with some estimating 100 Billion in 1031 transactions for the year. This is up from 170 Million in 2010.
- Unprecedented speed of increase in treasuries has created uncertainty which may increase perceived risk.
 - Many commercial banks will no longer give a rate lock. Term sheet provides that rate will be determined.
- Band of investment
 - Return of debt- interest rate dependent
 - Return on equity- market appetite dependent
 - Banks may start to require higher down payments to reduce their perceived risk.