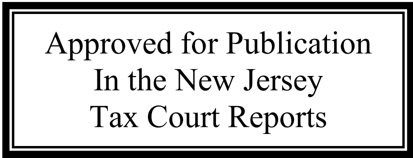
NOT FOR PUBLICATION WITHOUT APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS

GLENPOINTE ASSOCIATES, GLENPOINTE ASSOCIATES II, LLC, and GLENPOINTE ASSOCIATES III Plaintiffs, TOWNSHIP OF TEANECK, Defendant.	TAX COURT OF NEW JERSEY DOCKET NOs.: 004987-2007; 004989-2007; 004982-2007; 004984-2007; 004992-2007; 002967-2008; 002975-2008; 002977-2008; 002982-2008; 002987-2008; 001623-2009; 001639-2009; 001638-2009; 001640-2009; 001642-2009; 017684-2009; 002077-2010; 002080-2010; 003183-2010; 003198-2010; 003207-2010; 020410-2010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In the New Jersey
Tax Court Reports

Decided: August 11, 2020

Carl A. Rizzo for plaintiff
(Cole Schotz P.C., attorneys).

Kenneth A. Porro and Edna J. Jordan for defendant[1]
(Chasan Lamparello Mallon & Cappuzzo, P.C., attorneys).

ANDRESINI, P.J.T.C.

I. FINDINGS OF FACT AND PROCEDURAL HISTORY

Glenpointe Associates, Glenpointe Associates II, LLC, and Glenpointe Associates III (hereinafter "Plaintiff") are the owners of the subject property comprised of two office buildings, a two-story atrium, a four-story parking garage, a 345-room hotel, and various parcels of vacant land located in defendant taxing district, Teaneck, New Jersey ("Township"). The subject property is located on an irregular shaped parcel located along Frank W. Burr Boulevard encompassing

[1] The matters were tried by attorney for the defendant Steven D. Muhlstock, Esq., of the law firm Gittleman, Muhlstock, & Chewcaskie, L.L.P., with the assistance of Jenna M. Beatrice, Esq., of the law firm Genova Burns, L.L.C.

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approximately 24.272 acres, and situated at the intersection of I-80 and the New Jersey Turnpike, and is in close proximity to the George Washington Bridge and major airports as well as direct public transportation to and from New York City and local areas. The subject property's uniquely situated location, high quality features and amenities, and mixed-nature as a combined high-end hotel and office complex make it Bergen County's premier office and hotel attraction. The property as divided above is designated by the Township as follows:

100 Frank W. Burr Boulevard (Block 3606, Lot 5) - Hotel
200 Frank W. Burr Boulevard (Block 3606, Lot 2) – Glenpointe Center West Office
300 Frank W. Burr Boulevard (Block 3606, Lot 3) – Glenpointe Center East Office
400 Frank W. Burr Boulevard (Block 3606, Lot 4) – Atrium
Frank W. Burr Boulevard (Block 3606, Lots 1 & 6, and Block 3604 Lots 13 & 14)
370 Glenwood Avenue (Block 3605, Lot 7) – Vacant Land
284 Oakdene Avenue (Block 4403, Lot 1) – Parking Lot

The parties stipulated to the square footage of the various elements of the office complex (hereinafter referred to as the "Office Complex") as follows:

West Office Building – 333,650 square feet;
East Office Building – 242,000 square feet; and
Atrium – 76,000 square feet.

Additionally, the parties stipulated to vacancy and collection loss rates for the entire Office Complex at 12.5% for each tax year and the total operating expenses for the Office Complex at $7,251,944.00 for each tax year. The parties further stipulated to the addition of $3,000,000 to the overall value of the ten separate lots relevant to the instant matter for tax years 2008, 2009, and 2010. The court accepts all stipulations made by the parties.

The Chapter 123 ratios for the Township for the relevant tax years are as follows: 100% for tax year 2007; 99.00% for tax year 2008; 95.85% for tax year 2009; and 99.75% for tax year 2010.

For the tax years relevant to the instant matter the entire subject property was assessed as follows:

Tax Years 2007, 2008, 2009, 2010:

Description	**Block/Lot**	**Land**	**Improvement**	**Total**
West Tower	**3606/2**	**$8,250,000**	**$47,960,100**	**$56,210,100**
East Tower	**3606/3**	**$6,000,000**	**$34,714,500**	**$40,714,500**
Atrium	**3606/4**	**$2,000,000**	**$11,469,200**	**$13,469,200**
Hotel	**3606/5**	**$5,115,000**	**$38,071,000**	**$43,186,000**
Vacant Land	**3604/13**	**$507,000**	**0**	**$507,000**
Parking Garage	**3604/14**	**$4,213,800**	**$27,110,400**	**$31,324,200**
Parking Lot	**3606/1**	**$1,601,400**	**$230,000**	**$1,831,400**
Parking Lot	**3606/6**	**$2,566,800**	**0**	**$2,566,800**
Vacant Land	**3605/7**	**$220,200**	**0**	**$220,200**
Parking Lot	**4403/1**	**$732,000**	**0**	**$732,000**
Total Assessed Value				**$190,761,400**

A. Valuation of the Office Complex

"There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of income and cost." Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div. 2001) (citing Appraisal Institute, The Appraisal of Real Estate 81 (11th ed. 2006)). "There is no single determinative approach to the valuation of real property." 125 Monitor Street, LLC v. City of Jersey City, 21 N.J. Tax 232, 237-38 (Tax 2004) (citing Samuel Hird & Sons, Inc. v. City of Garfield, 87 N.J. Super. 65, 72 (App. Div. 1965); ITT Cont'l Baking Co. v. Township of East Brunswick, 1 N.J. Tax 244 (Tax 1980)). "The choice of the predominate approach will depend upon the facts of each case and the reaction of the experts to those facts." Id. at 238 (citing City of New Brunswick v. Div. of Tax Appeals, 39 N.J. 537 (1963); Pennwalt Corp. v. Township of Holmdel, 4 N.J. Tax 51, 61 (Tax 1982)).

At trial, both parties offered their real estate appraisers as expert witnesses in addition to subpoenaed testimony from a representative of Plaintiff. The court accepted both appraisers as qualified and competent real estate appraisal experts, and their reports were admitted into evidence without objection. Both experts relied exclusively on the income capitalization approach to valuing the subject property. The income capitalization approach is the preferred method of estimating the value of income-producing property. Parkway Vill. Apartments Co. v. Township of Cranford, 108 N.J. 266, 270 (1987); Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 79 (Tax 1996). The court agrees with the parties' experts that the income capitalization approach is the best method for determining the value of the income-producing office complex portion of the subject property.

1. Plaintiff's Expert's Approach to Valuation of the Office Complex

Plaintiff's expert appraiser (Plaintiff's expert) appraised the subject property and subsequently testified at length before this court, opining his determination of value of the Office Complex. The following will discuss his valuation methods and analysis and state his overall valuation determination.

Plaintiff's expert reached his valuation conclusion by valuing each component of the Office Complex separately given the differences in their design, size, and amenities. He described the West Tower as being a seven-story office building of metal frame and thermal glass construction. He similarly described the East Tower as a seven-story office building with a lobby area that is internally connected to both the West Tower and Atrium components of the Office Complex, as well as the Hotel Complex. According to Plaintiff's expert, the East Tower differs from the West Tower in several respects including housing a smaller lobby and "bland" offices with "nothing special about them," as well as "otherwise unremarkable spaces." Despite these differences, he

asserted that the two office buildings "command similar rental rates." The Atrium is a two-story office building that is internally connected to all other components of the Glenpointe Complex. Plaintiff's expert described the Atrium as being similar in character and quality to the other components of the Office Complex. He further testified to the retail and food amenities in the Atrium, including a take-out food shop, PNC bank, and a seating area looking over an "internal waterfall."

A. Calculation of Value using the Income Approach

Determining the value of real property pursuant to the income approach is achieved by the following process:

	Market Rent
Times	x Square footage
Equals	= Potential Gross Income
Less	- Vacancy Rate and Collection Losses
Equals	= Effective Gross Income
Less	- Operating Expenses
Equals	= Net Operating Income
Divided by	÷ Capitalization Rate
Equals	= Property Value

See Spiegel v. Town of Harrison, 19 N.J. Tax 291, 295 (App. Div. 2001), aff'g, 18 N.J. Tax 416 (Tax 1999).

B. Determination of Market Rent

For his income capitalization analysis, Plaintiff's expert relied on nine comparable leases to establish market rent, payable on a modified gross basis, with tenant electric added to leases 1 and 3, all from office space in Bergen County. The adjusted average rents ranged from $25.50 to $28.82 per square foot (/sqft), leading the expert to conclude that the office portion of the East and

West Towers of the subject property had a market rent of $28.00/sqft on a modified gross basis for tax years 2007 and 2008, $27.50/sqft of building area on a Modified Gross basis for tax years 2009 and 2010, and $25.00/sqft for the Atrium for all tax years.

Plaintiff's expert did not feel that relying upon the Office Complex's actual rents was appropriate because certain expenses were reportedly above market levels. He placed emphasis on distinguishing the differences between the subject's actual tenant improvement expenses and the subject's leasing commissions paid to brokers. He testified that the subject's tenant improvement expenses were approximately $4.07/sqft, compared to his conclusion of market tenant improvement allowances, which were at $2.50/sqft. Plaintiff's expert also opined that the leasing commissions paid to the subject office's brokers were above market, and as such relying on the subject's leases to establish market rent would not be accurate unless they were adjusted to reflect the above-market expenses. He testified that the typical leasing commissions paid at the subject property ranged from 5% to 7%, contrasting with his determination of market leasing commissions of 5%. Plaintiff's expert opined that relying on the subject property's leases to establish market rent would be akin to valuing the property on a leased fee interest rather than a fee simple interest. As such, he stated, he did not utilize or include any subject property's leases in his report or determination of market rent.

For tax years 2007 and 2008, the expert used nine leases from three distinct office buildings: 401 & 411 Hackensack Avenue, aka Continental Plaza, located in Hackensack, New Jersey; 61 South Paramus Road, aka the Paramus Road Property, in Paramus, New Jersey; and the "Park 80" office complex located on Park 80 Pehle Avenue in Saddle brook, New Jersey. The Continental Plaza property contained four of the comparable leases utilized by Plaintiff's expert,

leases 1, 2, 5, & 6. The Paramus Road Property contained an additional four leases, leases 3, 4, 7, & 8. The final comparable lease, lease 9, was located in the "Park 80" office complex.

Plaintiff's expert described the Continental Plaza property as an office complex comprised of 3 ten-story office buildings, containing 656,404 square feet as well as a two-story parking garage. He testified that he personally reviewed the Continental Plaza property's rent roll and income and expense information and verified each comparable lease by speaking with the property manager. He concluded the Continental Plaza property to be comparable, being physically proximate, similarly sized, multi-story office building with adequate parking and similar access. Furthermore, he indicated the property as having close access to major highways, transportation hubs, and desirable retail shopping.

The Paramus Road Property is owned by Paramus Road IV c/o Mack Cali. The property contains a five-story office building on a campus-like setting, encompassing a total of 269,191 square feet, with at-grade parking over 25.4 acres. Plaintiff's expert testified that he similarly verified this comparable's rent rolls and income and expense information by speaking to the property owner's representative. Like the subject property and the Continental Plaza property, the Paramus Road Property has close access to major highways, public transportation, and desirable retail shopping. Additionally, it is in close proximity to a hotel, although not on the property itself as is the case for the subject property.

The Park 80 Property is owned by L&L Park 80, LLC. Plaintiff's expert identified the property as including an office complex comprised of 2 ten-story office buildings containing a total of 492,415 square feet. The property contains both a multi-level parking garage as well as on-grade parking contained on an 8.66-acre lot. Plaintiff's expert testified that he verified the single comparable lease used in this property, ascertained through rent rolls provided in discovery

through previous litigation, with the property's ownership. He found this property to be comparable to the subject given that it is in the same geographic region, is similarly sized, and is a multi-story office building with adequate parking. Like the other comparable properties and the subject property, the Park 80 property is in close proximity to major highways and public transportation and, like the subject property, Park 80 is adjacent to a Marriott Hotel.

Plaintiff's expert concluded adjustments to three of the comparable leases he utilized in his analysis. Leases 2, 3, and 4 were subject to the following time adjustments identified as necessary due to minor changes in market conditions: Lease number 2 was adjusted to $28.82/sqft (increased from $28.00/sqft); lease 3 was adjusted to $27.84/sqft (increased from $27.00/sqft); and lease 4 was adjusted to $27.79/sqft (decreased from $29.00/sqft). Though these leases were primarily applicable to the 2007 and 2008 tax years, Plaintiff's expert concluded that with the above adjustments they were relevant for the later tax years as well.

For tax years 2009 and 2010, Plaintiff's expert utilized the four other leases from the Continental Plaza and Paramus Road Properties used for tax years 2007 and 2008, leases 5, 6, 7, and 8, as well as the remaining comparable lease, lease 9, located in the Park 80 Property. No adjustments were made on leases 5-9, the latter five being acknowledged by both parties to be post-valuation date leases for the tax years they were identified to support. The effective rent for leases 5-9 were as follows: $26.27/sqft for lease 5; $28.50/sqft for lease 6; $28.00/sqft for lease 7; $27.00/sqft for lease 8; and $27.75/sqft for lease 9. Plaintiff's expert initially determined additional income from tenant electric to be imputed at $2.50/sqft but based on information provided to him after the drafting of his report he testified before the court that it should be $1.50/sqft. He determined that no adjustments were needed for the latter five leases due to his

position that the offices were "very comparable" and further that adjustments were unsupported by the empirical data he utilized and would thus be improper.

Based on the foregoing, Plaintiff's expert determined market rent for both the East and West Towers to be $28.00/sqft for tax years 2007 and 2008, and $27.50/sqft for tax years 2009 and 2010. He concluded the market rent for the Atrium to be $25.00/sqft for each year. Multiplying his market rent determination by the stipulated square footage for the West Tower, Plaintiff's appraiser determined potential gross income of $9,842,675 for tax years 2007 and 2008, and $9,675,850 for tax years 2009 and 2010. Performing the same calculation for the East Tower, he computed the potential gross income to be $7,139,000 for tax years 2007 and 2008, and $7,018,000 for tax years 2009 and 2010. For the Atrium, he calculated the potential gross income to be $2,014,000 for all tax years.

C. Vacancy and Collection Loss

The parties stipulated to a total vacancy and collection loss rate for the entire Office Complex of 12.5% for all relevant tax years.

D. Operating Expenses

The parties stipulated to the total operating expenses for the entire Office Complex in the amount of $7,251,944.00 for all relevant tax years.

E. Capitalization Rate

The overall capitalization rate (OAR) is an "income rate for a total real property interest that reflects the relationship between a single year's net operating income expectancy and the total property price or value." Appraisal Institute, The Appraisal of Real Estate 493 (14th ed. 2013). The OAR is "used to convert net operating income into an indication of overall property value." Id. Further, "because most properties are purchased with debt and equity capital, the

[OAR] must satisfy the market return requirements of both investment positions." This method is known as the Band of Investment Technique which is "[a] technique in which the capitalization rates attributable to components of a capital investment (debt and equity) are weighted and combined to derive a weighted-average rate attributable to the total investment." Id. at 495. To determine the OAR, Plaintiff's expert selected an equity dividend rate of 0.09 based on data from the 3rd Quarter PriceWaterhouseCoopers Korpacz Real Estate Investor Survey (Korpacz) as well as data from the ACLI and the RealtyRates.com Investor Survey which he determined utilized analogous rates.

Plaintiff's expert expressed that the Korpacz statistics were especially useful in determining an applicable equity dividend rate given the fact that they relate only to 100% unleveraged cash transactions, rather than transactions including a mortgage component. He stressed that a higher capitalization rate was necessary given the risks he concluded to be present in a mixed-use property such as the subject property. He opined that the fact that the subject property is not a standalone office building, with the various component parts sharing the same parking and facilities, adds increased complexity and risks which necessitate a greater equity dividend rate.

Plaintiff's expert based his determination of the mortgage component of his Band of Investment calculation on his professional understanding of leveraged transactions in the market as well as the ACLI data. Relying primarily on the ACLI tables, he identified his concluded mortgage interest rate, amortization period, and loan-to-value (LTV) ratio. He concluded for each of the tax years in question that mortgages with 5-year terms and 20-year amortization periods would be applicable, and the appropriate LTV ratios were 75% for tax years 2007 and 2008 and 65% for tax years 2009 and 2010.

Plaintiff's expert further testified to the fact that the effective tax rate for each tax year in question were as follows: 0.0215 for 2007, 0.0218 for 2008, 0.0219 for 2009, and 0.0232 for 2010.[2] Factoring in the selected equity dividend rate for the resulting blended rate calculation, he concluded base rates of 0.0896 for tax year 2007, 0.0895 for 2008, 0.0897 for 2009, and 0.0897 for 2010. Plaintiff's expert reported that he corroborated his conclusions for each year using surveys from Realtyrates.com which showed OARs of 0.0972 for 2006, 0.0925 for 2007, 0.0909 for 2008, 0.0938 for 2009, and 0.0954 for 2010. Adding each relevant tax year's effective tax rate to each base rate led him to an OAR of 0.1111 for 2007, 0.1113 for 2008, 0.1115 for 2009, and 0.1129 for 2010.

Applying the above capitalization rate to his conclusion of the Net Operating Income for each tax year resulted in Plaintiff's expert's final valuation conclusion for the subject property Office Complex as follows:

Tax Year 2007	Tax Year 2008	Tax Year 2009	Tax Year 2010
$84,335,000	$84,180,000	$81,778,000	$80,755,000

2. <u>Township's Expert's Approach to Valuation of the Office Complex</u>

The Township's appraiser (Township's expert), prepared an appraisal report of the subject property and testified regarding its valuation. He stated that the Office Complex commanded the highest rent in Bergen County because of the location, common areas, and amenities. He described

[2] Though the parties utilized the rounded effective tax rate in their calculations, the court will utilize the unrounded effective tax rates in its own conclusions which are as follows: 0.0215 for tax year 2007, 0.02175 for tax year 2008, 0.02186 for tax year 2009, and 0.0232 for tax year 2010.

the amenities therein at length, contrasting starkly with the description provided by Plaintiff's expert, highlighting various aspects of construction and amenities that he felt contributed to not just the exceptional value of real estate, but also the "lifestyle" that allowed the subject property's Office Complex to command such high rental rates compared to other proximate comparable offices.

According to the Township's expert, the most distinctive characteristics of the subject Office Complex are: the maximization of window space in the office and atrium to provide ample light and views; 14 separate balconies and terraces attached to the West Tower as well as skylights in the West Tower Lobby; and clear glass elevator banks in the Atrium as well as a sitting area containing water fountains and a reflecting pond with a granite and marble floor base – reportedly a feature not found in any other office complexes in the Bergen County region.

The expert testified to several exceptional amenities provided by the subject Office Complex including a convenience store, gift shop, bank, and dry cleaners; substantial courtyard and dining area between the East and West Tower landscaped with meeting areas and a fountain; and finally tenant spaces containing higher quality finishes and high ceilings, ranging 13 feet high on the first floor and extending to 18-foot ceilings on the upper floors. Additionally, his testimony highlighted the Office Complex's close proximity to public transport, and the fact that it contains the "largest privately owned office building covered parking garage" in Bergen County which is able to accommodate up to 1200 cars.

A. Determination of Market Rent

The Township's expert relied primarily on 7 leases from the subject property as well as 19 comparable leases in the market in reaching his determination of market rent under his income capitalization analysis. An additional 17 subject leases he utilized were admitted into evidence

during the course of the trial. Contrasting with Plaintiff's expert's position, the Township's expert asserted that the subject's Office Complex leases are the best indicators of market rent and that no adjustments on the leases were necessary or required.

The expert's testimony described the various subject leases as well as enumerated several others as additional reference points for establishing market rent for the subject Office Complex. The testimony described the following for each relevant tax year: 4 leases prior to the October 1, 2006 valuation date, two in the East Tower and two in the West Tower; 5 leases in 2007 prior to the October 1 valuation date for the 2008 tax year, as well as one after the valuation date, four in the East Tower and two in the West Tower; 4 leases in 2008 (3 prior to the October 1, 2008 valuation date with one in December of the same year), one in the East Tower and three in the West Tower; and 3 leases prior to the 2009 valuation date, one in the East Tower and one in the West Tower. Additionally, 6 leases from the subject Atrium were admitted into evidence ranging from November 30, 2005 to September 23, 2008. The weighted average of all leases entered into evidence on the record is $33.82/sqft for the East and West Towers and $32.58/sqft for the Atrium.

The Township's expert testified to his reliance on the initial 7 subject leases. The effective rents of these leases ranged from $30.00/sqft - $36.33/sqft. Several of the leases also reflected free rent concessions which caused the actual scheduled cost per square foot of rent to differ from the lease's effective rent. Factoring in the free rent concessions was the only adjustment made to the subject leases by the expert.

The expert first identified D-6 as a lease for a space in the East Tower of the subject. It was for a term of 5 years, 3 months, with the 3 months being a free rent concession. This lease's effective rent was $30.95/sqft. D-7 was likewise a lease in the East Tower and reflected a term of 10 years with no concession and an effective rent of $34.75/sqft.

D-8 to D-12 were all leases located in the West Tower of the subject's Office Complex. D-8 reflected a 5-year, two-month lease with an effective rent of $31.32/sqft and two months free rent as a concession. The rent rolls reflect that D-8 had an initial rent of $31.50/sqft for the first two years of the 5-year term, followed by an increase to $32.50/sqft for the second two year period, with a final year at $33.50/sqft rent. D-9 reflected a lease with two 5-year terms. The effective rent for this lease was $32.00/sqft, with the first 5-year term being $31.00/sqft and the second 5-year term being $33.00/sqft. D-10 reflected a 5-year lease with an extra 3 months free rent of $32.50/sqft flat amounting to an effective rent of $30.95/sqft. D-11 reflected a lease term of 5 years 2.5 months with a flat rent of $31.00/sqft, equaling an effective rent of $30.00/sqft. Lastly, D-12 reflected a lease with a term of 12 years and an effective rent of $36.33/sqft. The actual rent for D-12 was $34.00/sqft for years 1-5 and $38.00/sqft for years 6-12. The effective rents for the admitted Atrium leases were as follows: $33.60/sqft for D-121; $34.50/sqft for D-113; $30.63/sqft for D-119; $35.75/sqft for D-112; $30.00/sqft for D-118; $25.00/sqft for D-115; $31.50/sqft for D-110; and $24.80/sqft for D-120.

The Township's expert corroborated the Office Complex's leases with other leases in Bergen County and surrounding the subject property. Each lease was payable on a gross basis plus tenant electric. Comparable leases 1, 3, 4, 9, 12, 13, and 14 were located in the Park 80 office complex in Saddle Brook, New Jersey. Leases 2, 5, 10, 11, and 16 were located in the Paramus Road Property office complexes located in Paramus, New Jersey. Comparable leases 7, 15, 17, and 19 were located in the Continental Plaza office buildings in Hackensack, New Jersey.

The remaining three leases, leases 6, 8, and 18 were located in the Metropolitan Center office complex in East Rutherford, the Meadows Office Complex in Rutherford, New Jersey, and the 650 From Road Office, located in Paramus, New Jersey (the "From Road Property"),

respectively. The Township's expert testified that the Metropolitan Center Office Complex was most comparable to the subject Office Complex as there is a Sheraton hotel within walking distance, similar amenities, and close access to major highways and transportation. The Meadows Office Complex contained two office towers similar to the subject as well as a cafeteria and courtyard, but according to the expert, the quality and amenities provided by this property are "inferior to Glenpointe's." He further testified that similar to the subject, the From Road Property contains an atrium, cafeteria, three fountains, and on-site public transportation. The From Road Property is also similarly situated, in close proximity to desirable shopping, dining, a fitness center, and is adjacent to a hotel.

Each comparable lease was used with some adjustments to their respective average rents based on factors including the age and condition of the property, amenities, parking, and location. Leases 1, 3, 4, 9, 12, 13, and 14 in the Park 80 office building were all given a 5% adjustment for the age, quality, and condition. Leases 2, 5, 10, 11, 16, and 18 in the Mack-Cali office complexes were provided a 25% adjustment comprised of 5% for age, quality, and condition, 5% for amenities, 10% for parking, and 5% for location. Comparable leases 7, 17, and 19 were all subject to a 15% net adjustment, which included 10% for age, and 5% for amenities. Lease 15 was subject to a 10% net adjustment, which likewise included 10% for age and 5% for amenities, with an additional -5% work letter adjustment. Lease 6 was given a -5% work letter adjustment. Lease 8 had a 30% adjustment based on 10% for age, quality, and condition, 5% for amenities, 10% for parking, and 5% for location. The adjusted average rents in the comparable properties ranged from \$32.50 to \$35.73/sqft for tax year 2007; \$32.55 to \$37.18/sqft for tax year 2008; \$31.50 to \$36.36/sqft for tax year 2009; and \$31.63 to \$34.38/sqft for tax year 2010.

Based primarily on the subject leases and corroborated by the comparables above, the Township's expert determined the market rent for each of the tax years as follows: $33.50/sqft for the West Tower, $33.50/sqft for the East Tower, and $32.00/sqft for the Atrium. He initially calculated tenant electric to be $1.50/sqft, though during the course of his testimony modified his conclusion to reflect tenant electric charges to be $1.75/sqft. Accordingly, the expert calculated the potential gross income of the office components to be $11,177,275 for the West Tower, $8,107,000 for the East Tower, and $2,432,000 for the Atrium. He modified his initial calculation of income from tenant electric ($977,475) to $1,140,388. In total, the potential gross income of the Office Complex in the subject property amounted to $22,856,663 for each relevant tax year in question.

B. Vacancy and Collection Loss Rate

As noted before, the parties stipulated to a total vacancy and collection loss rate for the entire Office Complex of 12.5% for all relevant tax years.

C. Operating Expenses

Parties stipulated to the total operating expenses for the entire Office Complex in the amount of $7,251,944.00 for all relevant tax years.

D. Capitalization Rate

To determine the OAR, the Township's expert selected an equity dividend rate of 0.05 based on data from the 3rd Quarter Korpacz Real Estate Investor Survey as well as data from the ACLI. Contrary to Plaintiff's expert's assertion that the mixed-use nature of the subject property adds risk and thus should necessitate an increased capitalization rate, the Township's expert testified that the combined office and hotel and their amenities created a beneficial "synergy" and actually reduced the risk. Additionally, the Township's expert placed an emphasis on the subject

Office Complex's close proximity to Manhattan, opining that its capitalization rates are more analogous to the Manhattan market than the National Suburban market highlighted in the Korpacz surveys.

In consideration of the high-end nature of the subject Office Complex, the Township's expert opined that a capitalization rate at the lower end of the investment ranges is appropriate. He based his conclusion on his "knowledge of the local market with regard to interest rates and cap rates" as well as the following published rates.

The Korpacz data for National Suburban Office rates utilized in the Township's expert's report indicated average capitalization rate ranges for each tax year of 0.055 to .1050 with an average of 0.0775 for tax year 2007; 0.05 to .1050 with an average of 0.0724 for tax year 2008; 0.05 to .1050 with an average of 0.0734 for 2009; and 0.07 to .12 with an average of 0.0872 for 2010. The Korpacz data set for Manhattan Offices capitalization rates shows ranges of 0.03 to .08 with an average of 0.0584 for tax year 2007; 0.03 to .08 with an average of 0.0552 for tax year 2008; 0.035 to .08 with an average of 0.0570 for tax year 2009; and 0.05 to .09 with an average of 0.0651 for tax year 2010. The ACLI averaged capitalization rates for National Office Buildings with 25+ million-dollar loan size included in the Township's expert's report showed rates of 0.071 for tax year 2007; 0.056 for 2008; 0.064 for 2009; and 0.082 for 2010. The ACLI average rates for the Middle Atlantic region showed rates of 0.065 for 2007; 0.057 for 2008; 0.062 for 2009; and 0.089 for 2010.

Based on the above data sets and his determination of the subject Office Complex's superior condition relative to other similar properties, the Township's expert concluded the base capitalization rate at 0.0625 for tax year 2007, 0.0625 for tax year 2008, 0.065 for tax year 2009, and 0.0675 for tax year 2010. With the addition of each relevant tax years' effective tax rate, he

determined an OAR of 0.084 for 2007, 0.0843 for 2008, 0.0869 for 2009, and 0.0907 for 2010. Applying the above capitalization rates to the determined Net Operating Income of $12,747,636 for each year, the Township's expert concluded the fair market value of the subject Office Complex reflected below:

Tax Year 2007	Tax Year 2008	Tax Year 2009	Tax Year 2010
$151,757,568	$151,217,505	$146,693,161	$140,547,251

B. Valuation of the Hotel

It is well settled that the valuation of income-producing properties is predominantly determined by using the preferred income capitalization approach. Parkview Vill. Assocs. v. Borough of Collingswood, 62 N.J. 21, 23 (1972). In valuing a hotel, Judge Pizzuto stated:

> [T]he income that the property owner received is not income from the rental of the real estate, but rather the net income of a business conducted at the facility. Therefore, the valuation of the fee simple interest in the real property by capitalization of income is a more complicated exercise than it is in cases where there is a lease of real estate to the operator of a business. It requires the separation of the income attributable to the use of the realty out of the total income generated by the operation of the business before capitalization of the realty income.
>
> [Chesapeake Hotel LP v. Township of Saddle Brook, 22 N.J. Tax 525, 526-27 (Tax 2005).]

Both experts in this case separated the income attributable to the use of the realty out of the total income generated by the operation of the hotel before capitalization. Referred to as the "Rushmore method," the approach that the experts utilized here has been employed by experts in other hotel valuation cases and followed in reported decisions before the New Jersey Tax Court. See id. at 527; Prudential Ins. Co. of Am. v. Township of Parsippany-Troy Hills, 16 N.J. Tax 58 (Tax 1995), aff'd, 16 N.J. Tax 148 (App. Div. 1996); Westmount Plaza v. Township of Parsippany-

Troy Hills, 11 N.J. Tax 127 (Tax 1990); see also City of Atlantic City v. Ace Gaming, LLC, 23 N.J. Tax 70 (Tax 2006) (applying the Rushmore methodology to a casino hotel as opposed to a conventional hotel).

The Rushmore methodology was explained by Judge Pizzuto as follows:

> Rushmore considered that all payments to the entity that manages and operates the hotel constitute business income generated by the exercise of management and entrepreneurship. Accordingly, he excluded these payments in the computation of realty income subject to capitalization. In addition, Rushmore considered that a portion of the overall income was realized by the employment of furniture, fixtures, and equipment (often referred to as "FF & E"). Since these items are (generally speaking) personal property rather than real estate, the income attributable to them, under Rushmore's method, is also excluded from realty income. Separate adjustments are made to provide for periodic replacement of the personal property (the return of FF & E) and also for a yield on the investment in personal property (the return on FF & E).
>
> [Chesapeake Hotel LP, 22 N.J. Tax at 527-28.]

In other words, the Rushmore method's steps involve: (1) calculating gross revenue from guest room rates, food and beverage, and other revenue; (2) deducting stabilized departmental expenses associated with guest room rates, food and beverage, and other expenses; (3) deducting undistributed operating expenses associated with general and administrative costs, sales and marketing, property operations, and energy; (4) deducting fixed expenses including franchise fees and insurance; (5) deducting business and personal property expenses including a market-rate management fee, a return of furniture, fixtures and equipment (FF&E), and return on FF&E; and finally (6) applying a capitalization rate to the Net Operating Income.

The experts for both parties utilized stabilized values for each component part of their valuation analysis. This court has held that "[a] determination of stabilized revenue and ultimately stabilized net income is necessary because, in the direct capitalization method, a single net income

figure is capitalized in perpetuity to determine value." Prudential Ins. Co., 16 Tax at 60. Given the economic upheaval inherent to the latter tax years in question due to the recession, this court agrees that stabilization of income and expenses can result in more accurate conclusions of fair market value. The merit of this reasoning is that, "[t]he stabilized net income is intended to reflect the anticipated operating results of the hotel over its remaining economic life, given any or all applicable stages of buildup, plateau, and decline in the life cycle." Ibid. (quoting Rushmore & Rubin, The Appraisal Journal, The Valuation of Hotels and Motels for Assessment Purposes, 274 (1984)). "History has shown that, during economic downturns, hotel values do not fall in the same proportion that their declining incomes do . . . Appraisers, therefore, can best reflect market behavior by projecting facilities' net income to a stabilized level reflecting renewed market stability and applying the proper discounted cash flow procedure over this time." Rushmore & Baum, The Appraisal Institute, Hotels and Motels, Valuations and Market Studies, 13 (2001). Furthermore, the court concurs with the holding in Prudential Ins. Co., which held that stabilization was appropriate during periods of "transitory conditions" in which hotel rates fell to the "bottom of the market." Id. at 63-64. See also American Cyanamid Co. v. Township of Wayne, 17 N.J. Tax 542, 566 (Tax 1998), aff'd, 19 N.J. Tax 46 (App. Div. 2000) (requiring stabilization in a tax appeal valuation context "regardless of what actual market conditions might reflect as of the date of valuation"); Hull Junction Holding Corp., 16 N.J. Tax at 96 ("value for purposes of taxation has some measure of permanency which renders it secure against temporary inflation or deflation.") (citation and quotation marks omitted).

The experts further relied on comparable hotels located in the subject market in the form of competitive sets compiled by the hotel and travel research organization Smith Travel Research

(STR).[3] The STR competitive sets are compiled based on various classes of hotels including Luxury, Upper-Upscale, Upscale, Upper-Midscale, Midscale, and Economy. These classifications are determined based on the hotel's average daily room rate relative to that of the chain hotels in the geographic region as well as the amenities and features contained in the hotel. The experts differed as to what classification the subject Hotel fell within. These differences are described in greater detail below.

With this background in mind, the Rushmore method contains multiple component parts that will be explained more fully below.

1. **Plaintiff's Expert's Approach to Valuation of the Hotel**

Plaintiff's expert identified the subject Hotel as being a 15-story, 345-room, full-service Marriott Hotel, containing banquet facilities, a restaurant, bar, meeting rooms, and a gym with an indoor pool. Though the gym and pool facilities are labelled as a "spa" by the Plaintiff, Plaintiff's expert testified that it was not in essence a "real" spa in terms of quality or amenities, though he reported that it contains locker rooms and rooms "devoted to masseuse." He noted that the Hotel relied on the same parking structure as the subject office.

Based on his classification of the subject Hotel as Full-Service, the expert utilized a competitive set from STR comprised of the following four hotels: the Double Tree in Fort Lee, the Sheraton Hotel Meadowlands, the Hilton Hasbrouck Heights/Meadowlands, and the Holiday Inn in Hasbrouck Heights. Only two out of these four hotels were classified by STR as Upper-Upscale,

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[3] Smith Travel Research, Inc., along with Smith Travel Research Global, Inc., track supply and demand data for the hotel industry and provide market share analysis for all major hotel chains and brands both domestically and internationally. Smith Travel Accommodations Reports (STARs) include data and trends of hotels to compare market share performance against a self-selected competitive list. See https://str.com/about.

namely the Hasbrouck Heights Hilton, and the Sheraton East Rutherford. The DoubleTree Fort Lee is reportedly classified by STR as Upscale while the Holiday Inn is classified as Upper-Midscale. The average daily room rates for each relevant tax year were as follows: $138.87 for 2006; $149.26 for 2007; $145.96 for 2008; $123.20 for 2009; and $119.61 for 2010. The corresponding occupancy rates for each year were: 67.9% for 2006; 70.3% for 2007; 72.2% for 2008; 58.9% for 2009; and 67.1% for 2010. Accordingly, the average RevPar (revenue per available room) of Plaintiff's expert's competitive set for each year was: $94.29 for 2006; $104.93 for 2007; $105.38 for 2008; and $72.56 for 2009; and $80.26 for 2010. In contrast to his valuation of the subject Office Complex, Plaintiff's expert opined that in his analysis he gave the greatest weight to the subject Hotel's actual performance.

A. Revenues

The first step in the hotel valuation analysis is to calculate gross revenue. Gross revenue is comprised of the revenue generated from the hotel rooms available, food and beverage sales, telephone charges, and other revenue. Plaintiff's expert calculated gross room revenue by multiplying the RevPar times the number of available rooms in the subject Hotel in the specified year, and determined the subject Hotel's RevPar by multiplying the stabilized average daily room rate (ADR) by the applicable occupancy rate for each tax year in question.

Plaintiff's expert determined that the total available rooms per night in the subject Hotel for all tax years in question amounted to 125,580, the occupancy rate to be 70% for tax years 2007 and 2008 and 75% for tax years 2009 and 2010, and calculated the subject hotel's ADR to be $165 for tax years 2007 and 2008, and $150 for tax years 2009 and 2010. Accordingly, the stabilized RevPar was $115.50 for tax years 2007 and 2008, and $112.50 for tax years 2009 and 2010.

Utilizing the above methodology, Plaintiff's expert concluded the stabilized room revenue figures to be $14,504,490 for tax years 2007 and 2008, and $14,127,750 for tax years 2009 and 2010.

The expert then determined and stabilized revenue derived from the subject Hotel's food and beverage sales by utilizing its actual performance as well as the results contained in the STR's 2011 Hotel Operating Statistics Study Report ("HOST Report") for Full-Service Hotels. Giving greater weight to the subject Hotel's actual performance, Plaintiff's expert concluded its stabilized food and beverage revenue to be 38.6% of total revenue for tax years 2007 and 2008, totaling $9,400,000, and 37% of total revenue for tax years 2009 and 2010, or $8,500,000.

Again utilizing the subject Hotel's actual revenue data as well as the selected market surveys, Plaintiff's expert determined the Hotel's stabilized telecommunication revenue to be 1.2% of total revenue for tax years 2007 and 2008, amounting to $300,000, and 0.9% of total revenue for tax years 2009 and 2010, totaling $210,000.

Lastly, the expert determined all other revenue generated by the subject Hotel such as rental income from hotel shops, valet service, vending machines, auto rental commissions, movie rental fees, and the like. Utilizing historical data from the subject Hotel as well as market surveys, he determined other revenue as 0.5% of total revenue for a stabilized amount of $125,000 for tax years 2007 and 2008, and 0.6% for tax years 2009 and 2010, for a stabilized amount of $132,000.

In sum, the total amount of revenue derived from the subject Hotel was determined by Plaintiff's expert to be $24,329,490 for 2007 and 2008 and $22,969,750 for 2009 and 2010.

B. Departmental Expenses

The next step in the valuation analysis for the subject Hotel is to calculate expenses as they relate to revenue. Accordingly, Plaintiff's expert utilized the same general categories as reflected above in his calculation of revenue, expressed in the form of ratios. As was the case in his revenue

calculation, Plaintiff's expert's calculation relied on estimated stabilized expenses for all relevant tax years expressed in the form of ratios to total revenue.

The first category of expenses are those derived from the sale and upkeep of the hotel rooms available. Plaintiff's expert utilized data from the STR's 2011 HOST Report as well as the actual expense data from the subject Hotel for the relevant tax years. Data from the HOST Report indicated an expense range of 26.7% to 30.1% of rooms revenue for comparable hotel properties in the subject market. For tax years 2007 and 2008, the expert determined the expense range from the subject Hotel's actual room expenses to be 13.7% to 14.3% of total revenue, or alternatively a total of $3,764,630 for tax year 2007 and $3,980,161 for tax year 2008. For tax years 2009 and 2010, the expert determined a range of 17.1% to 18.0% of total revenue for the subject Hotel's actual room expenses, or a total of $3,546,203 for 2009 and $3,793,126 for 2010. His stabilized room expense rate amounted to 15.4% of total revenue for tax years 2007 and 2008, and 17.2% of total revenue for tax years 2009 and 2010, or alternatively $29.89 and $31.45 times the total available room nights for a total of $3,753,000 and $3,950,000 respectively.

Plaintiff's expert next calculated the stabilized food and beverage expenses for the relevant tax years, again relying on the 2011 HOST Report to ascertain food and beverage expense ranges for comparable properties in the subject market. The expert further concluded that the actual food and beverage expense range for the subject Hotel amounted to 27.7% to 28.7% of total revenue for tax years 2007 and 2008, and 26.9% to 31.5% for tax years 2009 and 2010. Accordingly, Plaintiff's expert determined the stabilized food and beverage expense range to be 29.7% of total revenue for tax years 2007 and 2008, or alternatively $57.60 times the total number of available room nights for a total of $7,233,000, and 28.3% of total revenue for tax years 2009 and 2010, or $51.76 times the total room nights totaling $6,500,000.

To determine stabilized telecommunications expenses, Plaintiff's expert primarily based his calculation off the historical expense data from the subject Hotel. For tax years 2007 and 2008, the actual telecommunications expense range was between 0% and 1.2% of total revenue, leading him to determine a stabilized expense rate of 0.7% of total revenue for those years, or $175,000. For tax years 2009 and 2010, the subject Hotel's historical expense data showed a telecommunications expense range of 0.9% to 1.2% of total revenue, which led Plaintiff's expert to estimate an expense rate of 1.1% of total revenue for those years, or $250,000.

In calculating the expenses to offset the income in the above "Other Revenue" determination, the expert determined an expense range of 1.8% to 4.1% of revenues for properties deemed comparable to the subject Hotel. Analyzing the historical expense data from the subject Hotel, Plaintiff's expert determined the expense range for Other Expenses to be 1.9% to 0.6% of total revenue for 2007 and 2008, or $50,000, and 0.0% to 0.4% for tax years 2009 and 2010, or a total of $60,000. Accordingly, he concluded stabilized other expenses to be 0.2% of total revenue for 2007 and 2008, and 0.3% of total revenue for 2009 and 2010.

Plaintiff's expert thus determined the total stabilized departmental expenses to be $11,211,000 for tax years 2007 and 2008, and $10,760,000 for tax years 2009 and 2010.

C. Undistributed Operating Expenses

The next step in hotel valuation analysis is to calculate undistributed operating expenses. Plaintiff's expert calculated annual stabilized undistributed operating expenses for all tax years at issue as of October 1 of the preceding year, and categorized them as: administrative and general expenses, marketing expenses, property maintenance, and utilities. He calculated these expenses as both percentages of total revenue and numerical dollar figures based upon the range of actual

reported figures from years 2006-2010 and stabilizing same, as well as utilizing data in the 2011 HOST Reports and comparable hotel properties in the subject market.

Similarly utilizing the subject Hotel's actual expenses alongside the 2011 HOST Report, Plaintiff's expert determined its actual administrative and general expenses to be 9.1% of total revenue for 2007 and 9.3% of total revenue for 2008, and as stabilized, to be 9.8% of total revenue or $2,375,000. For tax years 2009 and 2010 the subject Hotel's actual expense rate was 10.9% of total revenue for 2009 and 11% for 2010, and as stabilized, 10.1% of total revenue, or a total of $2,326,000.

He determined the actual marketing expense rate for the subject Hotel to be 5.9% of total revenue for 2007 and 6.3% for 2008, with a stabilized expense rate for both years at 6.5% of total revenue or $1,575,000 total. For tax years 2009 and 2010, the expert utilized actual marketing expense rates of 7.4% and 8.2% respectively and estimated a stabilized rate of 7.6% of total revenue or $1,750,000 total.

Actual property maintenance expenses for tax tears 2007 and 2008 was determined to be 4.5% and 4.7% of total revenue respectively, stabilized to 4.9% of total revenue or a total of $1,200,000. For 2009 and 2010, this expense rate was 5.7% and 5.2% respectively, for an estimated stabilized expense rate of 5.0% of total revenue or $1,150,000.

Actual utilities expense rates for 2007 and 2008 were determined at 3.6% and 3.9% of total revenue respectively, stabilized to 4.3% of total revenue or $1,050,000 total. For 2009 and 2010, this expense rate was 5.6% and 5.2% of total revenue, stabilized to 5.0% of total revenue, or $1,150,000 total.

Plaintiff's expert thus determined total stabilized undistributed expenses for the subject Hotel to be $6,200,000 for tax years 2007 and 2008, and $6,935,000 for tax years 2009 and 2010.

D. Fixed Expenses

The next step of the valuation analysis for the subject Hotel is to calculate the fixed expenses as they relate to its operations, which here are comprised of franchise fees and insurance.

ii. Franchise Fee

Plaintiff's expert determined that for tax years 2007 and 2008 there were no franchise fee expenses and accordingly utilized the figure 0% for those years. For tax years 2009 and 2010 he utilized a market-oriented stabilized fee of 2.4% of total revenue.

iii. Insurance

Plaintiff's expert admitted that there were no actual insurance expenses reported by the subject property's management. As such, he calculated estimated stabilized rates based off of the subject Hotel's historical expense data as well as industry standards and market surveys, concluding insurance expenses rates of 0.2% of total revenue for tax years 2007 and 2008 and 0.3% of total revenue for 2009 and 2010, or $50,000 and $75,000 respectively.

E. Business and Personal Property Expenses and Deductions

i. Management Fee

With respect to management fees, Plaintiff's expert found stabilized rates to be 5% for all relevant tax years, comprised of the combined base management fee of 3% of total revenue and incentive management fee of 2% of total revenue. He emphasized that it is proper to separate the two components of Management Fees. The actual management fees ranged between 2.8% to 3% of total revenue for 2007 and 2008 and 2.5% to 2.8% for 2009 and 2010.

ii. Structural Reserves

With regard to structural reserves, Plaintiff's expert likewise determined stabilized rates of 3% for all relevant tax years.

iii. Return On FF&E

Consistent with the Rushmore Method, it is essential to deduct the income attributable to the realty from that of business and personal property. This type of property in the present matter is identified as FF&E. It is further broken down into the values attributable to the "Return On" the property and the "Return Of" the property.

Plaintiff's expert explained that the "Return On" the FF&E is used to represent the earning capacity of such property. He elaborated that the "Return On" the FF&E is calculated by finding the depreciated value of the property in question and then applying the applicable rate of return onto the subject FF&E. To reach his conclusion, he utilized the subject Hotel's actual operations as well as industry surveys including STR and Hospitality Valuation Services (HVS), in determining an estimated replacement cost of the FF&E of $25,000 per room. The expert then depreciated that value by 50% to $12,500 per room, citing that such property "depreciate[s] fairly quickly." He justified a rate of return of 15% on the FF&E, explaining that due to the relatively rapid speed of depreciation on this type of property, lenders and investors seek to make back their money at a swifter pace.

Accordingly, the expert determined the Return On FF&E for the subject Hotel to be $645,000 or 2.7% of total revenue for tax years 2007 and 2008, and 2.9% for tax years 2009 and 2010, based on the following calculation: ($12,500/room times 345 rooms @ 15% rate of return = $646,875).

iv. Return Of FF&E

Plaintiff's expert described the Return Of FF&E as the reserved cost of replacement of such chattels. Utilizing data from the HOST Reports[4] and PWC Korpacz Real Estate Investor Survey for the 3rd Quarters of 2006 to 2010[5], he opined a Return Of FF&E of 2% of total revenue for each applicable tax year, thus, a total of $486,590 for tax years 2007 and 2008, and $459,395 for tax years 2009 and 2010.

F. Net Operating Income

Applying the above stabilized revenues less the stabilized expenses, Plaintiff's expert reached a conclusion of Net Operating Income from the real estate for the subject Hotel of $3,787,131 for tax years 2007 and 2008 and $2,267,170 for tax years 2009 and 2010.

G. Capitalization Rate

Plaintiff's expert utilized the Band of Investment Technique method of capitalization to reach his valuation determination of the subject Hotel. He noted the first step in this technique is to "ascertain the best obtainable financial package available in the marketplace on the date of valuation for this type of property." In doing so, he analyzed market data from the ACLI surveys in conjunction with his personal knowledge of leveraged transactions in the market to ascertain his anticipated mortgage rate, amortization period, and appropriate LTV ratio, and determined the applicable mortgage constant for each tax year to be 0.0810.

Next, he determined the appropriate equity dividend rate for the income capitalization calculation, focusing primarily on the Korpacz data on OARs for "national full-service lodging

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4 HOST Reports reflected a range of Return Of FF&E from 1.8% for the Mid-Atlantic Region with a high of 3.3% for suburban locations, as well as 2.2% of total revenue in reserves for chain-affiliated hotels.

5 Korpacz Real Estate Investor Survey 3rd Quarter data from 2006 to 2010 indicated rates of 1% to 8% of total revenue for each tax year at issue.

segment" for each relevant tax year. Plaintiff's expert justified his reliance on this data because it was analogous to the equity dividend rates in that they reflected unleveraged transactions in the market. As such, Plaintiff's expert asserted that the Korpacz rates effectively highlight the OAR minus the mortgage component. Accordingly, he concluded an equity dividend rate of 0.1 for all relevant tax years. Plaintiff's expert opined that such a capitalization rate was appropriate given his theory of risk related to the mixed-use of the property.

Lastly, Plaintiff's expert applied the effective tax rate for each relevant tax year to his OAR to determine his final loaded capitalization rate for his Band of Investment capitalization analysis. As stated above, the effective tax rates used were as follows: for 2007 it was 0.0215, for 2008 it was 0.0218, for 2009 it was 0.0219, and for 2010 it was 0.0232. Based on the above figures as well as corroborating data from RealtyRates' OARs, Plaintiff's expert concluded a base capitalization rate of .0877 for all relevant tax years. Combining the base capitalization rate with the effective tax rate as discussed above, Plaintiff's expert concluded an overall rate of 0.1092 for tax year 2007, .1095 for 2008, .1096 for 2009, and .1109 for 2010.

Dividing his concluded Net Operating Income by the OAR resulted in the valuation conclusion reflected below:

Tax Year	2007	2008	2009	2010
Market Value	$34,680,000	$34,600,000	$20,695,000	$20,435,000

2. Township's Expert's Approach to Valuation of the Hotel

The Township's expert described the subject hotel as being one of the "premier hotels in [the Bergen County] market area" based on the amenity package, construction, quality, condition, location, and reputation within the brokerage community. Differing from Plaintiff's expert, the

Township's expert classified the subject hotel as a Luxury/Upper-Upscale Hotel which he concluded based on his analysis of the property, and by verifying with a representative from STR, who confirmed that the Glenpointe Marriott had been classified as Upper-Upscale "since it was built." He additionally testified that his own classification of Upper-Upscale was based off of the subject Hotel's close proximity to Manhattan as well as the fixtures, furniture, amenities, and room rates. He opined that compared to the subject Hotel, a full-service hotel would have "less quality finishes" whereas a hotel classified as "luxury" would have a "higher quality of finishes." He also described the various classifications of hotels based off the 2008 PricewaterhouseCoopers Korpacz Study for the 3rd Quarter of 2008 as follows:

> Full service lodging, lodging with restaurant, lounge facilities, meeting space and a minimum service and amenities level. Moderate to low upper per tier pricing includes all suite lodgings, includes upscale and mid-scale with food and beverage chain segments. Luxury lodging, high quality lodging offering personalized guest services, typically with extensive amenities, upper tier pricing, includes four and five star resorts, includes luxury and upper scale segments. Those are the definitions.

The Township's expert additionally asserted that luxury hotels would not be included in his definition of Full-Service and further that he would be "more concerned with luxury upscale hotels" in his analysis of the subject Hotel in the instant matter.

In his competitive set selected through STR, the Township's expert utilized the following comparable hotels: The Doubletree Fort Lee, the Renaissance Meadowlands, the Sheraton Hotel Meadowlands, Embassy Suites Secaucus Meadowlands, the Hilton Hasbrouck Heights Meadowlands, and the Marriott Saddle Brook. Each hotel in the set is classified by STR as Upper-Upscale with the exception of the DoubleTree Fort Lee which is classified as an Upscale hotel. The Township's expert's competitive set similarly shares the DoubleTree Fort Lee, Hasbrouck

Heights Hilton, and the Sheraton Hotel Meadowlands with Plaintiff's Expert's competitive set. The average daily room rates for the competitive set for each tax year is as follows: $163.03 for 2007; $160.77 for 2008; $134.22 for 2009; and $129.02 for 2010. The average occupancy rate of the competitive set for each year was as follows: 71.3% for 2007; 71.5% for 2008; 62.3% for 2009; and 69.6% for 2010. Accordingly, the average RevPar of the competitive set for each year was as follows: $116.28 for 2007; $114.88 for 2008; $83.57 for 2009; and $89.80 for 2010. The Township's expert opined in his testimony that the subject is a superior hotel to each of those in his competitive set. He further testified that he relied primarily on the subject Hotel's actual performance, rather than rely on the figures from his competitive set for its valuation.

The expert relied solely on the Income Capitalization Approach for his valuation analysis of the subject Hotel. He utilized the direct capitalization method capitalized through the Mortgage/Equity Band of Investment technique, taking into account the needs of an investor to satisfy both the necessary returns for the mortgage lender as well as the investor's own need to receive a return on their investment. The methodology behind each component of valuation done by the Township's expert was largely the same as that of Plaintiff's expert. All figures from below are contained in the Township's expert's report. Accordingly, the court will take a more streamlined approach in describing the Township's expert's analysis to avoid redundancy.

A. Revenues

To reach this conclusion, the Township's expert primarily focused on the actual income and expenses of the Hotel. He also relied on the six other hotels in his competitive set using the STR Trend Report, noting however that the subject Hotel outperformed all other hotels in Bergen County. Accordingly, he testified that these comparable hotels were primarily for corroborative purposes, rather than his main tools to reach a valuation conclusion.

The expert also utilized the Rushmore Method for his income capitalization valuation analysis. To determine RevPar, he utilized an ADR of $175 for 2007 to 2009 and $170 for 2010. He determined the subject Hotel's stabilized occupancy rate to be 75% for tax years 2007 to 2009 and 70% for 2010. This provided the subject Hotel's RevPar as $131.25 for tax years 2007 to 2009 and $119 for the 2010 tax year. He testified that its actual RevPar was lower than his stabilized RevPar for the 2010 tax year due to the recession, but asserted that in an actual real estate transaction for such a property, a depressed year of revenue would not result in a substantially lower sale price of the subject Hotel. The Township's expert's gross room revenue calculation concluded stabilized room revenue figures to be $16,431,844 for tax years 2007 to 2009 and $14,898,205 for 2010, or 60.5% of total revenue for all relevant tax years.

Utilizing the subject Hotel's actual data in conjunction with the PKF Hotel Trends data set for the relevant tax years, the expert determined stabilized food and beverage revenue to be $10,185,027 for tax years 2007 to 2009, or 37.5% of total revenue, and $9,234,425 for tax year 2010, likewise 37.5% of total revenue. For other revenue, he determined stabilized amounts of $543,201 for tax years 2007 to 2010 and $492,503 for tax year 2010, or 2% of total revenue for all years. In total, he concluded the stabilized revenues as $27,160,072 for tax years 2007 to 2009 and $24,625,132 for tax year 2010.

B. Departmental Expenses

The expert determined the stabilized room expenses to be $3,943,643 for tax years 2007 to 2009 and $3,575,569 for tax year 2010, or 14.5% of total room revenue for each year. He next determined the food and beverage expenses to be $7,638,770 for tax years 2007 to 2009, and $6,925,818 for tax year 2010, or 28.1% of total revenue. Lastly, he determined all other expenses to be a stabilized at $434,561 for tax years 2007 to 2009 and $394,002 for tax year 2010, or 1.6%

of total revenue, allowing him to reach a conclusion of stabilized total departmental expenses of $12,016,974 for tax years 2007 to 2009 and $10,895,390 for tax year 2010.

Accordingly, subtracting the total departmental expenses from the total revenue, the Township's expert concluded total departmental income of $15,143,098 for tax years 2007 to 2009 and $13,729,742 for tax year 2010.

C. Undistributed Operating Expenses

To determine the subject Hotel's undistributed expenses, the Township's expert first concluded stabilized administrative and general expenses of $2,580,207 for tax years 2007 to 2009 and $2,339,388 for tax year 2010, or 9.5% of total revenue for each year. He further concluded Sales and Marketing expenses of $1,629,604 for tax years 2007 to 2009 and $1,477,508 for 2010, or 6.0% of total revenue, and the utilities expenses to be $950,603 for tax years 2007 to 2009 and $861,880 for 2010, or 3.5% of total revenue. Stabilized expenses for repairs and maintenance were determined as $1,222,203 for tax years 2007 to 2009 and $1,108,131 for tax year 2010, or 4.5% of total revenue. All other undistributed operating expenses were concluded as $135,800 for tax years 2007 to 2009 and $123,126 for tax year 2010, or 0.5% of total revenue for each year.

In sum, the Township's expert determined total undistributed operating expenses to be $6,518,417 for tax years 2007 to 2009 and $5,910,032 for tax year 2010. Accordingly, the subject Hotel's gross operating profit was concluded as $8,624,681 for tax years 2007 to 2009 and $7,819,711 for tax year 2010, or 31.8% of total revenue.

D. Fixed Expenses

i. Franchise Fee

The Township's expert determined there to be no franchise fee for all relevant tax years as such fees weren't paid until after the last relevant valuation date.

ii. Insurance

The Township's expert concluded insurance expenses for the subject Hotel of $140,000 for all relevant tax years, equaling 0.5% of total revenue for tax years 2007 to 2009 and 0.6% for 2010.

E. Business and Personal Property Expenses

i. Management Fee

The Township's expert concluded management fees of 5% for each relevant tax year, totaling $1,358,004 for tax years 2007 to 2009 and $1,231,257 for tax year 2010.

ii. Structural Reserves

With regard to structural reserves, the Township's expert determined a stabilized rate of 2%, or a total of $543,201 for tax years 2007 to 2009, and $492,503 for tax year 2010.

iii. Return On FF&E

The Township's expert concluded the Return On FF&E to be $560,625 or 2.1% of total revenue for tax years 2007 to 2009 and 2.3% for 2010. He did this by calculating an estimated replacement cost of $25,000 per room, depreciated by 35%, and then multiplied by a rate of return of 10%.

iv. Return Of FF&E

The Township's expert determined the stabilized Return Of FF&E to be 2.5% of total revenue, or $679,002 for tax years 2007 to 2009, and $615,628 for tax year 2010.

F. Net Operating Income

Subtracting the stabilized expenses from the stabilized revenues of the subject Hotel, then further subtracting the stabilized reserves and fees, the Township's expert determined the subject

Hotel's Net Operating Income from the real estate to be $5,343,849 for tax years 2007 to 2009 and $4,779,698 for tax year 2010, or 19.7% and 19.4% of total revenue respectively.

G. Capitalization Rate

Like Plaintiff's expert, the Township's expert utilized the Mortgage/Equity Band of Investment technique of direct income capitalization. Likewise, he relied on data from the ACLI and the Korpacz Real Estate Investor Surveys to reach a conclusion of his capitalization rate. Taking into account the equity and debt components inherent to capitalizing income, as well as alternative investments such as municipal tax-exempt bonds, treasury bills, and U.S. and Corporate bonds, the expert concluded that a rate of at least 5% would be sufficient to attract investors. He opined that given the unique characteristics the subject Hotel possesses in terms of its location, amenities, quality of tenants, and access to transportation, a lower capitalization rate is more appropriate for determining its value.

Accordingly, he concluded his OARs as follows: For tax years 2007, based on data from October 1, 2006, the expert utilized the following factors to determine the capitalization rate applied in his valuation analysis: he determined mortgage and equity rates of 0.0517 and 0.0180 respectively resulting in a base rate of 0.0697%, determined by the LTV ratio of 70% with a mortgage component of 0.0739 and equity component of 0.0600. His equity component was based on comparable returns achievable through alternative investments in the market, reflected in the various market rates and bond yields for the tax years in question. Adding the applicable effective tax rate of 0.0215, he concluded a preliminary OAR of 0.0912. Further comparing the above factors to the data contained in the ACLI and Korpacz data sets, he concluded a base rate of 0.0725. Adding in the applicable effective tax rate of 0.0215 resulted in the Township's expert's OAR of 0.094 for tax year 2007.

For tax year 2008, the Township's expert developed his OAR by concluding mortgage and equity components of 0.0719 and 0.0600 factored into a LTV ratio of 70% resulting in a base rate of 0.0683, calculated from the mortgage position of 0.0503 added to the equity position of 0.0180. With the above, he likewise concluded a base rate for 2008 of 0.0725. Again, using the above referenced data sets to corroborate his findings, he concluded an OAR of 0.0943 for tax year 2008.

For tax year 2009, the Township's expert concluded an OAR of 0.0969. Just as above, he developed his base rate by calculating the equity rate and mortgage constant to be 0.06 and 0.0739 respectively, and applying the 70% LTV ratio to the same, determined a preliminary base rate of 0.0697. Using the same methodology as the above years, he then concluded his own base capitalization rate of 0.075. Applying the effective tax rate for the tax year of 0.0219 resulted in his overall rate conclusion of 0.0969.

Factoring in his analysis of the relevant data sets, for tax year 2010, the Township's expert concluded an OAR of 0.1007, concluded by adding his base rate of 0.0775 to the effective tax rate for the year of 0.0232. He determined this amount utilizing a preliminary overall rate of 0.0943 comprised of the mortgage position of 0.0531 and equity position of 0.018 reached after applying the same 70% LTV to each component, followed by adding in the effective tax rate of 0.0232.

Dividing the above Net Operating Income of $5,343,849 for tax years 2007 to 2009 and $4,779,698 for 2010 by his concluded OARs of 0.094, 0.0943, 0.0969, and 0.1007 for each respective tax year resulted in a valuation conclusion of the subject Hotel reflected below:

Tax Year	2007	2008	2009	2010
Market Value	$56,850,000	$56,670,000	$55,150,000	$47,465,000

II. CONCLUSIONS OF LAW

A. Presumption of Correctness

"Original assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). "Based on this presumption, the appealing taxpayer has the burden of proving that the assessment is erroneous." Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985). "The presumption of correctness . . . stands, until sufficient competent evidence to the contrary is adduced." Township of Little Egg Harbor v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998). A taxpayer can only rebut the presumption by introducing "cogent evidence" of true value. See Pantasote Co., 100 N.J. at 413. That is, evidence "definite, positive and certain in quality and quantity to overcome the presumption." Aetna Life Ins. Co. v. City of Newark, 10 N.J. 99, 105 (1952). Thus, at the close of proofs, the court must be presented with evidence that raises a "debatable question as to the validity of the assessment." MSGW Real Estate Fund, LLC, 18 N.J. Tax at 376.

In determining whether the evidence presented meets the "cogent evidence" standard, the court "must accept such evidence as true and accord the [offering party] all legitimate inferences which can be deduced from the evidence." Ibid. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535 (1995)). The evidence presented "must be 'sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.'" West Colonial Enters, LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div. 2000)), aff'd, 21 N.J. Tax 590 (App. Div. 2004). "Only after the presumption of correctness is overcome with sufficient evidence . . . must the court" go on to evaluate the testimony and determine the true value. Greenblatt v. City of Englewood, 26

N.J. Tax 41, 51-52 (Tax 2010). If the court determines that sufficient evidence to overcome the presumption has not been produced, the assessments will be affirmed and the court need not proceed to making an independent determination of value. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992).

During trial, the Township moved to dismiss Plaintiff's complaints for failure to overcome the presumption of correctness. According Plaintiff all reasonable and legitimate inferences which can be deduced from the evidence presented, and for the reasons stated on the record, the court concluded that Plaintiff produced cogent evidence to overcome the presumption of validity of the assessments at issue here. If accepted as true, the opinions of Plaintiff's expert and the facts upon which he relied raised debatable questions regarding the correctness of the subject properties' tax assessments for the 2007, 2008, 2009, and 2010 tax years. With the presumption overcome, the court must now consider the evidence and testimony put forth by both parties and make a determination of true value. Greenblatt, 26 N.J. Tax at 52.

B. Highest and Best Use

In the court's pursuit to determine the true market value of the subject, consideration must be given to the property's highest and best use. Ford Motor Co., 127 N.J. at 300-301. Both experts agreed that the highest and best use of the subject property was its present use as a mixed-use office and hotel property. Accordingly, the court finds that the current use of the property constitutes its highest and best use as vacant and improved.

C. The Income Capitalization Approach as to the Valuation of the Office Complex

The Tax Court is charged with the duty of applying its own judgment to the valuation data presented by parties' experts in order to arrive at a true value and find an assessment for the year under appeal. Glen Wall Assocs. v. Township of Wall, 99 N.J. 265 (1985). The court agrees with

both experts that the income capitalization approach is the most credible indicator of value for the Office Complex.

1. Market Rent

"Central to an income analysis is the determination of the economic rent, also known as the 'market rent' or 'fair rental value.'" Parkway Vill. Apartments Co. v. Borough of Cranford, 108 N.J. 266, 270 (1987). This differs from the actual rental income realized on the property, which may be below market rates. Parkview Vill. Assocs., 62 N.J. at 25-30. "However, actual income is a significant probative factor in the inquiry as to economic income." Ibid. at 30. "Checking actual income to determine whether it reflects economic income is a process of sound appraisal judgment applied to rentals currently being charged for comparable facilities in the competitive area." Ibid.

In the instant matter, the court affords serious weight and consideration to the subject leases admitted into evidence in its determination of market rent, and finds that given the exceptional nature of the subject property in terms of quality, location, and amenities, which the court finds is substantially supported by the record, they are the best metric for determining economic rent for the subject property for each tax year. Additionally, the 19 comparable leases offered by the Township's expert, when considered without the adjustments, as well as select comparable leases used by Plaintiff's expert, serve as credible corroborative evidence of the subject office complex's economic rent.

In the instant matter the court cannot afford Plaintiff's expert's leases 6, 7, and 9 any weight due to the fact that they are all post-valuation date at a time when the market was radically different

from the tax years in question.[6] Despite Plaintiff's suggested reliance on Almax Builders, Inc. v. City of Perth Amboy, 1 N.J. Tax 31, 37 (Tax 1980), where the court found that post-valuation sales are relevant, "[s]o long as a proffered sale is not remote, the sale should be admitted for its rational probative valuation inference," in the present case these three post valuation leases relied upon by Plaintiff's expert, purportedly to be relevant for three of the four tax years in question, all fall at odds with the declaration of the global economic recession announced in December 2008. Plaintiff's expert himself opined that the recession was "critically important," describing it as a "public meltdown of the market" triggering a significant decline in available financing and capital between October 2008 and March 2009. Accordingly, the court finds his reliance on these leases to determine market rent for the earlier tax years to be misplaced.

Given the fact that these three leases, being used to support a determination of fair market value for tax years 2008, 2009, and 2010, occurred largely after the full impact of the economic recession had been known to willing buyers in the market place, the court cannot consider them to be credible direct evidence of market rent for tax years 2008 and 2009. For the same reason, the court places no weight on any lease excepting leases 5 and 8 for tax year 2010.[7] Testimony by both experts demonstrate that the market following the recession differed substantially from that of the tax years in question. Quite simply, a willing buyer in the market as of the October 1 valuation date of the pretax year for tax years 2008, 2009, and potentially 2010, would not be in

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[6] Lease 6 has an inception date of June 2010, and was identified as being relevant for the October 1, 2008, 2009 and 2010 valuation dates. Lease 7 has an inception date of October 2010, and was identified as being relevant for the October 1, 2008 and 2009 valuation dates. Lease 9 has an inception date of August 2011, and was identified as being relevant for the October 1, 2008, 2009 and 2010 valuation dates.

[7] Lease 5 has an inception date of August 2009, identified as being relevant for the October 1, 2008, 2009 and 2010 valuation dates. Lease 8 has an inception date of November 2009, identified as being relevant for the October 1, 2008, 2009 and 2010 valuation dates.

the same fiscal position or have the same information available to contract in the same way as someone at the time of these post valuation date leases.

As such, with the exception of leases 5 and 8 for tax year 2010 which were in close proximity to the October 1, 2009 valuation date for the 2010 tax year, the court cannot afford leases 6, 7, and 9 any weight in determining market rent for the 2008, 2009, or 2010 tax years. The nature of the market following the recession is clearly distinguishable from the cases relied upon by Plaintiff, and despite the fact that these leases under stable economic conditions would not be too remote or dissimilar as held in Venino v. Borough of Carlstadt, 1 N.J. Tax 172 (Tax 1980), aff'd. o.b., 4 N.J. Tax 528 (App. Div. 1981), the economic reality of the time period renders them untenable in the instant matter.

The court also finds Plaintiff and its expert's stance that the subject leases cannot be utilized to determine market rent because they allegedly had factored in above-market leasing commissions and tenant improvement expenses, to be unsupported by accepted appraisal practices, law, and custom, and is thus uncompelling. Leasing commissions and tenant improvements are an expense item and were treated as such by both experts. The court agrees with the Township's contention that adjusting rent for leasing commissions while simultaneously taking an expense for the commission would be akin to "double dipping." The court has done extensive research into this issue, motions were made, yet Plaintiff was unable to show any credible or accepted source or methodology that permits such treatment of leasing commissions and as such the court cannot accept it as valid. Furthermore, as the parties have stipulated to expenses, the court will not consider factoring in additional expenses in its own determination of value.

Plaintiff's argument regarding tenant improvement expenses being above market likewise falls short and is unpersuasive. As with leasing commissions, the record shows that Plaintiff's

expert did not read or review the subject leases prior to making his report and as such could not conclusively determine whether the tenant improvement expenses in the subject Office Complex were market or not. Furthermore, the Township's expert opined that the tenant improvement allowances were within market and further that some portion of the work done on the property was in fact better characterized as capital improvements, rather than solely as a tenant improvement expense, and thus cannot be attributed to that expense item.

Though the record shows that dollar amounts for tenant improvements on the subject leases were not provided to either party's expert, the Township's expert actually viewed the leases and provided a basis for his opinion that the tenant improvement expenses were at market, rather than above market. On cross examination, he testified at length regarding his opinion on tenant improvements for the subject office complex and the methodology he employed to reach his conclusion that the expense was at market levels and not extraordinary. The court finds that the Township's expert's determination that tenant improvements in the subject leases were at market was credible and supported by the record. As such, it rejects Plaintiff's argument that the tenant improvement expenses in the subject Office Complex were above market and thus the subject leases were inconsistent with market levels.

"The opinion of an expert depends upon the facts and reasoning which forms the basis of the opinion." Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980), aff'd, 180 N.J. Super. 366 (App. Div. 1981). "Without explanation as to the basis, the opinion of the expert is entitled to little weight." Ibid. "Thus, an expert's opinion is only as good as the data upon which the expert relied." Greenblatt, 26 N.J. Tax at 55. Accordingly, the court places little weight to Plaintiff's expert's opinion or his comparable leases and concurs with the Township's expert's

position that "there was absolutely no reason to avoid utilization of the copious and timely subject leases as being proof positive of the economic rent."

With regard to the Township's 19 comparable leases, the court is persuaded by Plaintiff's argument that the significant adjustments made by the Township's expert are not grounded in cognizable data and were applied in an arbitrary fashion. On cross-examination, the Township's expert himself admitted that he used no objective "measuring stick" or publications to determine his adjustment, instead relying solely on his opinion and his own subjective analysis of the comparable properties and the rents they commanded. In accordance with the holdings of Dworman and Greenblatt, the court cannot afford weight to his adjustments as they were not based on any cognizable data, market studies, publications, or any other basis recognized by this court. However, the court does find that the comparable leases he utilized are of significant probative value when stripped of the aforementioned arbitrary adjustments. Without the adjustments, the average rent for the comparable leases for each tax year are as follows: $29.71/sqft for tax year 2007; $30.39/sqft for tax year 2008; $30.53/sqft for tax year 2009; and $26.29/sqft for tax year 2010.

When viewed alongside the initial 7 subject leases utilized by the Township's expert, this court finds that the unadjusted comparable leases provide a solid basis to reach its own determination of value. The court will not consider the Township's expert's Comparable lease 6, finding that it lacks credibility in light of testimony indicating that the subject had other leases more in line with the figures provided by both parties, nor will it consider leases D-7 or D-12 as they are similarly skewed as outliers given the remaining evidence on the record. As such, the court will base its determination of market rent on subject leases D-6, D-8, D-9, D-10, and D-11,

as well as the remaining 18 comparable leases utilized by the Township's expert (minus lease 6), and Plaintiff's comparable leases 1-5, and 8 for the tax years discussed above.

Further, testimony by both experts as well as multiple subject leases entered into evidence provide a solid basis for a determination of $1.75/sqft for tenant electric for the subject office. Though both parties' experts initially concluded different figures than their ultimate conclusions, with Plaintiff's expert first concluding $2.50/sqft and the Township's expert concluding $1.50/sqft, both experts subsequently changed their conclusions when shown actual tenant electric costs from subject leases amounting to $1.75/sqft. Though Plaintiff's expert's ultimate conclusion of tenant electric was modified to $1.50/sqft, the court finds that the Township's expert's conclusion of $1.75/sqft is substantially supported by the record and will adopt the same.

Accordingly, the court will utilize $31.00/sqft base rent for tax years 2007 and 2008, and $30.00/sqft for tax years 2009 and 2010 for the West Tower and the East Tower, and $28.00/sqft base rent for the Atrium for each tax year at issue. The court will factor in an additional $1.75/sqft for tenant electric.

2. Vacancy and Credit Loss

The court will incorporate the stipulated rate of 12.5% for all relevant tax years into its valuation determination.

3. Operating Expenses

The court will incorporate the stipulated total operating expenses of $7,251,944.00 for all relevant tax years into its valuation determination.

4. Capitalization Rate

The direct capitalization rate is used in the income capitalization approach to "convert a single year's income expectancy into a value indication." The Appraisal of Real Estate at 491.

This is accomplished by dividing the net operating income estimate by the OAR. Ibid. Both experts relied on the Band of Investment technique for calculating an OAR. The Band of Investment "technique is a form of direct capitalization [that] includes both a mortgage and an equity component." Hull Junction Holding Corp., 16 N.J. Tax at 80-81 (internal quotation marks omitted).

> Because most properties are purchased with debt and equity capital, the overall capitalization rate must satisfy the market return requirements of both investment positions. Lenders must anticipate receiving a competitive interest rate commensurate with the perceived risk of the investment or they will not make funds available. Lenders generally require that the loan principal be repaid through periodic amortization payments. Similarly, equity investors must anticipate receiving a competitive equity return (i.e., equity capitalization rate) commensurate with the perceived risk, or they will invest their funds elsewhere.
>
> [The Appraisal of Real Estate at 495.]

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

Plaintiff's expert based his high capitalization rate on the premise that the mixed-use nature of the subject property (the intermingling of the office with the hotel parking and facilities) increased the amount of risk inherent to investing in such a property and thus necessitated a higher capitalization rate. The Township's expert disagreed with this contention, arguing the opposite – essentially that the mixed-use nature created a synergistic relationship between each component part of the subject and made it a more attractive, less risky investment. The court declines to accept either party's contention that the mixed-use nature of the property will have a significant impact on the risk associated with the property and thus necessitate a significant change in the capitalization rate, at least insofar as the evidence available to the court suggests.

There is simply not enough support in the record to accept Plaintiff's expert's contention that the mixed-use nature of the subject increases the risk associated in investing in the subject to the degree demonstrated by Plaintiff's expert's concluded capitalization rate, if at all. His testimony that, "[y]ou don't need data to analyze risk," runs counter to the standard set out in Hull Junction Holding Corp., requiring "reliable market data" to be the basis of an expert's opinion. Furthermore, the capitalization rates concluded by Plaintiff's expert fall on the outskirts of the high ranges provided in the surveys he reportedly utilized, which does not seem appropriate given the high-end nature of the property as well as the subject market it resides in, even considering any theoretical increased risk as a result of a property being mixed-use. As such, the court cannot accept Plaintiff's expert's concluded capitalization rate as reliable.

The court similarly finds that the Township's expert likewise relied on outlier figures and as such cannot accept his concluded capitalization rates. As with Plaintiff's expert's contentions, there is not enough evidence on the record to support the Township's expert's conclusions regarding the synergistic nature of the property due to its mixed-use. As such, the court declines

to utilize his concluded capitalization rates and will instead apply its own judgment to the valuation data presented by the parties' experts to determine the appropriate capitalization rate for each tax year in question. The court will apply the following base capitalization rates for the subject Office Complex for each tax year in question while taking into account the relevant market data and surveys placed at the court's disposal: 0.0675 for tax years 2007 and 2008, and 0.07 for tax years 2009 and 2010. To be added to the capitalization rates for each year are the effective tax rates of 0.0215 for tax year 2007, 0.02175 for tax year 2008, 0.02186 for tax year 2009, and 0.0232 for tax year 2010.

D. The "Rushmore Method" as to the Valuation of the Hotel

In applying the income approach to the valuation of a hotel, our court recognizes that the income that a property owner receives is not income from the rental of real estate, but rather the net income of the hotel business conducted at the subject property. Chesapeake Hotel LP, 22 N.J. Tax at 527-28. Thus, when attempting to derive the value of a hotel under the income capitalization approach, an appraiser must separate the income attributable to use of the real property from the income that is generated by business operations of the hotel, before capitalization. Ibid. This approach to valuing hotels, referred to as the "Rushmore method," has been adopted by our courts. The court accepts both experts' use of the Rushmore method as appropriate, and will employ the same in its valuation of the subject Hotel.

In the instant matter, the parties' experts disagreed in their classification of the subject Hotel. In selecting his competitive set, Plaintiff's expert relied on a selection that included hotels falling within the non-luxury Full-Service category rather than exclusively relying on Upper-Upscale hotels. The Township's expert on the other hand categorized the subject Hotel as Upper-Upscale due to its exceptional nature in comparison to the other hotels in the region and which he

confirmed with STR, and utilized a competitive set primarily comprised of Upper-Upscale hotels in the subject market. The court accepts the Township's expert's classification of the subject Hotel as Upper-Upscale as credible and supported by the record. See F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985) (the court's independent determination of value must be based "on the evidence before it and the data that are properly at its disposal").

The Township's expert provided lengthy testimony as to his classification of the subject Hotel, which the court finds credible and substantiated by the record. See Creanga v. Jardal, 185 N.J. 345, 360-62 (2005) (The basis of the expert's opinion must be supported by credible factual evidence or other data.). In order for the opinion of an expert to be of any consequence, the expert must "identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are scientifically reliable." Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992). The court agrees with the Township's expert's contention that an opinion of value reached in reliance on a lower-end data set than that of the subject property, specifically Full-Service versus Upper-Upscale, would not produce a credible result. For hotels to be considered part of the competitive set, they must be "comparable to the subject in physical condition and amenities." Chesapeake Hotel LP, 22 N.J. Tax at 531. Here, Plaintiff's expert failed to ascertain the correct classification of the subject Hotel and thus relied on inferior comparable properties in reaching his conclusions. Given the court's finding based on the record that the subject Hotel is properly classified as Upper-Upscale, it cannot afford Plaintiff's expert's conclusions based on data for hotels outside of that classification any weight.

1. Revenues

"Unless there is some indication of poor management . . . the revenues achieved by a particular hotel are indicative of economic rent." Prudential Ins. Co., 16 N.J. Tax at 62 (Citations

Omitted). Here, there is no allegation of bad management. Both experts attempted to stabilize the subject Hotel's actual economic performance in order to mitigate the effects of the economic downturn in 2009 with differing results. The difference in the experts' valuation largely hinged on to what extent the stabilization should reflect the subject Hotel's actual revenue during the financial crisis as well as what data sets should be used to corroborate those figures. Plaintiff's expert having relied on inadequately comparable sources of data for his valuation conclusion, the court must reject his determination of stabilized revenues for the subject Hotel.

When an expert's opinion lacks a reliable foundation, supported by facts and objective market data, "the court cannot extrapolate value." Inmar Assocs. v. Township of Edison, 2 N.J. Tax 59, 66 (Tax 1980). In accordance with the foregoing, the court rejects Plaintiff's expert's determination of stabilized revenue. Given that the Township's expert's stabilized ADR figures are in line with the actual ADR of the subject Hotel for the relevant tax years, did not overstate the effect of the economic downturn on those years, and are supported by the comparable data sets contained in the PKF trends he used, the court finds his stabilization of the subject Hotel's revenues to be reliable and will adopt his conclusions of revenues accordingly.

2. Departmental Expenses

Departmental expenses consist of three categories: guest rooms, food and beverage, and telecommunications/other expenses. Both experts calculated annual stabilized departmental expenses for each tax year at issue as of October 1 of the preceding year as a percentage of total revenue. However, Plaintiff's expert's stabilization of departmental expenses was similarly flawed as his revenue stabilization but to the opposite effect. His method of stabilization resulted in expenses that were inflated above those of the subject Hotel's actual expenses and at the high end of, and even exceeding, those of the surveys he utilized. The subject Hotel's actual year end

expense ratios for room expenses were 14.4% for 2006, 13.7% for 2007, 14.3% for 2008, and 18% for 2009. Plaintiff's expert, however, stabilized to 15.4% for tax years 2007 and 2008 and 17.2% for tax years 2009 and 2010.

On the other hand, the Township's expert stabilized each year to 14.5%, which the court finds to be reasonable and supported by the record and the relevant market data. The court accepts his calculation of guest room expenses as indicative of actual operating results at the subject Hotel, along with market participants' expectations. The Township's expert's stabilization of the ratio was properly calculated and reflects the market based upon the evidence adduced at trial. Consequently, the court concludes that a guest room expense ratio of 14.5% will be utilized.

Food and beverage expenses as well as telecommunications and other expenses were similarly calculated as of October 1 of the pretax year. The actual food and beverage expense ratios were 27.05% for tax year 2007; 28.7% for tax year 2008; 27.7% for tax year 2009; and 31.5% for tax year 2010. Plaintiff's expert stabilized the expense ratio at 29.7% for tax years 2007 and 2008, and 28.3% for tax years 2009 and 2010. Meanwhile, the Township's expert maintained a consistent stabilization of 28.1%, which the court finds is indicative of the subject Hotel's actual food and beverage expense rate. As such, the court concludes that a 28.1% food and beverage ratio will be utilized.

For telecommunications and other expenses, Plaintiff's expert concluded a stabilized expense rate of .9% for 2007 and 2008 and 1.4% for 2009 and 2010, whereas the Township's expert determined a rate of 1.6% for all years. While the telecommunications ratio was the one expense section not apparently inflated by Plaintiff's expert compared to the actual expenses, the court finds that the Township's expert's expense ratio contains greater support on the record as well as in the competitive hotel set used to verify the figures and as such is more indicative of the

market rate. As the Township's expert's telecommunication and other expense figures were supported by credible data and the record, the court will adopt them in its final valuation determination accordingly.

3. <u>Undistributed Operating Expenses</u>

Both experts calculated annual stabilized undistributed operating expenses for each tax year at issue as of October 1 of the preceding year as a percentage of total revenue. The experts categorized them as: general and administrative costs, marketing, property maintenance, and utilities. Both experts calculated their stabilized undistributed operating expenses in largely the same manner. However, as was the case with departmental expenses, Plaintiff's expert's stabilization resulted in figures significantly higher than the subject Hotel's actual expense rates. For the same reasons as above, the court rejects Plaintiff's expert's stabilization of undistributed operating expenses and accepts the Township's expert's stabilization as valid and credible. Accordingly, the court will adopt the following expense rates for this category: 9.5% for administrative and general expenses; 6% for marketing; 4.5% for property maintenance; 3.5% for utilities; and 0.5% for other expenses.

4. <u>Fixed Expenses</u>

The hotel valuation analysis needs to account for fixed expenses as they relate to the operation of a hotel. The parties' expert's provided lengthy testimony as to the proper method of incorporating franchise and insurance fees into their analysis despite the subject not having shown any for the tax years in question. The following analysis considers each issue in turn.

<u>i. Franchise Fee</u>

With regard to the franchise fee component of the Rushmore analysis, Plaintiff's expert argues that it was necessary for the experts to impute a franchise fee on the subject despite none

having been paid for the tax years in question. Plaintiff's expert did include such a fee for the latter two tax years, but the Township's expert declined to do so. During cross examination, when asked whether it was appropriate to deduct franchise fees only if there is an actual payment of the same, Plaintiff's expert testified to the fact that "there's not a rule; there's not a treatise. There's not a right way and a wrong way," further stating that, he "can't say [he's] 100 percent right." Given the fact that neither Plaintiff's expert nor the Township's expert provided testimony indicating that including franchise fees when none were paid is a necessary part of the analysis in every case, in actuality stating the opposite, the court will not do so here.

ii. Insurance

Additionally, both experts included insurance fees where none were reportedly paid by the subject Hotel for the tax years in question. As both experts here saw fit to provide a stabilized insurance fee for each tax year, the court will incorporate an insurance fee into its own valuation analysis. Though both insurance rates concluded by experts are based on market data to establish appropriate rates where no actual data existed, the court again cannot adopt Plaintiff's expert's figures due to the flawed data set he utilized. Given that the court has held that the Township's expert's Upper-Upscale market data is more representative of the subject Hotel, and his determination is based on those sets, the court will adopt his insurance fee rate of 0.5% for each tax year.

5. Business and Personal Property Expenses

As previously stated, both experts in this case separated the income attributable to the use of the realty from the total income generated by the operation of the hotel before capitalization. The payments to the entity that manages and operates the hotel constitute business income generated by the exercise of management and entrepreneurship. Furthermore, the last items to be

deducted from gross income are the amounts to satisfy the return on and return of investment in FF&E. A portion of the overall income is realized by the employment on FF&E, and a deduction to account for the present value of FF&E is necessary. Finally, an expense to account for the periodic future replacement of the personal property (Return Of FF&E) is necessary. The Rushmore method excludes these expenses in the computation of realty income subject to capitalization. Both experts traced this logic.

i. Management Fee

Though Plaintiff's expert split his management fee determination into two component parts as opposed to the Township's expert's combined figure, both experts concluded the same overall management fee of 5% for all years. Given the fact that the result is identical whether the figures are combined or bifurcated, and considering that both experts reached the same conclusion, the court will incorporate the total 5% figure utilized by both experts into its own determination of value.

ii. Structural Reserves

Both experts made a deduction for the reserves set aside for repairs of structural elements of the building. For the reasons stated above regarding the credibility of Plaintiff's valuation determinations, the court cannot accept Plaintiff's expert's conclusion of structural reserves. Given the testimony that the Township's expert's conclusion was based on his assessment of the quality and condition of the Hotel and his proper classification of the subject Hotel as Upper-Upscale, the court accepts his conclusion of 2% reserves as credible and will utilize his figures in its own valuation determination.

iii. Return On FF&E

"A return on FF&E reflects the owner's cost of capital and is used with the current market value of the FF&E in place." Rushmore, The Appraisal Institute, Hotels and Motels: Valuations and Market Studies, 103 (1983). Both experts made a deduction for the Return On the value of FF&E. In developing their annual estimates attributable to the return on the value of the FF&E, both experts opined their estimate of replacement cost new ("RCN") of the FF&E as of October 1, 2007, 2008, 2009, and 2010. Each expert then applied a depreciation factor and applied an expected rate of return to this value.

Both experts utilized an RCN for FF&E at the Hotel of $25,000 per room. Plaintiff's expert depreciated the RCN by 50% while the Township's expert depreciated the same by 35%. The experts then applied their concluded rates of return of 15% and 10% respectively. This analysis resulted in Plaintiff's expert's conclusion for Return On FF&E of $645,000 for each tax year and the Township's expert's conclusion of $560,625 for each tax year.

For the same reasons of lack of credibility as to the data sets utilized by Plaintiff's expert with regard to his valuation conclusions for the subject Hotel, the court declines to accept his figures. As the court finds that the Township's expert's conclusion more credible, it will utilize his concluded Return On FF&E of $560,625 for each year.

iv. Return Of FF&E

The second component part of FF&E is the Return Of the investment in the FF&E. The Return Of FF&E is typically quantified by deducting a percentage of revenues as an annual reserve for future replacement of personal property and "is based on the replacement cost of the chattels and their estimated useful lives." Ibid. These items are "short lived" items and must be replaced periodically during the economic life of a hotel.

In reaching his conclusion of Return Of FF&E, Plaintiff's expert likewise utilized the Korpacz Real Estate Investor Survey for the 3rd Quarters from 2006 to 2010 for national full-service hotel properties, concluding 2% of total revenues as appropriate. For the same reasons stated above, the court cannot accept his conclusions as credible and supported by adequate data. However, this court has found 2% to 3% for the return of FF&E to be appropriate. See Prudential Ins. Co., 16 N.J. Tax at 67. Thus, the court finds the Township's expert's opinion as to the Return Of FF&E of 2.5%, or a total of $679,002 for tax years 2007 to 2009 and $615,628 for tax year 2010, to be credible and will adopt the same in its own valuation determination.

6. Capitalization Rate

The final component of the income approach is to divide a loaded capitalization rate into the net income to real property to calculate the fair market value of the subject Hotel. An unloaded capitalization rate does not include the tax rate as of each year under appeal. Both experts applied the mortgage-equity band of investment technique in arriving at their calculations of overall unloaded capitalization rates. The technique involves calculating the weighted average of the return required to satisfy the cost of carrying a mortgage for the property and the typical return required by an investor on the equity portion.

Both appraisers utilized published studies as support for the estimates developed by the mortgage-equity technique; however, as stated above, Plaintiff's reliance on both the incorrect classification of the subject Hotel as well as an unpersuasive and unsubstantiated theory of risk renders his OARs untenable. The court agrees with the Township's expert's assertions that the attractive nature of the property in comparison to other hotels in the market makes a lower capitalization rate most appropriate. However, for the same reasons stated above with regard to the capitalization rates utilized for the Office Complex portion of the subject, namely the

arguments surrounding its mixed-use nature, the court cannot accept the Township's expert's capitalization rate determination and will use its own judgment in concluding the appropriate rates.

Basing its capitalization rate conclusion of data provided in the PriceWaterhouseCoopers Korpacz data for the National Luxury Lodging Segment 3rd Quarter data for each relevant tax year, and keeping in line with its finding that a lower capitalization rate is appropriate, the court determines the appropriate capitalization rates for the subject hotel to be 0.0775 for tax years 2007 and 2008, 0.08 for tax year 2009, and 0.085 for tax year 2010. To be added to the capitalization rates for each year are the effective tax rates of 0.0215 for tax year 2007, 0.02175 for tax year 2008, 0.02186 for tax year 2009, and 0.0232 for tax year 2010.

III. VALUATION SUMMARY AND CONCLUSION

The following tables summarize the court's conclusions, utilizing the income approach to valuation, discussed above:

1. **The Office Complex**

Tax Year 2007

Office Complex	Square Footage	Base Rent/Sqft	Total
West Tower	333,650	$31.00	$10,343,150
East Tower	242,000	$31.00	$7,502,000
Atrium	76,000	$28.00	$2,128,000
Tenant Electric	651,650	$1.75	$1,140,388
Potential Gross Income			$21,113,538
Less			
Vacancy and Collection Loss Rate		12.5% (Stipulated)	$2,639,192
Effective Gross Income			$18,474,346
Less			
Expenses	651,650	$11.13 (stipulated)	$7,251,944
Net Operating Income			$11,222,402
Cap Rates			
Base Rate			0.0675
Effective Tax Rate			0.0215
OAR			0.089
Market Value			$126,094,404
Rounded			$126,094,400

Tax Year 2008

Office Complex	Square Footage	Base Rent/Sqft	Total
West Tower	333,650	$31.00	$10,343,150
East Tower	242,000	$31.00	$7,502,000
Atrium	76,000	$28.00	$2,128,000
Tenant Electric	651,650	$1.75	$1,140,388
Potential Gross Income			$21,113,538
Less			
Vacancy and Collection Loss Rate		12.5% (Stipulated)	$2,639,192
Effective Gross Income			$18,474,346
Less			
Expenses	651,650	$11.13 (stipulated)	$7,251,944
Net Operating Income			$11,222,402
Cap Rates			
Base Rate			0.0675
Effective Tax Rate			0.02175
OAR			0.08925
Market Value			$125,741,199
Rounded			$125,741,200

Tax Year 2009

Office Complex	Square Footage	Base Rent/Sqft	Total
West Tower	333,650	$30.00	$10,009,500
East Tower	242,000	$30.00	$7,260,000
Atrium	76,000	$28.00	$2,128,000
Tenant Electric	651,650	$1.75	$1,140,388
Potential Gross Income			$20,537,888
Less			
Vacancy and Collection Loss Rate		12.5% (Stipulated)	$2,567,236
Effective Gross Income			$17,970,652
Less			
Expenses	651,650	$11.13 (stipulated)	$7,251,944
Net Operating Income			$10,718,708
Cap Rates			
Base Rate			0.07
Effective Tax Rate			0.02186
OAR			.09186
Market Value			$116,685,260
Rounded			$116,685,300

Tax Year 2010

Office Complex	Square Footage	Base Rent/Sqft	Total
West Tower	333,650	$30.00	$10,009,500
East Tower	242,000	$30.00	$7,260,000
Atrium	76,000	$28.00	$2,128,000
Tenant Electric	651,650	$1.75	$1,140,388
Potential Gross Income			$20,537,888
Less			
Vacancy and Collection Loss Rate		12.5% (Stipulated)	$2,567,236
Effective Gross Income			$17,970,652
Less			
Expenses	651,650	$11.13 (stipulated)	$7,251,944
Net Operating Income			$10,718,708
Cap Rates			
Base Rate			0.07
Effective Tax Rate			0.0232
OAR			0.0932
Market Value			$115,007,597
Rounded			$115,007,600

2. The Hotel

Tax Year 2007

Revenue			
	Rooms – 345		
	ADR	$175	
	AOP	75%	
	REVPAR	$131.25	
		Total	$16,431,844
	Food and Beverage	$10,185,027	
	Telecommunications and Other	$543,201	
		Total	$27,160,072
Less			
Departmental Expenses			
Less	Guest Rooms	$3,943,643	
	Food and Beverage	$7,638,770	
	Telecommunications and Other	$434,561	
		Total	$12,016,974
Undistributed Operating Expenses			
Less		Total	$6,518,417
Fixed Expenses			
	Franchise Fee	$0	
	Insurance	$140,000	
Net Income		Total	$8,484,681
Less	Management Expense	$1,358,004	
	Structural Reserves	$543,201	
	Return Of FF&E	$679,002	
	Return On FF&E	$560,625	
Net Income to Real Property	$5,343,849		
Cap Rate	0.0775		
Overall Cap rate (Cap +.0215)	0.099		
Value	$53,978,273		
Rounded	**$53,978,300**		

Tax Year 2008

Revenue			
	Rooms – 345		
	ADR	$175	
	AOP	75%	
	REVPAR	$131.25	
		Total	$16,431,844
	Food and Beverage	$10,185,027	
	Telecommunications and Other	$543,201	
		Total	$27,160,072
Less			
Departmental Expenses			
Less	Guest Rooms	$3,943,643	
	Food and Beverage	$7,638,770	
	Telecommunications and Other	$434,561	
		Total	$12,016,974
Undistributed Operating Expenses			
Less		Total	$6,518,417
Fixed Expenses			
	Franchise Fee	$0	
	Insurance	$140,000	
Net Income		Total	$8,484,681
Less	Management Expense	$1,358,004	
	Structural Reserves	$543,201	
	Return Of FF&E	$679,002	
	Return On FF&E	$560,625	
Net Income to Real Property	$5,343,849		
Cap Rate	0.0775		
Overall Cap rate (Cap +.02175)	0.09925		
Value	$53,842,307		
Rounded	**$53,842,300**		

Tax Year 2009

Revenue				
	Rooms – 345			
	ADR	$175		
	AOP	75%		
	REVPAR	$131.25		
			Total	$16,431,844
	Food and Beverage	$10,185,027		
	Telecommunications and Other	$543,201		
			Total	$27,160,072
Less				
Departmental Expenses				
Less	Guest Rooms	$3,943,643		
	Food and Beverage	$7,638,770		
	Telecommunications and Other	$434,561		
			Total	$12,016,974
Undistributed Operating Expenses				
Less			Total	$6,518,417
Fixed Expenses				
	Franchise Fee	$0		
	Insurance	$140,000		
Net Income			Total	$8,484,681
Less	Management Expense	$1,358,004		
	Structural Reserves	$543,201		
	Return Of FF&E	$679,002		
	Return On FF&E	$560,625		
Net Income to Real Property	$5,343,849			
Cap Rate	0.08			
Overall Cap rate (Cap +.02186)	.10186			
Value	$52,462,684			
Rounded	**$52,462,700**			

Tax Year 2010

Revenue				
	Rooms – 345			
	ADR	$170		
	AOP	75%		
	REVPAR	$119		
			Total	$14,898,205
	Food and Beverage	$9,234,425		
	Telecommunications and Other	$492,503		
			Total	$24,625,132
Less				
Departmental Expenses				
Less	Guest Rooms	$3,575,569		
	Food and Beverage	$6,925,818		
	Telecommunications and Other	$394,002		
			Total	$10,895,390
Undistributed Operating Expenses				
Less			Total	$5,910,032
Fixed Expenses				
	Franchise Fee	$0		
	Insurance	$140,000		
Net Income				$7,679,711
Less	Management Expense	$1,231,257		
	Structural Reserves	$492,503		
	Return Of FF&E	$615,628		
	Return On FF&E	$560,625		
Net Income to Real Property	$4,779,698			
Cap Rate	0.085			
Overall Cap rate (Cap +.0232)	0.1082			
Value	$44,174,658			
Rounded	**$44,175,000**			

3. Total Market Value for Subject Plus $3,000,000 Vacant Lot Component

Total Aggregate Market Value	2007	2008	2009	2010
Plus $3,000,000 for 2008, 2009, & 2010	180,072,700	$182,583,500	$172,148,000	$162,182,600

Pursuant to N.J.S.A. 54:51A-6(a), in a non-revaluation year an assessment must be reduced when the ratio of the assessed value of the property to its true value exceeds the upper limit of the common level range. The common level range is defined by N.J.S.A. 54:l-35a(b) as "that range which is plus or minus 15% of the average ratio" for the municipality in which the subject property is located. The formula for determining the subject property's ratio is: Assessment divided by True Value = Ratio.

The ratio for the subject property in tax year 2007, therefore, is determined as follows:

$190,761,400 divided by $180,072,700 = 105.93%.

The ratio for the subject property in tax year 2008 is determined as follows:

$190,761,400 divided by $182,583,500 = 104.47%

The ratio for the subject property in tax year 2009 is determined as follows:

$190,761,400 divided by $172,148,000 = 110.81%.

The ratio for the subject property in tax year 2010 is determined as follows:

$190,761,400 divided by $162,182,600 = 117.62%.

The chapter 123 ratio for the Township was as follows: 100% for tax year 2007 with an upper limit of 1.15 and a lower limit of 0.85; 99.00% for tax year 2008 with an upper limit of 1.14 and a lower limit 0.84; 95.85% for tax year 2009 with an upper limit of 1.1 and a lower limit of 0.8185; and 99.75% for tax year 2010 with an upper limit of 1.1475 and a lower limit of 0.8575.

Pursuant to N.J.S.A. 54:51A-6(b), if the average ratio is below the county percentage level (1.00) and the ratio of the assessed value of the subject property to its true value exceeds the county percentage level, the tax court shall enter judgment revising the taxable value of the property by applying the average ratio to the true value of the property.

Since the court's determination as to value is set forth in the aggregate for the hotel and office portions of the subject property, the parties are directed, pursuant to R. 8:9-3, to submit an agreed upon allocation of assessment for each block and lot included in the subject for purposes of entry of judgment. Such allocation shall be submitted within thirty (30) days. If the parties are unable to agree, pursuant to R. 8:9-3, said assessment allocation shall be made by this court and judgment shall be entered in accordance therewith.