

2023 Annual Conference, Cape May

# Recent New Jersey Cases concerning Valuation

Nursing Homes, Assisted Living, Supermarkets, Public Lands,  
and Others

**Jeffrey D. Gordon, Esq.**



**Mark Pomykacz, MAI, ASA**



# Jeff Gordon

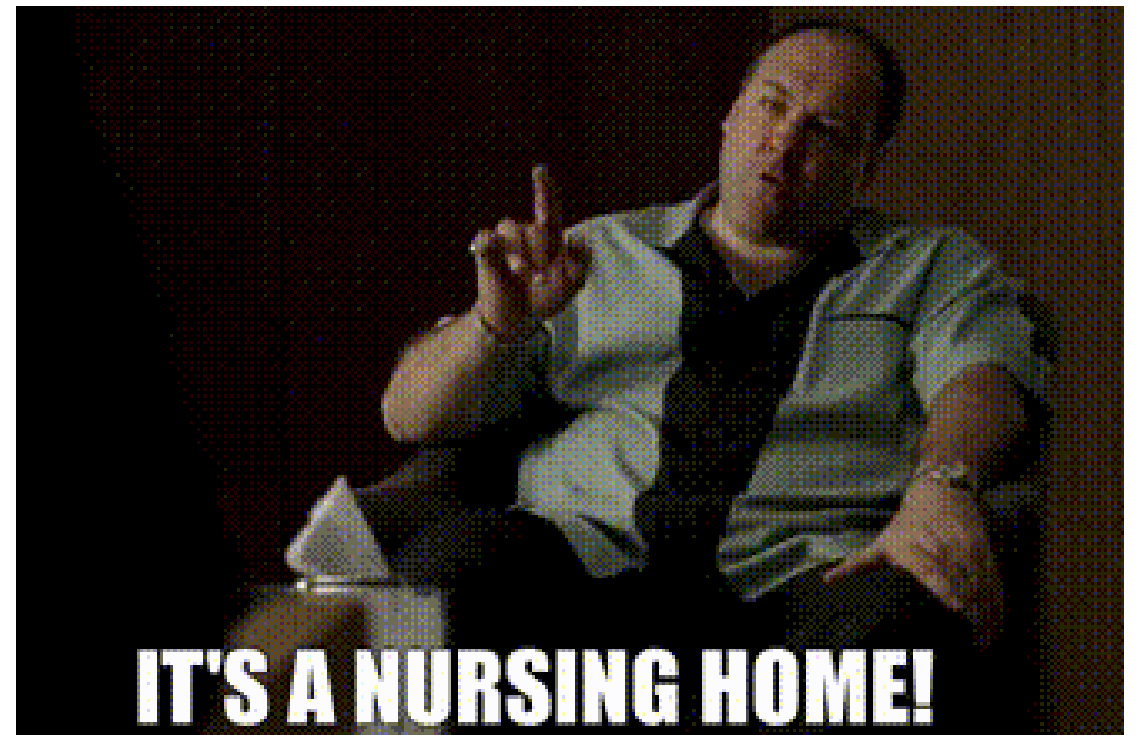
- Former New Jersey Tax Court law clerk to Presiding Judge Michael A. Andrew, Jr., retired
- Former Certified Tax Assessor
- Long time member of the New Jersey Supreme Court Committee on the Tax Court
- Chair of the Tax Section of the New Jersey State Bar Association
- Multi-term Co-Chairman of the NJSBA's Property Tax Subsection
- Managing Partner – Archer's Princeton Office
- Chairs Real Estate Tax Appeal Practice, Co-Chairs Condemnation Practice



# Mark Pomykacz

- MAI, AI-GRS, Member of the Appraisal Institute, General Review Specialist
- ASA, Accredited Senior Appraiser, American Society of Appraisers, Business Valuation
- State Certified General Real Estate Appraiser, over 20 states
- 37 years
- Specializes in the appraisal of utilities, power plants, infrastructure, specialized and complex industrial facilities, and refineries
- General Commercial Real Estate and Business Appraisal
- For use in investment decisions, tax and investor reporting, litigation and finance.

# NURSING HOMES



# Case Study One

- Nursing Homes
- Economic Obsolescence

# Nursing Homes – General Valuation

- Appraisal Issues:
  - Estimating Functional and Economic Obsolescence
- 3 Approaches, but
  - Income is preferred.
  - Sales second.
  - Cost is least. Issue with economic obsolescence.

# Nursing Homes – Valuation for Assessment

- Appraisal Issues:
  - Separating Personal Property & Intangibles
  - Estimating Economic Obsolescence
- 3 Approaches, but
  - Cost is preferred. It's a special purpose property.
  - Income and Sales are least. Issues with PP, intangibles, and eco. obs.

# Background Principles #1, Real Property Valuation Formulas

- **Value of Real Property = Real Property Income ÷ Real Property Cap Rate**
  - $V_{rp} = I_{rp} \div R_{rp}$  Income Approach
- **Value of Real Property = Net Present Value of Cash Flows, + Reversion**
  - $V_{rp} = V_{cf}'s + V_{Reversion}$
  - $V_{rp} = NPV\{V_{cf}_1 + V_{cf}_2 + V_{cf}_x + V_{reversion}\}$  Income Approach
  - Financing, mortgages, IRS & SEC, property tax assessment
- **Value of Real Property = Average Value of Adjusted Comparable Sales**
  - $V_{rp} = V_{comparables}$  Sales Approach



# Where the Problem of Allocation Arises

What if: Income comes from Real Property, Personal Property, and/or Business Income  
When  $I_o = I(rp \text{ and/or } pp \text{ and/or } bi)$ ,  
then  $I_o \div R_{rp} \neq V_{rp}$

What if: Comparable Sales include Real Property, Personal Property, and / or Business Income  
When  $V_{comp} = V(rp \text{ and/or } pp \text{ and/or } bi)$ ,  
then  $V_{comp} \neq V_{rp}$

# IRS Property Classifications

- Purpose for IRS reporting is to account for depreciation. If you don't need to depreciate something, then you don't need to classify it.
- Focus is on tangible property, Vrp, Vpp, some Vint
- Leases and some contracts are expensed as operating expenses, no need to classify for depreciation purposes
- Many other intangible are amortized over 15 years.
- So,  $V_{biz} \neq V_{rp} + V_{pp} + \text{some } V_{int}$

# Generally Accepted Accounting Principles (“GAAP”) Classifications

- Land
- Site Improvements
- Buildings
- Items of Personal Property
  - Machinery and Equipment
  - Furniture
  - Vehicles
- Intangibles
  - Contracts
  - Patents, Copyrights
  - Intellectual Property
- Good Will - The difference between the purchase price and the acquired asset's fair value.

# List of Assets that Combine Asset Types, that have aggregated income from different assets

Hotels

Nursing Homes/Skilled Nursing

Senior Housing

Data Centers

Marinas

Airports

Stadiums

Quarries

Concert Halls Event Venues

Racetracks

Casinos

Power Generation Properties

Oil Refineries

Bed and Breakfast

Telecom

Cell Towers

Restaurants

Daycare Centers

Cemetery

Funeral Home

Movie Theater

Bowling Alley

Winery/Vineyard

Farms

Sports Complexes

Gas Station

Health Club

Horse Stables

Cement/Gravel Plant

Amusement Parks

Auto Dealership

Self Storage

Bar/Nightclubs

Car Wash

Skating Rink

Golf Courses

Country Clubs

# After Algebraic Transformation, Valuation Formulas Transform to Allocation and Residuals

- **Allocation via Cost Approach**

- $VI + Vb = Vrp$
- $VI + Vb + V_{site\ improvements} = Vrp$

- **Land Residual**

- $VI = Vrp - Vb$
- $VI = Vrp - Vb + V_{site\ improvements}$

### Building Residual

$$Vb = Vrp - VI$$
$$Vb + V_{site\ improvements} = Vrp - VI$$

- **Allocation via Income Approach**

- $Ve + Vd = Vrp$

$$V_{lf} + V_{lh} - V_{lost} = V_{fs}$$

- **Equity and Debt Residual**

- $Ve = Vrp - Vd$
- $Vd = Vrp - Ve$

### Leased Fee & Leasehold Residual

$$V_{lh} = V_{fs} - V_{lf} + V_{lost}$$
$$V_{lf} = V_{fs} - V_{lh} + V_{lost}$$

# Background Principle #2

## The Balance Sheet Equilibrium

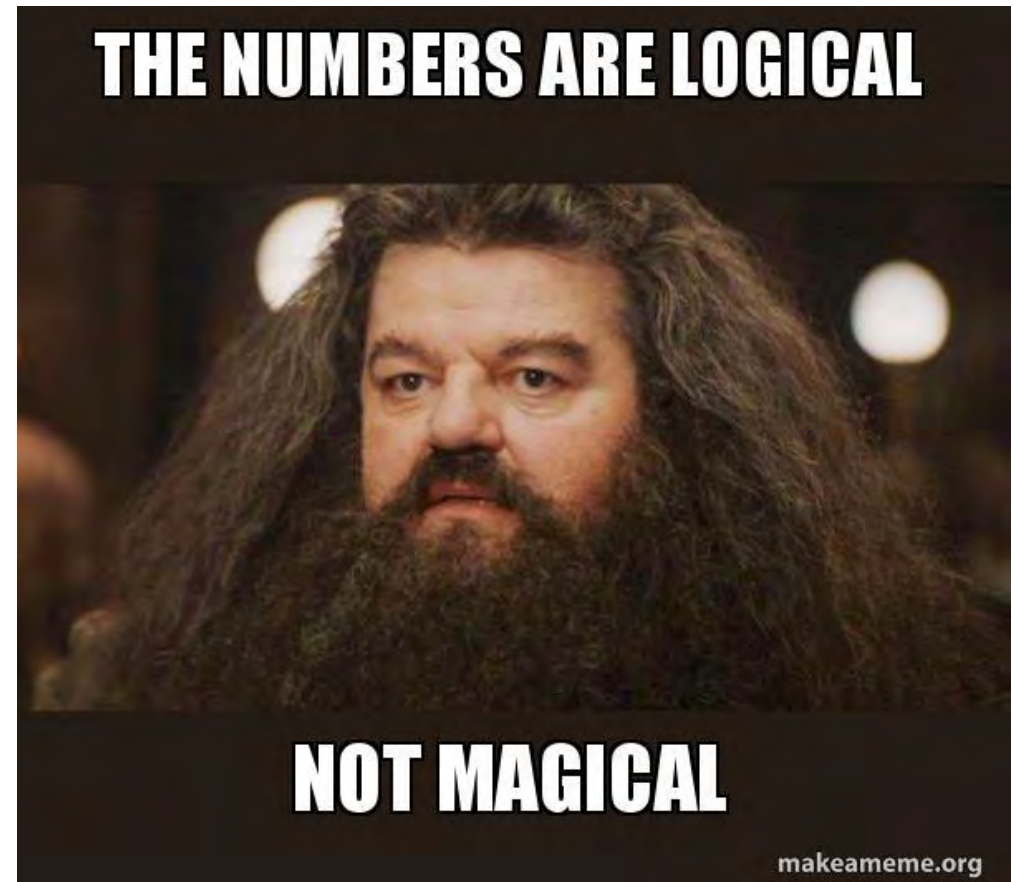
- $\text{Sum} (V_{\text{asset1}} + V_{\text{asset2}} + V_{\text{assetx}}) = V_e + V_d$ 
  - This is the Balance Sheet Equilibrium: Assets = Liabilities plus Equity

<u>Assets</u>	<u>Liabilities and Equity</u>
Current Assets (CA)	Current Liabilities (CL)
Tangible Assets (TA)	Long Term Debt (LTD)
Intangible Assets (IA less CA)	Equity (E)

- $V_{\text{biz}} = V_{e_{\text{biz}}} + V_{d_{\text{biz}}} = \text{Sum} (V_{\text{asset1}} + V_{\text{asset2}} + V_{\text{assetx}})$ 
  - $V_{\text{biz}} = \text{MVIC} = \text{Going Concern} = \text{Business Enterprise Value} = \text{Business Combination}$

# Examples, Business Value, Continued

- $V_{biz} = V_{e_{biz}} + V_{d_{biz}} = \text{Sum} (V_{asset1} + V_{asset2} + V_{assetx})$
- $V_{biz} = V_{rp} + V_{pp} + V_{bi}$
- $V_{biz} = V_l + V_b + V_{pp} + V_{bi}$
- $V_{biz} = V_l + V_b + V_{si} + V_{pp} + V_{bi}$



# Issues Estimating Economic Obsolescence

- The big problems estimating economic obsolescence are
  - Subjectivity of analyses
  - Avoiding circularity with income analyses



# Prior Legal Decisions – Nursing Homes

## Twin Oaks v. Morristown, 9 N.J. Tax 386 (Tax 1987)

- Which approach to value?
  - Taxpayer expert –both income and cost
  - Taxing district expert – used cost
- Court's (Judge Lasser) findings:
  - Accepted town's arguments that income was a combination of real estate, personal property and service income.
  - Income and market approaches not foreclosed from consideration.
  - Applied the **cost approach**.
  - Affirmed by the Appellate Division.

# Prior Legal Decisions – Nursing Homes

## Regent Care v. Hackensack, 27 N.J. Tax 138 (Tax 2013)

- Which approach to value?
  - Parties stipulated that the cost approach was appropriate.
  - Parties stipulated to land value and cost new.
  - Issues limited to entrepreneurial profit (5% vs. 10%) and depreciation.
- Court's (Judge Andresini) findings:
  - Utilized a cost approach (as stipulated).
  - Used 5% entrepreneurial profit – built for owner occupant's use, not resale.
  - Obsolescence: Court accepted plaintiff's P.O. and F.O., but no E.O.

# Prior Legal Decisions – Nursing Homes

## Regent Care v. Hackensack, 27 N.J. Tax 138 (Tax 2013)

- P.O.: age-life vs. M&S commercial property table (at 154) –

“I find that the economic age-life method combined with the Marshall and Swift table specifically designed for nursing homes is a more reliable method than the Marshall and Swift table for national commercial properties relied on by defendant's expert. A typical commercial property is not in continuous use. Many commercial properties are only in use during business hours and are not necessarily in use every day.

A nursing home, on the other hand, operates 24 hours-a-day, every day. Such a building in continuous use will see a higher rate of wear and tear by virtue of the additional use of its components over a given period of time.

Consequently, using a table designed to account for depreciation in all commercial properties nationally will not adequately account for the rate of depreciation occurring in nursing home in constant use. Indeed, reliance on nationally standardized table or chart cannot effectively replace an appraiser's calculation for depreciation on particular property supported by market data, observation, explicable analysis and calculation. . . . Towards that end, the court will use the economic age-life method as more accurate reflection of the depreciation in the subject nursing home given its continuous use.

# Prior Legal Decisions – Nursing Homes

## 962 River Ave. LLC v Lakewood (unreported Tax 2013)

- Which approach to value?
  - Taxpayer expert – income
  - Taxing district expert – cost
- Court's (Judge DeAlmeida) findings:
  - Reviewed precedent, which applied the cost approach.
  - Found the cost approach appropriate.
  - Rejected plaintiff's income approach as not limited to real estate operations.
  - Therefore, adopted taxing district expert's value opinion.

# Prior Legal Decisions – Nursing Homes

## Excel-Care v. Cranford (unreported Tax 2017)

- Which approach to value?
  - Taxpayer expert – cost & income, corroborated with sales
  - Taxing district expert – cost
- Court's (Judge DeAlmeida) findings:
  - Reviewed precedent, which applied the cost approach.
  - Found the cost approach appropriate.
  - Rejected sales and income approaches.

# Prior Legal Decisions – Nursing Homes

Eagle Rock Convalescent Ctr. V. W Caldwell, 32, N.J. Tax 122 (Tax 2021)

- Which approach to value?
  - Taxpayer expert – primarily income (“Rushmore”) & secondarily cost
    - Emphasized heavy Medicaid population
  - Two taxing district experts – cost
- Court’s (Judge Nugent) findings:
  - Rejected income approach – SNF income includes business operations that are not easily separated.
  - Reviewed precedent, which applied the cost approach.
  - Used the cost approach.
    - Take note: Rejected taxpayer and 1 defense expert’s use of M&S SwiftEstimator software as unsubstantiated – court unable to review all the data used by the software

# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

## **What approach?**

- Taxpayer expert?
  - Cost
- Municipal expert?
  - Cost
- Judge Novin?
  - Cost

# Simple way to work around PP & Intangibles

- Do a cost approach on real property only
- Don't do the income and sales and then don't need to allocate



# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

	<u>Town</u>	<u>Taxpayer</u>
<b>LAND VALUE</b>		
Unit of value	Total Units	Bldg. Area SF
SF of Building Area	60,404	60,404
Land Value Per SF of Building Area	<u>\$52.56</u>	<b>\$40</b>
Indicated Land Value w/o Entrepreneurial Profit	\$3,175,000	\$2,416,160
Entrepreneurial Profit		<u>5%</u>
Indicated Land Value		<b>\$2,540,000</b>
# of Units	96	96
Land Value Per Unit	<b>\$33,100</b>	\$25,168
<b>Indicated Land Value</b>	<b>\$3,175,000</b>	\$2,416,128
<b>Indicated Land Value</b>	<b>\$3,175,000</b>	<b>\$2,540,000</b>

## Land Valuation Issues

- What unit of value?
- Add entrepreneurial profit?
- Land value conclusion?

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# Land Issues - Unit of Measure

- Unit of Measure
  - \$/Land SF or \$/Acre
  - \$/Unit of Development
    - Homes, apartments, building SF
- Generally whichever gives less Range of Value, after adjustment
- What terms does the supply of comparable data come in?
- What terms does the highest and best use of Subject come in?

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## Land Valuation Issues

- What unit of value?
- **Add entrepreneurial profit?**
- Land value conclusion?

# Land Issues - Adding Entre Profit to the Land Cost

- Adding Entrepreneurial Profit to the Land Cost
  - Depends on source of your EP%
    - If source (comparables, market data, etc. ) gave a % that was to be applied to improvements AND land cost, then add EP to land also.
    - If source (comparables, market data, etc. ) gave a % that was to be applied to improvement only, then add EP to improvement only.
  - In practice, we are pulling EP % from thin air! We don't have hard data on which way to apply EP
  - In theory, entrepreneurs deserve a profit on ALL their efforts to develop, including the effort to acquire the land. So somewhere they should receive a profit on the land too!

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# New Tax Court Opinion - Nursing Home

## Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

### RCN Issues

	<u>Town</u>	<u>Taxpayer</u>	<u>Judge Novin</u>
<b>GENERAL INFORMATION</b>			
Current Use/Highest and Best Use	SNF	SNF	SNF
Approach to Value	Cost only	Cost only	Cost
Construction Class	C	C	C
Quality Rank	Average	Average	Average
Year built		1984 ('19 part reno.)	
No. of Stories	4	4	4
Building Area (SF)	60,404	60,404	60,404

- Agreement on many items, including base costs and current and local cost multipliers

# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

	<u>Town</u>	<u>Taxpayer</u>
<b>BUILDING VALUE</b>		
Total Replacement Hard & Soft Costs New	\$12,081,600	\$11,710,716
Entrepreneurial Incentive	<u>10%</u>	<u>5%</u>
<b>TOTAL RCN</b>	<b>\$13,289,710</b>	<b>\$12,296,252</b>
Cost Break Outs	Broke out basement, HVAC & sprinklers	Same costs below grade, HVAC, & sprinklers
Perimeter Multipliers	Mult'r. b/c partial below grade Flr1	No perimeter mult'r - all floors same size/shape
Height Multipliers	Yes, 3 upper flrs. ~ 12'	None; & only meant for over 3 stories + 12'

## RCN Issues

- M&S cost breakouts/ adjustments
- Perimeter multipliers
- Height multipliers

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# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

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<b>BUILDING VALUE</b>		
Total Replacement Hard & Soft Costs New	\$12,081,600	\$11,710,716
Entrepreneurial Incentive	<u>10%</u>	<u>5%</u>
<b>TOTAL RCN</b>	\$13,289,710	\$12,296,252

## **Entrepreneurial profit**

- Both applied
- 5% or 10%?

# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

	Town	Taxpayer	Judge Novin
<b>BUILDING VALUE</b>			
Total Replacement Hard & Soft Costs New	\$12,081,600	\$11,710,716	\$10,720,006
Entrepreneurial Incentive	<u>10%</u>	<u>5%</u>	<u>10%</u>
<b>TOTAL RCN</b>	\$13,289,710	\$12,296,252	\$11,792,007

## Entrepreneurial profit

- Both applied
- 5% or 10%?

# Entrepreneurial Profit, at all and how much

- Owner's appraiser: 5%
- Town's appraiser: 10%
  
- Another Common Opinion: 0%
  
- First Important Observation: Judge did not pick 0%
- Second Observation: Judge picked 10%

# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

## Depreciation Issues

- Physical depreciation
  - Both used economic age/life
  - M&S “Depreciation-Commercial Properties” schedule or straight-line?

	As of 10/1/2015 (2016)			As of 10/01/2016 (2017)			As of 10/1/2017 (2018)			As of 10/1/2018 (2019)			As of 10/1/2019 (2020)		
	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin
<b>BUILDING VALUE</b>															
<b>DEPRECIATION - BUILDING COSTS</b>															
<u>Physical Depreciation</u>															
Effective Age Conclusion (Years)	20	16		20	17		20	18		20	19		20	17	
Typical Life (Years)	40	40		40	40		40	40		40	40		40	40	
Physical Depreciation Amount	30%	40.0%		30%	42.5%		30%	45.0%		30%	47.5%		30%	42.5%	
Explanation	M&S Table	24/7 use, cf. generic M&S comm. table		M&S Table	24/7 use, cf. generic M&S comm. table		M&S Table	24/7 use, cf. generic M&S comm. table		M&S Table	24/7 use, cf. generic M&S comm. table		M&S Table	24/7 use, cf. generic M&S comm. table	

# Depreciation

- Straight Line vs Curve Line
  - Owner's Appraiser: Straight Line
  - Town's Appraiser: Curve Line, using Marshall Valuation Service Tables
- Theory says both could be reliable
- Old precedent says SL
- MVS is objective. SL requires appraisal assumptions
- Curve is good for very new and very old. But SL can be good too.
- Don't conflate functional and economic obsolescence with physical deterioration adjustment

# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

## Depreciation Issues

- Physical depreciation
  - Both used economic age/life
  - M&S “Depreciation-Commercial Properties” schedule or straight-line?

	As of 10/1/2015 (2016)			As of 10/01/2016 (2017)			As of 10/1/2017 (2018)			As of 10/1/2018 (2019)			As of 10/1/2019 (2020)		
	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin
<b>BUILDING VALUE</b>															
<b>DEPRECIATION - BUILDING COSTS</b>															
<u>Physical Depreciation</u>															
Effective Age Conclusion (Years)	20	16	20	20	17	20	20	18	20	20	19	20	20	17	20
Typical Life (Years)	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Physical Depreciation Amount	30%	40.0%	30.0%	30%	42.5%	30.0%	30%	45.0%	30.0%	30%	47.5%	30.0%	30%	42.5%	30.0%
Explanation	M&S Table	24/7 use, cf.generic M&S comm. table	M&S Table	M&S Table	24/7 use, cf.generic M&S comm. table	M&S Table	M&S Table	24/7 use, cf.generic M&S comm. table	M&S Table	M&S Table	24/7 use, cf.generic M&S comm. table	M&S Table	M&S Table	24/7 use, cf.generic M&S comm. table	M&S Table

# New Tax Court Opinion - Nursing Home

## Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

### **Depreciation Issues**

Cf. use of M&S “Depreciation-Commercial Properties” schedule, to ***Regent Care v. Hackensack***, supra:

“A typical commercial property is not in continuous use. Many commercial properties are only in use during business hours and are not necessarily in use every day.”

A nursing home, on the other hand, operates 24 hours-a-day, every day. Such a building in continuous use will see a higher rate of wear and tear by virtue of the additional use of its components over a given period of time.

Consequently, using a table designed to account for depreciation in all commercial properties nationally will not adequately account for the rate of depreciation occurring in nursing home in constant use. Indeed, reliance on nationally standardized table or chart cannot effectively replace an appraiser's calculation for depreciation on particular property supported by market data, observation, explicable analysis and calculation. . . . Towards that end, the court will use the economic age-life method as more accurate reflection of the depreciation in the subject nursing home given its continuous use.



# New Tax Court Opinion - Nursing Home

## Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

### Depreciation Issues

- Functional obsolescence
  - Both applied
  - Differed on types and degree

	Town	Taxpayer
<b>BUILDING VALUE</b>		
<b>DEPRECIATION - BUILDING COSTS</b>		
Functional Obsolescence / Depreciation	5.0%	10.0%
Explanation	Lacks oxygen rooms & back-up power, but avg. size BRs.	Small BRs, short bsmt./Flr1, dbl. rms., lacks oxy.

# Nursing Homes – Functional Obsolescence

- **Functionality**
  - Taxpayer: Subject has small rooms relative to new builds, nationally
  - Taxing Authority: Subject has average rooms relative to existing builds in NJ.
  - Interesting!
  
  - Court finds functional obsolescence exists, at Taxpayer's rate.
  - Seems right, if one assume M&S cost manual is for new builds, based on national averages.
- Entrepreneurial profit: court finds for Authority, 10% EP
- Physical Depreciation from M&S manual is better economic age-life method, than one's own.

# New Tax Court Opinion - Nursing Home

## Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

### Depreciation Issues

- Functional obsolescence
  - Both applied
  - Differed on types and degree

	<u>Town</u>	<u>Taxpayer</u>	<u>Judge Novin</u>
<b>BUILDING VALUE</b>			
<b>DEPRECIATION - BUILDING COSTS</b>			
<u>Functional Obsolescence / Depreciation</u>	5.0%	10.0%	10.0%
Explanation	Lacks oxygen rooms & back-up power, but avg. size BRs.	Small BRs, short bsmt./Flr1, dbl. rms., lacks oxy.	Largely agreed w/ taxpayer

# Functional Obsolescence

- Owner's Appraiser: 10%
  - Town's Appraiser: 5%
  - Judge: 10%
- 
- Which is right? In appraisal, 5% or 10% are about the same. Need really good data to differentiate that small difference. Neither appraisal seems to have that kind of data.

# New Tax Court Opinion - Nursing Home

Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

## Depreciation Issues

- Economic obsolescence
  - Experts – none observed
  - Court – 0%

Footnote 28: “Canterbury's expert included [a lack of new construction due to 2014 changes in the Medicaid payment system] point in attempting to highlight the differences between the subject property's facility and more modern senior care facilities [as part of his function obsolescence discussion]. However, the court finds that the alleged stagnation New Jersey is experiencing in the construction of new skilled nursing care facilities would be more appropriately characterized as an item of economic or external obsolescence. External obsolescence is defined as ‘a diminution in value caused by negative externalities and generally incurable on the part of the owner, landlord, or tenant.’”

# Issues Estimating Economic Obsolescence

- The big problems estimating economic obsolescence are
  - Subjectivity of analyses
  - Avoiding circularity with income analyses

# New Tax Court Opinion - Nursing Home

## Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

	<u>Town</u>	<u>Taxpayer</u>
<b>SITE IMPROVEMENTS VALUE &amp; LUMP SUMS</b>		
Total Replacement Hard & Soft Costs New	\$444,900	\$214,630
Entrepreneurial Incentive (% of Hard & Soft Costs)	10%	5%
Total Replacement Costs New	\$489,390	\$225,362
Total Depreciation %	35%	40%
<b>Depreciation Cost</b>	<b>\$318,104</b>	<b>\$135,217</b>
Explanation	Same as building	Faster deprcn.

### Site Improvement Issue

- Depreciation differed
- Same as building, or faster?

# New Tax Court Opinion - Nursing Home Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

	<u>Town</u>	<u>Taxpayer</u>	<u>Judge Novin</u>
<b>SITE IMPROVEMENTS VALUE &amp; LUMP SUMS</b>			
Total Replacement Hard & Soft Costs New	\$444,900	\$214,630	\$241,477
Entrepreneurial Incentive (% of Hard & Soft Costs)	10%	5%	10%
Total Replacement Costs New	\$489,390	\$225,362	\$265,625
Total Depreciation %	35%	40%	40%
<b>Depreciation Cost</b>	<b>\$318,104</b>	<b>\$135,217</b>	<b>\$159,375</b>
Explanation	Same as building	Faster deprcn.	Agrees faster

## Site Improvement Issue

- Depreciation differed
- Same as building, or faster?



# New Tax Court Opinion - Nursing Home

## Canterbury at C.G. v. Cedar Grove Tp., N.J. Tax (Tax 2023)

### **Final Conclusions of Value**

	As of 10/1/2015 (2016)			As of 10/01/2016 (2017)			As of 10/1/2017 (2018)		
	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin
<b>VALUE CONCLUSIONS</b>									
Total Value	\$12,131,415	\$8,823,343	\$9,924,579	\$12,410,122	\$8,681,390	\$10,126,487	\$12,440,366	\$8,375,246	\$10,139,955
Rounded	\$12,130,000	\$8,800,000	\$9,925,000	\$12,410,000	\$8,700,000	\$10,125,000	\$12,440,000	\$8,400,000	\$10,140,000

As of 10/1/2018 (2019)			As of 10/1/2019 (2020)		
Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin
\$12,753,679	\$8,227,582	\$10,367,652	\$12,815,741	\$8,922,008	\$10,419,535
\$12,755,000	\$8,200,000	\$10,370,000	\$12,815,000	\$8,900,000	\$10,420,000

	As of 10/1/2015 (2016)			As of 10/01/2016 (2017)			As of 10/1/2017 (2018)			As of 10/1/2018 (2019)			As of 10/1/2019 (2020)		
	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin	Town	Taxpayer	Judge Novin
<b>GENERAL INFORMATION</b>															
Current Use/Highest and Best Use	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF	SNF
Approach to Value	Cost only	Cost only	Cost	Cost only	Cost only	Cost	Cost only	Cost only	Cost	Cost only	Cost only	Cost	Cost only	Cost only	Cost
Construction Class	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Quality Rank	Average	Average	Average	Average	Average	Average	Average	Average	Average	Average	Average	Average	Average	Average	Average
Year built		1984 ('19 part reno.)			1984 ('19 part reno.)			1984 ('19 part reno.)			1984 ('19 part reno.)			1984 ('19 part reno.)	
No. of Stories	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
Building Area (SF)	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404	60,404
<b>LAND VALUE</b>															
Unit of value	Total Units	Bldg. Area SF	Units, incl. ALF & IL land sales	Total Units	Bldg. Area SF	Units, incl. ALF & IL land sales	Total Units	Bldg. Area SF	Units, incl. ALF & IL land sales	Total Units	Bldg. Area SF	Units, incl. ALF & IL land sales	Total Units	Bldg. Area SF	Units, incl. ALF & IL land sales
SF of Building Area	60,404	60,404		60,404	60,404		60,404	60,404		60,404	60,404		60,404	60,404	
Land Value Per SF of Building Area	\$52.56	\$40		\$52.56	\$40		\$52.56	\$40		\$52.56	\$40		\$52.56	\$40	
Indicated Land Value w/o Entrepreneurial Profit	\$3,175,000	\$2,416,160		\$3,175,000	\$2,416,160		\$3,175,000	\$2,416,160		\$3,175,000	\$2,416,160		\$3,175,000	\$2,416,160	
Entrepreneurial Profit	0%	5%	0%	0%	5%	0%	0%	5%	0%	0%	5%	0%	0%	5%	0%
Indicated Land Value		\$2,540,000			\$2,540,000			\$2,540,000			\$2,540,000			\$2,540,000	
# of Units	96	96	96	96	96	96	96	96	96	96	96	96	96	96	96
Land Value Per Unit	\$33,100	\$25,168	\$28,000	\$33,100	\$25,168	\$28,000	\$33,100	\$25,168	\$28,000	\$33,100	\$25,168	\$28,000	\$33,100	\$25,168	\$28,000
Indicated Land Value	\$3,175,000	\$2,416,128	\$2,688,000	\$3,175,000	\$2,416,128	\$2,688,000	\$3,175,000	\$2,416,128	\$2,688,000	\$3,175,000	\$2,416,128	\$2,688,000	\$3,175,000	\$2,416,128	\$2,688,000
Indicated Land Value	\$3,175,000	\$2,540,000	\$2,690,000	\$3,175,000	\$2,540,000	\$2,690,000	\$3,175,000	\$2,540,000	\$2,690,000	\$3,175,000	\$2,540,000	\$2,690,000	\$3,175,000	\$2,540,000	\$2,690,000
<b>BUILDING VALUE</b>															
Total Replacement Hard & Soft Costs New	\$12,081,600	\$11,710,716	\$10,720,006	\$12,453,700	\$12,059,215	\$11,040,730	\$12,497,800	\$12,102,271	\$11,081,011	\$12,909,000	\$12,500,874	\$11,439,876	\$13,010,600	\$12,600,093	\$11,538,574
Entrepreneurial Incentive	10%	5%	10%	10%	5%	10%	10%	5%	10%	10%	5%	10%	10%	5%	10%
TOTAL RCN	\$13,289,710	\$12,296,252	\$11,792,007	\$13,699,020	\$12,662,176	\$12,144,803	\$13,747,530	\$12,707,385	\$12,189,112	\$14,199,850	\$13,125,918	\$12,583,864	\$14,311,610	\$13,230,098	\$12,692,431
<b>DEPRECIATION - BUILDING COSTS</b>															
<u>Physical Depreciation</u>															
Effective Age Conclusion (Years)	20	16	20	20	17	20	20	18	20	20	19	20	20	17	20
Typical Life (Years)	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Physical Depreciation Amount	30%	40.0%	30.0%	30%	42.5%	30.0%	30%	45.0%	30.0%	30%	47.5%	30.0%	30%	42.5%	30.0%
Functional Obsolescence / Depreciation	5.0%	10.0%	10.0%	5.0%	10.0%	10.0%	5.0%	10.0%	10.0%	5.0%	10.0%	10.0%	5.0%	10.0%	10.0%
External Obsolescence / Depreciation	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total Depreciation (%)	35.00%	50.0%	40.0%	35.00%	52.5%	40.0%	35.00%	55.0%	40.0%	35.00%	57.5%	40.0%	35.00%	52.5%	40.0%
Total Depreciation (\$)	\$4,651,399	\$6,148,126	\$4,716,803	\$4,794,657	\$6,647,642	\$4,857,921	\$4,811,636	\$6,989,062	\$4,875,645	\$4,969,948	\$7,547,403	\$5,033,545	\$5,009,064	\$6,945,801	\$5,076,973
Depreciation Building Cost	\$8,638,311	\$6,148,126	\$7,075,204	\$8,904,363	\$6,014,533	\$7,286,882	\$8,935,894	\$5,718,323	\$7,313,467	\$9,229,902	\$5,578,515	\$7,550,318	\$9,302,546	\$6,284,296	\$7,615,459
<b>SITE IMPROVEMENTS VALUE &amp; LUMP SUMS</b>															
Total Replacement Hard & Soft Costs New	\$444,900	\$214,630	\$241,477	\$462,600	\$219,665	\$247,281	\$460,800	\$222,710	\$248,159	\$487,800	\$230,829	\$257,240	\$473,000	\$232,646	\$259,265
Entrepreneurial Incentive (% of Hard & Soft Costs)	10%	5%	10%	10%	5%	10%	10%	5%	10%	10%	5%	10%	10%	5%	10%
Total Replacement Costs New	\$489,390	\$225,362	\$265,625	\$508,860	\$230,648	\$272,009	\$506,880	\$233,846	\$272,975	\$536,580	\$242,370	\$282,964	\$520,300	\$244,278	\$285,192
Total Depreciation %	35%	40%	40%	35%	45%	45%	35%	50%	50%	35%	55%	55%	35%	60%	60%
Depreciation Cost	\$318,104	\$135,217	\$159,375	\$330,759	\$126,857	\$149,605	\$329,472	\$116,923	\$136,487	\$348,777	\$109,067	\$127,334	\$338,195	\$97,711	\$114,077
<b>VALUE CONCLUSIONS</b>															
Total Value	\$12,131,415	\$8,823,343	\$9,924,579	\$12,410,122	\$8,681,390	\$10,126,487	\$12,440,366	\$8,375,246	\$10,139,955	\$12,753,679	\$8,227,582	\$10,367,652	\$12,815,741	\$8,922,008	\$10,419,535
Rounded	\$12,130,000	\$8,800,000	\$9,925,000	\$12,410,000	\$8,700,000	\$10,125,000	\$12,440,000	\$8,400,000	\$10,140,000	\$12,755,000	\$8,200,000	\$10,370,000	\$12,815,000	\$8,900,000	\$10,420,000

# ASSISTED LIVING FACILITIES



# Older Tax Court Opinion – Assisted Living Liberty Manor v. Englishtown (unreported) (Tax 2005)

- Which approach to value?
  - Taxpayer expert –cost (as instructed)
  - Taxing district expert – used income, added sales at assessor’s request
    - “He testified that notwithstanding that some of the subject’s income is derived from its value as a going business concern, income attributable to the real estate can be extracted by subtracting from gross revenues [amounts related to FF&E and a management fee].”
- Court’s (Judge Menyuk’s) findings:
  - Both experts suffered from bias due to following client instructions. [**Soprano’s video**]
  - Rejected subject sale as including non-realty assets.
  - Rejected sales and income approaches as included FF&E and business value.
  - Utilized a cost approach.

# Hospitals (Valuation)



# Video – A Few Good Men

# Case Study Two

- Supermarkets
- Effective Rents from Comparables

# Supermarkets – General Valuation

- Issues:
  - Getting market data, lease comparables
  - Addressing Existing Leases versus Market Rates
  - Estimating Functional and Economic Obsolescence
  
- 3 Approaches, but
  - Income is slightly preferred.
  - Sales is close second. But avoid dark store issues
  - Cost is least applicable



# Supermarkets – Valuation for Assessment

- Income is preferred, but Sales and Cost are OK
  - Both appraisers did income
  - Judge is OK with that.

# Supermarkets – Assessment Cases and Law

- AG Kings Montclair LLC v. Montclair Township
  - Issue: All future benefits, Effective Rents, and cash equivalency issues on an NPV basis
- EG: Imagine 2 leases, both with first year base rent of \$10 PSF. Both for 5 years.
  - **Question: Are they equivalent? Answer: It might appear that way; can't yet tell**
  - Consider lease #1, base rent is flat for 5 years, while #2 increases \$1 PSF each year.
  - So NPV @10%, on #1: \$37.98
  - So NPV @10%, on #2: \$44.77
  - **Question: Are they equivalent? Answer: Clearly, not.**

# Example Rent Cash Equivalency Analysis

<u>NPV Analysis</u>										
			Year	1	2	3	4	5		<u>NPV@10%</u>
Lease #1				\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00		\$37.91 =NPV(0.1,E3:I3)
Lease #2				\$ 10.00	\$ 11.00	\$ 12.00	\$ 13.00	\$ 14.00		\$44.77 =NPV(0.1,E4:I4)
Average First Year Rent, Concluded Rent				\$ 10.00						
<u>Cash Equivalency, Option 1, Concluding level rents are typical in the market</u>										
	<u>NPV@10%</u>		Year	1	2	3	4	5		<u>NPV@10%</u>
Lease #1	\$37.91			\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00		\$37.91
Lease #2	\$44.77			\$11.81	\$11.81	\$11.81	\$11.81	\$11.81	=PMT(0.1,5,-B10,0,)	\$44.77
Average First Year Rent, Concluded Rent				\$ 10.91						
<u>Cash Equivalency, Option 2, Concluding typically rent escalate in the market, \$1 PSF per year</u>										
	<u>NPV@10%</u>		Year	1	2	3	4	5		<u>NPV@10%</u>
Lease #1	\$37.91	iteration		\$ 8.19	\$ 9.19	\$ 10.19	\$ 11.19	\$ 12.19		\$37.91
Lease #2	\$44.77			\$ 10.00	\$ 11.00	\$ 12.00	\$ 13.00	\$ 14.00		\$44.77
Average First Year Rent, Concluded Rent				\$ 9.10						

# So, which option is the basis of cash equivalency?

- Answer: Which format is most common, typical, in the market.
  - Before adjustment for any cash equivalency, typical market terms must be identified.
- For commercial leases, first determine:
  - Term of lease: 1, 3, 5, or 10-year, etc. leases?
  - Net or Gross?
  - Free Rent &/or Work Letter?
- Make these adjustment. **Then**, do rent cash equivalency analysis.
- **Then**, flat or escalating? If escalating, at \$ or %? Lastly do rent equivalency

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

- Both appraisers do income, no sales or cost. Judge accepts this.
  - But I have personally seen judges throw out appraisals even when both agree to the method, because the judges wants another approach.
  - Personally I would have tried a sales.

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Calculating market rent from escalating subject or comparable lease

<u>Lease</u> <u>Year</u>	<u>Rent Start</u> <u>Date</u>	<u>Rent</u>	<u>DOV</u>
1	10/1/2018	\$10.00	
2	10/1/2019	\$10.50	
3	10/1/2020	\$11.00	
4	10/1/2021	\$11.50	10/1/2021
5	10/1/2022	\$12.00	
6	10/1/2023	\$12.50	
7	10/1/2024	\$13.00	
8	10/1/2025	\$13.50	
9	10/1/2026	\$14.00	
10	10/1/2027	\$14.50	

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Calculating market rent from escalating subject or comparable lease

<u>Lease</u> <u>Year</u>	<u>Rent Start</u> <u>Date</u>	<u>Rent</u>	<u>DOV</u>
1	10/1/2018	\$10.00	
2	10/1/2019	\$10.50	
3	10/1/2020	\$11.00	
4	10/1/2021	\$11.50	10/1/2021
5	10/1/2022	\$12.00	
6	10/1/2023	\$12.50	
7	10/1/2024	\$13.00	
8	10/1/2025	\$13.50	
9	10/1/2026	\$14.00	
10	10/1/2027	\$14.50	
Average:		\$12.25	
E.g.,	<i>AG Kings Montclair</i>		

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Accordingly, when a lease contains a rent escalation provision “those increases in income, to the extent they reflect economic rent, should be reflected in the appraiser's estimate of the property's future income.” Ibid. The logic and rationale behind this principle is straightforward; the landlord is often willing to accept a lower rent at the outset of a lease in recognition of the expenses that the tenant will incur in establishing or relocating its business. Thus, the landlord will permit the tenant to amortize those start-up costs during the initial months or first years of the lease when the rent is lower.

*AG Kings Montclair, LLC at 15.*



# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Accordingly, when rent step-ups payable under a lease “are known . . . , those increases in income, to the extent they reflect economic rent, should be reflected in the appraiser's estimate of the property's future income.”

*AG Kings Montclair, LLC at 16.*

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Calculating market rent from escalating subject or comparable lease

<u>Lease</u> <u>Year</u>	<u>Rent Start Date</u>	<u>Rent</u>	<u>DOV</u>
1	10/1/2018	\$10.00	
2	10/1/2019	\$10.50	
3	10/1/2020	\$11.00	
4	10/1/2021	\$11.50	10/1/2021
5	10/1/2022	\$12.00	
6	10/1/2023	\$12.50	
7	10/1/2024	\$13.00	
8	10/1/2025	\$13.50	
9	10/1/2026	\$14.00	
10	10/1/2027	\$14.50	
Average:		\$12.25	
E.g.,	<i>American Cyanamid (rejecting 10 yr. avg.)</i>		

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Calculating market rent from escalating subject or comparable lease

<u>Lease</u> <u>Year</u>	<u>Rent Start Date</u>	<u>Rent</u>	<u>DOV</u>
1	10/1/2018	\$10.00	(+ time adj.)
2	10/1/2019	\$10.50	
3	10/1/2020	\$11.00	
4	10/1/2021	\$11.50	10/1/2021
5	10/1/2022	\$12.00	
6	10/1/2023	\$12.50	
7	10/1/2024	\$13.00	
8	10/1/2025	\$13.50	
9	10/1/2026	\$14.00	
10	10/1/2027	\$14.50	
Average:		\$12.25	
E.g.,	<i>Kearny Leasing Corp. (+ time adjustments)</i>		

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Here, AG Kings' expert's testimony revealed that in his search for the market or economic rent, he focused on "that first year rent that's indicative of the market." Thus, he did not truly analyze the effect or influence that the rent step-ups had under the comparable retail leases on the property owner's anticipated stream of revenue flow, a pivotal consideration under the income capitalization approach. Rather, the sole barometer by which AG Kings' expert seemingly measured whether he would consider inclusion of the rent step-ups was premised entirely on the CPI. If he viewed the step-up rents under the leases as exceeding the CPI, then he would average them. Conversely, if he viewed the step-up rents under the leases as being more closely aligned with CPI, he would consider only the first year's rent.

*AG Kings Montclair, LLC at 16.*

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

Calculating market rent from escalating subject or comparable lease

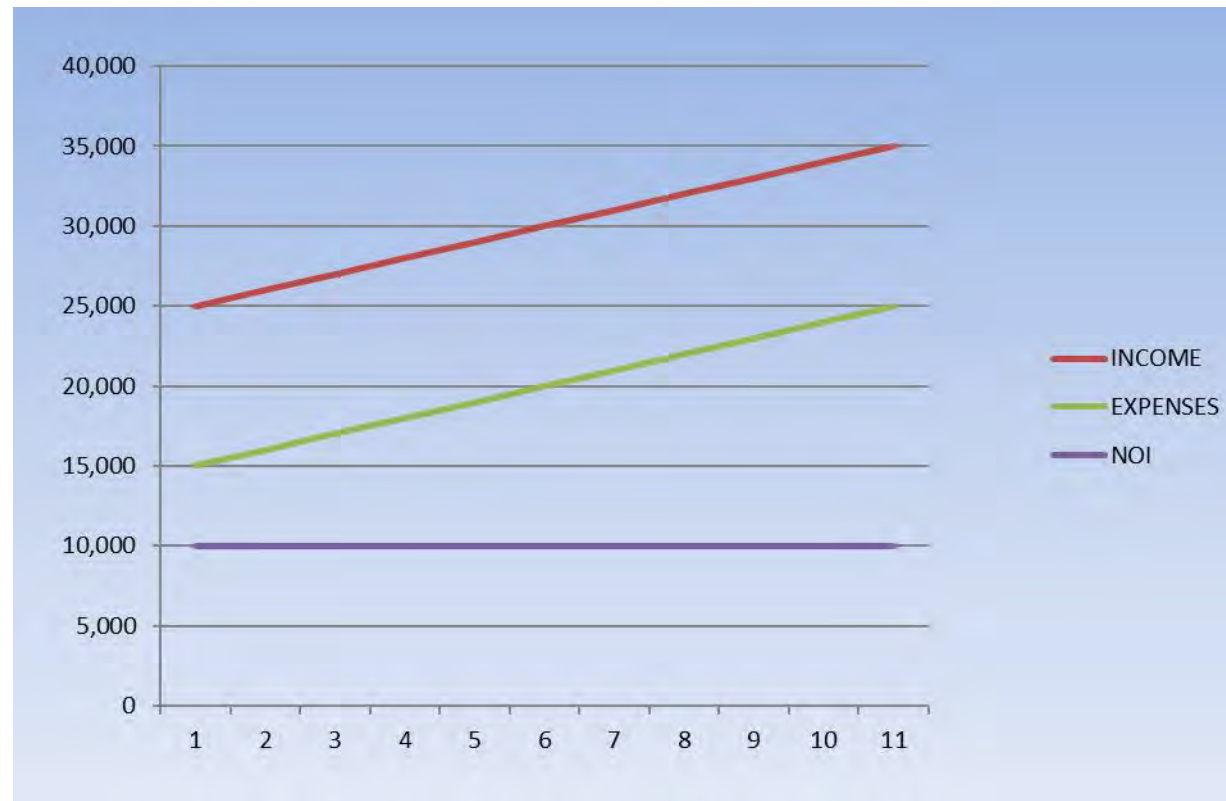
## Parting thoughts

- Doesn't direct capitalization use current/first year income?
- Is using future income akin to DCF?
  - Need to discount to PV?
  - Need to increase the cap rate (i.e. to yield rates)?
- Make sense to include future income increases but not expenses?

# Supermarkets – AG Kings Montclair LLC v. Montclair Township

## Parting thoughts

Escalating rents to  
maintain stable  
NOI



# Office – General Valuation

- All 3 approaches, but income first, then sales, then cost. Could skip cost, unless new and no worries about economic feasibility.
- A transparent market, sale prices, rents, vacancy rates, cap rates.
- Subject data should be good quality for appraisal analysis.

# OTR-MCC LLC v. Parsippany (Tax Ct. Jan. 2023)

- Morris Corporate Center
- Judge found: premier Class A office building in Parsippany market





# OTR-MCC LLC v. Parsippany (Tax Ct. Jan. 2023)

## Effective Rent

- Taxpayer: averaged 5 years to account for free rent/initial incentives
- Municipality: average all years in initial lease term
- Judge Novin – both flawed.
  - Taxpayer’s 5 years is arbitrary; not proven as the benchmark.
  - Municipality’s longer term similarly unreliable.
    - “[T]he court questions whether the rent step-ups ... accurately reflected economic or market rent, or merely represented the property owner’s best guess of what economic or market rent may be in [15 or 20 years] into the future.”
    - Averaging rent payable in the 20<sup>th</sup> year with the 1<sup>st</sup> year is atypical, and “will produce an inaccurate representation” of the anticipated future return.
  - Experts should harmonize rents with the rent concessions and T.I. amortization periods.

# OTR-MCC LLC v. Parsippany (Tax Ct. Jan. 2023)

- Other finding:
  - 18-22% vacancy and collection loss
  - \$2.25-2.88/SF TI expense found
  - ~\$10/SF expenses, 43% expense ratio
  - Cap rate:
    - Judge Novin gave no weight to PWC survey, because surveys represent opinions, not market-derived data
    - Used band of investment: 8.08% to 6.75% from 2009-2019 (lower than both experts in most years)
  - Value ~ \$125 PSF

# Office – Subject Leases

- When to exclude subject leases?
- Court - High subject sale during years at issue was given no consideration because it was a *sale of leased fee interest*
  - *Sounds like a troubling ruling*
  - *But some evidence was provided that suggests that the lease was atypical.*

# Case Study Four

- Public Lands
- Highest and Best Use

# Public Lands – General Valuation

- Market Value for general valuation requires appraising to the highest and best use.
  - Do proper H&BU analysis
  - Remember that financial feasibility requires an economic use,
    - and government and other not-for-profit uses do not have economic incentives
    - Parks, many public land uses are not economical, financially feasible and/or maximally productive.
      - I wonder if an appraiser can ever conclude a public use is the H&BU.
      - Are regulated utilities public or private? Private.
  - Narrate the analysis adequately
  - Can't conclude a non-legal use. That contradicts definition of H&BU.
    - Unless a change in legal status is reasonably probable

# Public Lands – Valuation for Assessment

- Same as above
- Market Value for general valuation requires appraising to the highest and best use.
  - Do proper H&BU analysis
  - Remember that financial feasibility requires an economic use,
    - and government and other not-for-profit uses do not have economic incentives
    - Parks, many public land uses are not economical, financially feasible and/or maximally productive.
      - I wonder if an appraiser can ever conclude a public use is the H&BU.
      - Are regulated utilities public or private? Private.
  - Narrate the analysis adequately
  - Can't conclude a non-legal use. That contradicts definition of H&BU.
    - Unless a change in legal status is reasonably probable

# Public Lands – Assessment Cases and Law

- City of Newark and City of Newark-Div. Sewer and Water v. West Milford Township
- Motion for summary judgement on issue of highest and best use
- This is NOT a simple H&BU determination. Easy to get or narrate wrong.
- Court - No Net Opinions.
- Court - No opinions without reasons, basis, justification, support.
- Court – But for summary judgement, there should be no legitimate claim of having reasons, basis, justification, support
  - Even if the reasons, basis, justification, support ultimately prove wrong.

# Public Lands – Assessment Cases and Law

- It appears that the appraiser messed up the H&BU conclusion and/or analysis.
  - After legitimate research and consideration, the appraiser concluded “no” highest and best use. That’s non-sensical. Worthy of criticism.
- But the only way to determine this is by a full review of the facts.
  - And having messed up the conclusion after substantive consideration is not grounds for summary dismissal. The motion is also wrong.
- Bottomline: These public lands have no ordinary H&BU. Further, nearly all very rare uses also fail H&BU criteria.
  - But one significant use remains, which the appraiser missed. The lands are used for a watershed and reservoirs. Have been for over 100 years. Even though it is currently publicly owned, (GOUs), the property can just as likely be owned by an investor/for-profit utility (IOUs). The H&BU is a watershed, owned by an IOU, which would meet all H&BU criteria.



# Public Lands – Assessment Cases and Law

- Collateral Issue: There should be no hypothetical conditions in property tax appraisal
  - If the client insisted, the appraiser should have rejected the appraisal conditions.
  - Analyzing various uses and later determining that they are unfeasible, does not then mandate classifying the analysis as completed under a hypothetical assumption.

# Public Lands – Assessment Cases and Law

## Legal issues:

- Lack of highest and best use was not grounds to preclude the expert's testimony as a net opinion where the conclusion was based on facts, data, and analysis.
- No N.J.R.E. 104 hearing was due to the Tax Court's expertise.

# Other Recent Valuation Cases

- Lafayette Sq. Construction v Montclair Tp., Tax Ct. March 24, 2023
  - 2 separately owned, contiguous surface parking lots
  - Rear easement for adjacent owner's dumpsters; partial flood zone
- Taxpayer expert: valued each lot separately for commercial development (H&BU) with variances needed
- Municipality: valued together (same principal), so no variances needed
- Judge Novin:
  - Municipality did not prove same ownership – no unity of ownership to value as one
  - Multiple comparables by both experts were not properly verified (deed or Co-Star insufficient)
  - Sales used place value within the corridor – no change to the assessments

# Carant L.P. v. W. Caldwell Tp., Tax Ct., Oct. 8, 2022

## Facts

- Vacant land; business zone; partial flood zone
- Approvals obtained, site improvements started, but building permit denied as of DOVs for improper filling on site – law suit ensued

## Issues

1. “per building SF” or “per usable acre” as the unit of value?

# Carant L.P. v. W. Caldwell Tp., Tax Ct., Oct. 8, 2022

- The court finds that the contrasting units of comparison selected by the experts each possess their own unique advantages and disadvantages. **Carant's expert's unit of comparison** affords meaningful insight into how a prospective developer may value a site based on its **potential developability and yield**. **West Caldwell's expert's unit of comparison** similarly affords substantial understanding about the development potential of a site, **omitting the developer's subjective considerations as to what suits the site best**. [Both have specific disadvantages as well.]

# Carant L.P. v. W. Caldwell Tp., Tax Ct., Oct. 8, 2022

## Facts

- Vacant land; business zone; partial flood zone
- Approvals obtained, site improvements started, but building permit denied as of DOVs for improper filling on site – law suit ensued

## Issues

2. Adjustments to sales well supported?

- ✓ Detailed legal discussion:
  - ✓ Support for many adjustments lacking
  - ✓ So, many comps rejected by Judge Novin

# Carant L.P. v. W. Caldwell Tp., Tax Ct., Oct. 8, 2022

## Facts

- Vacant land; business zone; partial flood zone
- Approvals obtained, site improvements started, but building permit denied as of DOVs for improper filling on site – law suit ensued

## Issues

3. Timing deduction for lack of building permits?
- ✓ Judge Novin applied a 10% discount for the uncertainty of when the property can achieve its highest and best use

# Redwood LLC v. West Orange (Tax Ct., Sept. 2022)

- 2006 approvals for 68 condos lapsed following 2008 market downturn.
- Expert's workfile (Judge reviewed!) showed the approvals were extended under the permit extension act through April of 2017.
- 2016 subject sale:
  - \$1.625MM less credit for \$800k tax lien payoff that buyer paid.
  - Cross examination revealed that seller's estate was highly illiquid.
- Prior contract purchasers sought DEP wetlands permits for 68 condos
- Months before the DOV, taxpayer applied for variance for 128 units.



# Redwood LLC v. West Orange (Tax Ct., Sept. 2022)

- Judge Novin's findings:
  - Rejected subject sale. Listed and arms length but not shown that seller lacked duress.
  - Taxpayer expert's as-of-right (only) analysis failed to consider the reasonable probability of zoning change (to denser MFR use), particularly where variances had been granted previously.
  - Expert's highest and best use limited to 6 building lots based on owner's underwriting, lacked necessary land use proofs, e.g.
    - Wetlands analysis
    - Whether Permit Extension Act applied.
  - Assessment affirmed.
- One lesson: use supporting experts

# Questions





## 2023 Annual Conference, Cape May

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