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Notice of Appeal.

New Jersey Supreme Court

Nos. 236 and 237, MAY TERM, 1943.

NEWARK FARMERS MARKET, INC., a corporation of the State of New Jersey, <p style="text-align: right;">Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY, and THE CITY OF NEWARK, <p style="text-align: right;">Defendants.</p>	}	On Cross Writs. Notice of Appeal.	10
THE CITY OF NEWARK, <p style="text-align: right;">Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY, and NEWARK FARMERS MARKET, INC., <p style="text-align: right;">Defendants.</p>	}		20

*To Harrison & Roche & Darby,
 Attorneys of Newark Farmers Market, Inc.*

Sirs:

TAKE NOTICE that The City of Newark appeals 30
 to the Court of Errors and Appeals of the State
 of New Jersey from the whole of the judgment
 entered in these causes.

Respectfully,

PHILIP J. SCHOTLAND,
 Corporation Counsel of The City
 of Newark.

VINCENT J. CASALE,
 Of Counsel. 40

Grounds of Appeal.

Due service of within Notice of Appeal is acknowledged this 20th day of April, 1945.

HARRISON & ROCHE & DARBY,
Attorneys for Newark Farmers'
Market, Inc.

10

Grounds of Appeal.

NEW JERSEY SUPREME COURT.

Nos. 236 and 237, MAY TERM, 1943.

20

NEWARK FARMERS MARKET, INC., a
corporation of the State of New
Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY, and
THE CITY OF NEWARK,

Defendants.

On Cross Writs.
Grounds of
Appeal.

THE CITY OF NEWARK,

Prosecutor,

vs.

30

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY, and
NEWARK FARMERS MARKET, INC.,
Defendants.

To Harrison & Roche & Darby,

Attorneys of Newark Farmers Market, Inc.

Sirs:

40

TAKE NOTICE that the grounds for appeal of The City of Newark to the Court of Errors and Appeals of the State of New Jersey are as follows:

Grounds of Appeal.

1. The Supreme Court erred in giving judgment for the defendant on the writ of The City of Newark.

2. The Supreme Court erred in reversing the judgments of the State Board of Tax Appeals entered September 22, 1942.

10

3. The Supreme Court erred in considering the cases as though they involved only the value of vacant land instead of the value of whole property, land and improvements devoted to a special use.

4. The Supreme Court erred in not considering the special use of the properties and the income derived therefrom, in arriving at the true value of such properties for taxation.

20

5. The Supreme Court erred in fixing the true value of Block 2408, Lot 1, 2-44 Cornelia Street, for the year 1940, at \$77,000.00, being \$27,000.00 on land and \$50,000.00 on improvements, and fixing the true value of Block 2409, Lot 1, 1-43 Joseph Street, for the year 1940, at \$83,000.00, being \$27,000.00 on land and \$56,000.00 on improvements, as there was no competent or legal evidence to support such value for the whole property.

30

6. The Supreme Court erred in holding that "the question before us is the fair land value of Blocks 2408 and 2409 for taxation for the year 1940 as of October 1, 1934," the question for determination being the value of the whole property, land and buildings, in the use to which they were put on the assessing date.

7. The Supreme Court erred in considering this just a land case, because Newark Farmers Market, Inc., took the same valuations for the buildings

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Grounds of Appeal.

as allocated by The City of Newark in the assessment of the value of the whole property.

10 8. The judgment of the Supreme Court is founded upon erroneous principles of law and is contrary to the clear intent and meaning of the Taxing Laws and the Constitution of the State of New Jersey.

9. The Supreme Court erred in giving judgment for the defendant on the writ of the City of Newark, and a judgment of reduction in favor of the Farmers Market based on neighboring values of land not comparable and not put to special use to which these two blocks were put.

20 10. The judgment of the Supreme Court is, in divers other respects, erroneous, illegal, arbitrary and unreasonable, and should be set aside.

PHILIP J. SCHOTLAND,
Philip J. Schotland,
Attorney for The City of Newark.

VINCENT J. CASALE,
Of Counsel.

30 Due service of within Grounds of Appeal is acknowledged this 20th of April, 1945.

HARRISON & ROCHE & DARBY,
Attorneys for Newark Farmers' Market,
Inc.

Opinion of Supreme Court.

(Filed May 22, 1944.)

NEW JERSEY SUPREME COURT.

Nos. 236 AND 237 MAY TERM, 1943.

NEWARK FARMERS MARKET, INC.,
Prosecutor,
vs.

STATE BOARD OF TAX APPEALS, and
CITY OF NEWARK,
Defendants.

THE CITY OF NEWARK,
Prosecutor,
vs.

STATE BOARD OF TAX APPEALS, and
NEWARK FARMERS MARKET, INC.,
Defendants.

10

No. 236.

On Certiorari.
Before Justices
Parker, Heher,
and Perskie
No. 237.

20

Submitted May 4, 1943: decided

1943.

On the evidence in this case, *held* that a tax valuation of \$1500. per city lot of two blocks of land adjoining a block in which similar lots were valued at \$550. per lot was excessive.

For Newark Farmers Market, Inc., CHARLES
H. STEWART and JOHN J. McDONOUGH.
For the City of Newark, VINCENT J.
CASALE.

30

The opinion of the court was delivered by
PARKER, J.

These are cross writs of certiorari in a tax valuation case. The properties are in the East-early district of Newark near the bend to the

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Opinion of Supreme Court.

south of the Passaic River and just south of the plants of the Sherwin Williams Company and the American Agricultural Chemical Co. which front northward on the Passaic River.

10 The question concerns two blocks of land, Nos. 2408 and 2409, 44 City lots being included in each block. This property was acquired by a corporation known as the Newark Farmers Market, Inc. which needed a situs for wholesale trade between farmers and purchasers of their products.

Just North of the property is a street called Albert Street. On the other side of Albert Street are blocks 2451 and 2423 not here in question, and just beyond them are the plants fronting on the river.

20 The question before us is the fair land value of Blocks 2408 and 2409 for taxation for the year 1940 as of October 1, 1939. The valuation of the buildings is not in question. The City valued Block 2408 at \$111,000, or something like \$2500. a lot, and Block 2409 the same. There was an appeal to the County Board of Taxation, which cut down the valuation in both cases to \$36,300, or a little over \$800. a lot. Then there was an appeal to the State Board of Tax Appeals and that body raised
30 the valuation to \$42,000 for each block or about \$950. a lot. Throughout the argument, however, the valuation per lot is never mentioned, but is stated in terms of square feet. To us it seems more practical to treat the case in terms of the ordinary city lot of 25 by 100 feet: and indeed the property is depicted on the map in just that manner. The City is not satisfied with the valuation of \$42,000 per block, and says that it ought to be at least \$65,000. The Farmers Market is
40 not satisfied, and says that this valuation ought

Opinion of Supreme Court.

to be about \$25,000 per block. At \$65,000 the valuation would be \$1500. a lot. At \$25,000 it would be about \$570. a lot in round figures.

There was considerable testimony of a rather technical character by expert witnesses. While this has its value, the question after all is a commonplace one, namely, the fair taxable value of two city blocks of lots in a generally manufacturing district. In such a situation it is customary to look at the valuations of adjoining properties; and in the present case the process is illuminating. 10

On the North side of Albert Street is Block 2451, consisting of 45 lots valued by the City, as we read the evidence, at \$25,000 or \$550. a lot; and in the next block, No. 2423, is a string of lots, eight in number, on the North side of Albert Street, valued for taxation, at \$4,800 or \$600. a lot. It seems to us that this is properly to be considered in ascertaining the valuation of the Farmers Market property. The claim of the City, as we understand it, is that because of the use to which the Farmers Market, Inc. has put the property, the value of the land has been increased above that of land in the immediate vicinity not used for the same or similar purposes. But even on that assumption, to which we do not subscribe, a value of \$1500. per lot in one block as compared with \$550. in the adjoining block seems preposterous. 20 30

The lots in Blocks 2423 and 2451 are just as available for the Farmers Market as those of 2408 and 2409 if any Farmers Market or other organization chose to come there and acquire them. So that as we see the matter, the valuation is a valuation growing mainly, if not entirely, out of neighborhood conditions rather than out of the mere 40

Opinion of Supreme Court.

use for which an isolated parcel of land is put where the physical conditions are, as here, identical.

10 These considerations lead to a judgment for the defendant on the writ of the City of Newark, and a judgment of reduction in favor of the Farmers Market based on neighboring values of about \$600. a lot. Accordingly the total value of each block is hereby fixed for the year 1940 at \$27,000.

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Rule for Judgment.

NEW JERSEY SUPREME COURT.

Nos. 236 and 237, MAY TERM, 1943.

NEWARK FARMERS MARKET, INC., Prosecutor, <i>vs.</i> STATE BOARD OF TAX APPEALS, and CITY OF NEWARK, Defendants.	}	On Certiorari. Rule for Judgment.	10
THE CITY OF NEWARK, Prosecutor, <i>vs.</i> STATE BOARD OF TAX APPEALS, and NEWARK FARMERS MARKET, INC., Defendants.	}		20

The above entitled matters coming on to be heard at the May Term, 1943, on writs and cross writs of certiorari and the Court having inspected the transcript and records of the proceedings of the State Board of Tax Appeals returned with the writs of certiorari and depositions taken pursuant to rule, and having examined the reasons assigned for reversing the judgments of the State Board of Tax Appeals, and having heard the argument of counsel for the respective parties, and having duly considered the same;

It is on this 26 day of May, 1944, ORDERED that judgment be entered in favor of Newark Farmers' Market, Inc., on the writs of certiorari allowed to the City of Newark and to the Newark Farmers Market, Inc., and that the judgments of the State Board of Tax Appeals fixing the value of Block

Rule for Judgment.

2408, Lot 1—2-44 Cornelia Street, at \$92,000.00, being \$42,000.00 on land and \$50,000.00 on improvements, and the value of Block 2409, Lot 1—1-43 Joseph Street, at \$98,000.00, being \$42,000.00 on land and \$56,000.00 on improvements, be and the same are hereby reversed, and that the true value of Block 2408, Lot 1—2-44 Cornelia Street, for the year 1940, be and the same is hereby fixed at \$77,000.00, being \$27,000.00 on land and \$50,000.00 on improvements, and that the true value of Block 2409, Lot 1—1-43 Joseph Street, for the year 1940, be and the same is hereby fixed at \$83,000.00, being \$27,000.00 on land and \$56,000.00 on improvements.

And it is further ORDERED that costs to be taxed be allowed to prosecutor-defendant, Newark Farmers Market, Inc., and against prosecutor-defendant, The City of Newark.

Rule entered May 26, 1944.

On motion of

HARRISON & ROCHE & DARBY,
Attorneys for Prosecutor-Defendant,
Newark Farmers Market, Inc.

I hereby approve the foregoing rule for judgment as to form.

PHILIP J. SCHOTLAND,
Philip J. Schotland,
Attorney for Prosecutor-Defendant,
The City of Newark.

Writ.

(Filed January 14, 1943.)

STATE OF NEW JERSEY, SS.:

[SEAL] THE STATE OF NEW JERSEY TO THE
STATE BOARD OF TAX APPEALS AND
THE CITY OF NEWARK, GREETING:

We being willing, for certain reasons, to be certified of a judgment made by the State Board of Tax Appeals on September 22, 1942, upon the petition of appeal of the Newark Farmers Market, Inc. from the assessment by the said City of Newark of certain land and building for the year 1940 known as Block 2408, Lot 1, 2-44 Cornelia Street, do command you, the said State Board of Tax Appeals, that the said judgment, together with all things touching and concerning the same as fully and completely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 3rd day of February, 1943, you certify and send, together with this, our writ, that therein may be done what of right and justice, and according to the laws of the State of New Jersey, ought to be done.

WITNESS, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 14th day of January, 1943.

FRED L. BLOODGOOD, 30
Clerk.

On motion of:
HARRISON & ROCHE,
Attorneys for Prosecutor.

I allow this writ. Let it be sealed.

Dated: January 9, 1943.

CHARLES W. PARKER,
Justice, Supreme Court. 40

Writ.

(Filed January 14, 1943.)

STATE OF NEW JERSEY, SS.:

10 [SEAL] THE STATE OF NEW JERSEY TO THE
STATE BOARD OF TAX APPEALS AND
NEWARK FARMERS MARKET, INC.,
GREETING:

20 We being willing, for certain reasons, to be certified of a judgment made by the State Board of Tax Appeals on September 22, 1942, upon the petition of appeal of the City of Newark from the judgment of the Essex County Board of Taxation fixing the valuation of certain lands and buildings for the year 1940 known as Block 2408, Lot 1, 2-44 Cornelia Street, do command you, the said State Board of Tax Appeals, that the said judgment, together with all things touching and concerning the same as fully and completely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 3rd day of February 1943 you certify and send, together with this, our writ, that therein may be done what of right and justice, and according to the laws of the State of New Jersey, ought to be done.

30 WITNESS, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 14th day of January 1943.

FRED L. BLOODGOOD,
Clerk.

On motion of:

RAYMOND SCHROEDER,
Attorney for Prosecutor.

I allow this writ. Let it be sealed.

40 Dated: January 9, 1943.

CHARLES W. PARKER,
Justice, Supreme Court.

Notice of Application for Writ.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

On Application for
Writ of Certiorari.

Notice of
Application
for Writ.

Block 2408, Lot 1.
2-44 Cornelia
Street.

10

20

*To the State Board of Tax Appeals of the State
of New Jersey:*

TAKE NOTICE that on Saturday, the 26th day of December, 1942, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard thereon, we shall apply to the Honorable Charles W. Parker, a Justice of the New Jersey Supreme Court, at his chambers in the Court House, Newark, New Jersey, for the issuance of a writ of certiorari in the above entitled cause to review a judgment of the State Board of Tax Appeals made on September 22, 1942, fixing an assessment for the year 1940 by the said City of Newark on the lands and building known and designated as Block 2408, Lot 1, 2-44 Cornelia Street, on the official tax maps of the City of Newark, and that said application is based upon the affidavits of George E. Haines, President of Newark Farmers Market,

30

40

Notice of Application for Writ.

Inc., a corporation, and Charles H. Stewart, copies of which are herewith served upon you.

Respectfully yours,

HARRISON & ROCHE,
Attorneys for Prosecutor.

10 Dated: December 14, 1942.

Service of the within notice and affidavit is hereby acknowledged this 24th day of December, 1942.

STATE BOARD OF TAX APPEALS,
By CHAS. E. COOK,
Secretary.

20

Notice of Application for Writ.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

30

NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

On Application for
Writ of Certiorari.

Notice of
Application
for Writ.

Block 2408, Lot 1.
2-44 Cornelia
Street.

*To Raymond Schroeder, Esq., Attorney for City
of Newark:*

40 TAKE NOTICE that on Saturday, the 26th day of
December, 1942, at 10 o'clock in the forenoon, or

Notice of Application for Writ.

as soon thereafter as counsel can be heard there-
 on, we shall apply to the Honorable Charles W.
 Parker, a Justice of the New Jersey Supreme
 Court, at his chambers in the Court House, New-
 ark, New Jersey, for the issuance of a writ of cer-
 tiorari in the above entitled cause to review a
 judgment of the State Board of Tax Appeals 10
 made on September 22, 1942, fixing an assessment
 for the year 1940 by the said City of Newark on
 the lands and building known and designated as
 Block 2408, Lot 1, 2-44 Cornelia Street, on the of-
 ficial tax maps of the City of Newark, and that
 said application is based upon the affidavits of
 George E. Haines, President of Newark Farmers
 Market, Inc., a corporation, and Charles H.
 Stewart, copies of which are herewith served upon
 you. 20

Respectfully yours,

HARRISON & ROCHE,
 Attorneys for Prosecutor.

Dated: December 14, 1942.

Service of the within notice and affidavit is
 hereby acknowledged this 22nd day of December,
 1942.

RAYMOND SCHROEDER,
 Attorney for Defendant, City of Newark.

30

40

Affidavit of George E. Haines.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

10 NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

On Application
for Writ of
Certiorari.

Affidavit.

Block 2408, Lot 1
2-44 Cornelia
Street.

20 STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

GEORGE E. HAINES, of full age, being duly sworn according to law, upon his oath deposes and says:

I am President of Newark Farmers Market, Inc., a corporation of the State of New Jersey, and I am familiar with the matters and things hereinafter set forth and duly authorized to make this affidavit on behalf of said Newark Farmers Market, Inc.

30 The Newark Farmers Market, Inc. is a corporation of the State of New Jersey. The stock of the corporation is divided into two classes. The ownership of Class "A" stock is limited to farmers, and the ownership of Class "B" stock is limited to farmers and tenants of stores owned by the corporation. Class "B" stockholders only have voting powers in case of dissolution or in case of a proposal to change the amount of stock that may be

40 issued or to create a new class of stock.

Affidavit of George E. Haines.

The corporation owns approximately ten acres of land in the easterly outlying section of Newark, which are used in the operation of the Newark Farmers Market. The property is located in an industrial area and a zone designated as an industrial zone under the Newark Zoning Ordinance. Annexed hereto and made a part hereof is a copy of a map showing the property owned by the Newark Farmers Market and contiguous property. The corporation is the owner of the following property shown on said map, to wit:

All of Block 2408	
“ “ “ 2409	
“ “ “ 2451	
Lots 24 to 31 in Block 2423	
“ 32 “ 46 “ “ 2423	20
Lots 1 & 7 in Block 2423	

Block 2408, Lot 1, known as 2-44 Cornelia Street, has a frontage on Cornelia Street of 555 feet, a frontage on Catherine Street of 555 feet, and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue and on the north by Albert Avenue, and constitutes an entire City block. It contains approximately 111,000 square feet. On the Cornelia Street side of the block is erected a group of one-story buildings, 60 feet in depth, which face, not on Cornelia Street, but towards an open plaza situate on that portion of the premises in question fronting on Catherine Street. On Euclid Avenue, between Catherine Street and Cornelia Street is another group of one-story buildings running to within 120 feet of Cornelia Street and 60 feet in depth. On the remainder of the block, in front of the buildings above referred to, there is erected an open concrete plaza

30

40

Affidavit of George E. Haines.

in which individual farmers daily rent a space or stand from which their farm produce is sold. The stores in the buildings are rented to tenants for a monthly or annual rental.

10 Block 2409, Lot 1, 1-43 Joseph Street, has a frontage of approximately 555 feet on Joseph Street and a frontage of 555 feet on Catherine Street and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue, on the north by Albert Avenue, and constitutes an entire City block. Erected on this tract is a group of one-story buildings, smaller in area than the buildings on Cornelia Street, but also 60 feet in depth. This group of buildings is erected on that portion of the block fronting on Joseph Street but faces on an open plaza which is constructed on the remainder of the block and which fronts on Catherine Street. On the Euclid Avenue end of this block is erected another one-story building running from Catherine Street eastwardly toward Joseph Street and about 125 feet in length. This block (2409, Lot 1, 1-43 Joseph Street) is assessed by the City of Newark as a separate entity from Block 2408, Lot 1, first above referred to.

20 The corporation also owns the entire block known and designated as Block 2451, Lot 1, 46-88 Cornelia Street. This block has a frontage of 545 feet on Cornelia Street, 582 feet on Catherine Street, and a depth of 100 feet on each street. It is bounded on the north by Lister Avenue and on the south by Albert Avenue, and contains approximately 114,000 square feet. Erected on this tract is a building at the corner of Albert Avenue and Cornelia Street, which is also part of the Farmers Market. This block is separately assessed by the City, and the State Board of Tax Appeals, by 30 40 judgment entered on September 22, 1942, fixed the

Affidavit of George E. Haines.

assessment for 1940 at, land \$25,000.00, and building \$7,800.00, which land value is at the rate of approximately 22¢ a square foot.

The corporation also owns a parcel of land known and designated as Block 2423, Lot 24-31, 76-90 Albert Avenue. This parcel has a frontage on Albert Avenue of 202 feet, a depth of 101 feet, and is bounded on the east by Joseph Street and on the west by Catherine Street. No building is erected on this parcel, but a concrete pavement has been constructed on a portion of it and is used in the operation of the market. This parcel is separately assessed by the City of Newark, and the State Board of Tax Appeals, by judgment entered on September 22, 1942, fixed the assessment for 1940 at, land \$4,800.00, which is the rate of approximately 23½¢ a square foot.

The Newark Farmers Market, Inc. operates the market, collects the rentals both from the stores monthly, and daily from the farmers who rent the "spaces" or "stands" in the plaza. The corporation furnishes, at its own cost and expense, the necessary policing of the area, takes care of the collection of garbage, the daily cleaning and electric lighting of the plaza, and performs many other functions necessary and essential to the successful operation of its business. The corporation employs a manager to oversee the management and operation of the market, a bookkeeper, a market master who supervises the plaza operations, and hires men to perform other essential services. The operation of the market, not only requires the use of Block 2408, Lot 1, known as 2-44 Cornelia Street, but also the use of Block 2409, Lot 1, known as 1-43 Joseph Street, and also the use of Block 2451, Lot 1, 46-88 Cornelia Street, and Lots 24-31 in Block 2423, known as 76-90 Albert Ave-

Affidavit of Charles H. Stewart.

nue, and Lots 32-46 in Block 2423, known as 54-82 Catherine Street.

GEORGE E. HAINES.

Subscribed and sworn to before me }
this 16th day of December, 1942. }

10 JOHN F. CONNOLLY
A Master in Chancery
of New Jersey

Affidavit of Charles H. Stewart.

NEW JERSEY SUPREME COURT.

20	NEWARK FARMERS MARKET, INC., a corporation of the State of New Jersey, <div style="text-align: right; padding-right: 20px;">Prosecutor,</div>	}	On Application for Writ of Certiorari. Prosecutor's Affidavit. Block 2408, Lot 1, 2-44 Cornelia St.
	<i>vs.</i>		
30	THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY, and THE CITY OF NEWARK, <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

CHARLES H. STEWART, being duly sworn according to law, upon his oath deposes and says:

40 I am the agent and attorney for Newark Farmers Market, Inc., a corporation of the State of New Jersey, and I am familiar with the matters

Affidavit of Charles H. Stewart.

and things hereinafter set forth, and duly authorized to make this affidavit on behalf of said Newark Farmers Market, Inc.

On or about October 1, 1939, the City of Newark, pursuant to the provisions of the statute in such case made and provided, levied a tax assessment for the year 1940 against lands and premises of the Newark Farmers Market, Inc., located in the City of Newark, County of Essex and State of New Jersey, known and designated as Block 2408, Lot 1, 2-44 Cornelia Street, consisting of land and buildings. The assessment for the year 1940, as of October 1, 1939, levied by the City of Newark against said premises, was, land \$111,000.00, improvements \$50,000.00, total \$161,000.00. 10

On or about July 29, 1940, Newark Farmers Market, Inc., conceiving that its property had been taxed in excess of its true value, filed with the Essex County Board of Taxation its petition of appeal from the said assessment, praying that the assessment be reduced to the following amounts: land \$26,100.00, improvements \$46,800.00, total \$72,900.00. The Essex County Board of Taxation, after the hearing, reduced the assessment to, land \$36,300.00, improvements \$50,000.00, total \$86,300.00. 20

On or about December 10, 1940, Newark Farmers Market, Inc. filed its petition of appeal from the said assessment as reduced by the Essex County Board of Taxation to the State Board of Tax Appeals. Petitioner's appeal and the cross appeal of the City of Newark came on for hearing before the State Board on April 22, 1942, and April 23, 1942. Testimony of witnesses was taken before the State Board of Tax Appeals. By a judgment filed on September 22, 1942, the State 30 40

Affidavit of Charles H. Stewart.

Board of Tax Appeals increased the assessment as reduced by the Essex County Board of Taxation to \$92,000.00, being \$42,000.00 on land and \$50,000.00 on improvements.

10 There was introduced in evidence before the State Board of Tax Appeals the following tax history of the assessments against the said lands and premises for the years 1936, 1937, 1938 and 1939:

In 1936, the Essex County Board of Taxation reduced the land assessment to \$22,200.00.

In 1937, the State Board of Tax Appeals reduced the land assessment to \$26,100.00.

In 1938, the State Board of Tax Appeals reduced the assessment to, land \$26,100.00, buildings \$46,800.00, the reduction on improvements being by consent.

20 In 1939, the State Board of Tax Appeals reduced the assessment to, land \$26,100.00, buildings \$46,800.00, the reduction on improvements being by consent.

30 The Newark Farmers Market, Inc. is a corporation of the State of New Jersey. The stock ownership in the corporation, "Class A" is limited to farmers, "Class B" to farmers and tenants of the stores owned by the corporation, "Class B" stockholders only having voting powers in case of dissolution or in case of a proposal to change the amount of stock that may be issued or to create a new class of stock. The corporation owns approximately ten acres of land in the easterly outlying section of Newark, of which the premises in question are a part. The property is located in an industrial area and a zone designated as an industrial zone under the Newark Zoning Ordinance.

40 Annexed hereto and made a part hereof is a photostatic copy of that portion of the Robinson City Atlas for 1927 showing the general location

Affidavit of Charles H. Stewart.

of the Newark Farmers Market and contiguous property. Newark Farmers Market, Inc. is the owner of the following property shown and delineated thereon, to wit:

All of Block 2408	
“ “ “ 2409	
“ “ “ 2451	10
Lots 24 to 31 in Block 2423	
“ 32 to 46 “ “ 2423	
Lots 1 and 7 in Block 2423	

Appeals from assessments for 1940, levied by the City of Newark, were taken to the Essex County Board of Taxation and thence to the State Board of Tax Appeals on all of the aforesaid parcels and said appeals were tried before the State Board of Tax Appeals as separate appeals at the same hearing. 20

The tract in question, Block 2408, Lot 1, 2-44 Cornelia Street, has a frontage on Cornelia Street of 555 feet, a frontage on Catherine Street of 555 feet, and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue and on the north by Albert Avenue, and constitutes an entire City block. It contains approximately 111,000 square feet. On the Cornelia Street side of the block is erected a group of one-story buildings, 60 feet in depth, which face, not on Cornelia Street, but towards an open plaza situate on that portion of the premises in question fronting on Catherine Street. On Euclid Avenue, between Catherine Street and Cornelia Street, is another group of one-story buildings running to within 120 feet of Cornelia Street and 60 feet in depth. On the remainder of the block, in front of the buildings above referred to, there is erected an open concrete plaza in which individual farmers 40

Affidavit of Charles H. Stewart.

daily rent a space or stand from which their farm produce is sold. The stores in the buildings are rented to tenants for a monthly or annual rental.

10 Block 2409, Lot 1, 1-43 Joseph Street, has a frontage of approximately 555 feet on Joseph Street and a frontage of 555 feet on Catherine Street and a depth of 100 feet on each street. It is bounded on the South by Euclid Avenue, on the North by Albert Avenue, and constitutes an entire City block. Erected on this tract is a group of one-story buildings, smaller in area than the buildings on Cornelia Street, but also 60 feet in depth. This group of buildings is erected on that portion of the block fronting on Joseph Street but faces on an open plaza which is constructed on the remainder of the block and which fronts on Catherine Street. On the Euclid Avenue end of this block is erected another one-story building running from Catherine Street eastwardly toward Joseph Street and about 125 feet in length. This block (2409, Lot 1, 1-43 Joseph Street) is assessed by the City of Newark as a separate entity from Block 2408, Lot 1, first above referred to.

20 The corporation also owns the entire block known and designated as Block 2451, Lot 1, 46-88 Cornelia Street. This block has a frontage of 545 feet on Cornelia Street, 582 feet on Catherine Street, and a depth of 100 feet on each street. It is bounded on the north by Lister Avenue and on the south by Albert Avenue, and contains approximately 114,000 square feet. Erected on this tract is a building at the corner of Albert Avenue and Cornelia Street, which is also part of the Farmers Market. This block is separately assessed by the City, and the State Board of Tax Appeals, by judgment entered on September 22, 1942, fixed the assessment for 1940 at, land \$25,000.00, and

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Affidavit of Charles H. Stewart.

building \$7,900.00, which land value is at the rate of 22¢ a square foot.

The corporation also owns a parcel of land known and designated as Block 2423, Lot 24-31, 76-90 Albert Avenue. This parcel has a frontage on Albert Avenue of 202 feet, a depth of 101 feet, and is bounded on the east by Joseph Street and on the west by Catherine Street. No building is erected on this parcel, but a concrete pavement has been constructed on a portion thereof and is used in the operation of the market. This parcel is separately assessed by the City of Newark, and the State Board of Tax Appeals, by judgment entered on September 22, 1942, fixed the assessment for 1940 at, land \$4,800.00, which is at the rate of 23½¢ a square foot. 10

The Newark Farmers Market, Inc. operates the market and collects the rentals both from the stores monthly, and daily from the farmers who rent the "spaces" or "stands" in the plaza. The corporation furnishes, at its own cost and expense, the necessary policing of the area, takes care of the collection of garbage, the daily cleaning and electric lighting of the plaza, and performs many other functions necessary and essential to the successful operation of its business. The corporation employs a manager to oversee the management and operation of the market, a bookkeeper, a market master who supervises the plaza operations, and hires men to perform other essential services. The operation of the market, not only requires the use of Block 2408, Lot 1, known as 2-44 Cornelia Street, but also the use of Block 2409, Lot 1, known as 1-43 Joseph Street, and other land and buildings of the Farmers Market contiguous to these two parcels, and constituting one other entire City block 20 30 40

Affidavit of Charles H. Stewart.

partially improved with buildings and concreted plaza and another half City block.

10 Mr. Leo Flaster, a duly licensed real estate broker of the City of Newark and State of New Jersey, who specializes in the sale and leasing of industrial property, was produced on behalf of petitioner. Mr. Flaster testified that he had appraised and had valued the land known as Block 2408, Lot 1, 2-44 Cornelia Street, at the sum of \$24,420.00 as of October 1, 1939, being the block assessed by the City. In arriving at this valuation, he valued the land at \$20.00 per front foot for the frontage on Cornelia and Catherine Streets, which has a total frontage on both streets of 1,110 feet, making a value of \$22,200.00. To this value Mr. Flaster added 10% for plottage, 20 corner and frontages, making a total value as of October 1, 1939, of \$24,420.00. In arriving at this valuation, Mr. Flaster took into consideration his experience, knowledge of real estate values, and sales of other comparable property in the vicinity.

30 Mr. Flaster also testified to the value of the Block 2409, Lot 1, 1-43 Joseph Street, and placed a value on this parcel at a unit price of \$20.00 per front foot for a frontage of 1,110 feet on Catherine Street and Joseph Street, making a value of \$22,200.00, and added 10% for plottage, corners, and frontages, making a total value of \$24,420.00.

Mr. Flaster also testified to the value of Block 2451, Lot 1, 46-88 Cornelia Street, and placed a value on this parcel at a unit price of \$20.00 per front foot for a frontage of 1127 feet on Cornelia Street and Catherine Street, making a value of \$22,540.00, and added 10% for plottage, corners and frontages, making a total value of \$24,794.00.

40 Mr. Flaster also testified as to the value of a

Affidavit of Charles H. Stewart.

parcel known and designated as Block 2423, Lot 24-31, 76-90 Albert Avenue, above referred to, and placed a value on this parcel at a unit price of \$20.00 per front foot for a frontage of 202 feet on Albert Avenue, and added 10% for plottage, corners and frontages, making a total value of \$4,444.00.

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Mr. Frank Hannoch, a real estate broker of the City of Newark, was produced and testified on behalf of the City of Newark as to the value of Block 2408, Lot 1, 2-44 Cornelia Street. Mr. Hannoch placed a value on the land in question at 25¢ per square foot for 111,046 square feet, making a total valuation for the land of \$27,761.00. Mr. Hannoch testified that the value of the building erected on the block in question and other improvements, such as paving of the plaza, plat-

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forms, lights, etc., was \$50,000.00.

There is no dispute in the issues herein involved as to the valuation of the building and the improvements.

Mr. Hannoch, in testifying to the value of Block 2408, Lot 1, 2-44 Cornelia Street, then proceeded, over the objection of the petitioner, to testify to the amount of gross income received by the petitioner, Newark Farmers Market, Inc., for the year 1938, of \$39,000.00, representing fees re-

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ceived from farmers for daily rentals, and \$70,268.00 collected for store rentals from Block 2408, Lot 1 & Block 2409, Lot 1; and for the year 1939, of \$42,622.00, representing fees received from farmers for daily rentals and \$68,809.00 collected for store rentals from the above mentioned blocks. The income from store rentals was averaged for the years 1938 and 1939. The income received from farmers' daily rentals of "stalls" was ar-

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Affidavit of Charles H. Stewart.

ness operation. Mr. Hanocho then assumed that the plaza could be rented to a suppositious lessee, who would pay 25% of the gross income received from the market plaza, viz., \$42,600.00, and that the Farmers Market would, therefore, receive an annual rental of \$10,650.00. One-half of this estimated rental value of the plaza, amounting to \$5,325.00, is then added to one-half of the averaged store rentals actually received by the Farmers Market and Mr. Hanocho reaches a figure of \$39,615.00, which he terms "total estimated gross income", representing, in the opinion of Mr. Hanocho, the estimated gross income allocated to Block 2408, Lot 1, 2-44 Cornelia Street; the other one-half being allocated to Block 2409, Lot 1, 1-43 Joseph Street. The remaining property of the Farmers Market, although used in the operation, was not considered in Mr. Hanocho's calculations. An allowance was then made for a promoter's share amounting to \$3,961.00, which was deducted from the estimated gross income, leaving what is called "effective gross income" of \$35,654.00. From this "effective gross income" was deducted one-half of the averaged expenses for the years 1938 and 1939 for salaries of employees, manager, and all other expenses, which amounted to \$12,262.00. This sum, representing one-half of the expenses, was deducted from the "effective gross income" of \$35,654.00, leaving what is called "net income" before taxes or depreciation, of \$23,392.00. Mr. Hanocho then made further additional deductions from net income as follows: interest at 6% and depreciation at 10% per annum on \$50,000.00, his (Mr. Hanocho's) estimated physical building value, which produced \$8,000.00; taxes on the building value of \$50,000.00 at 5% per annum, amounting to \$2,500.00, were

Affidavit of Charles H. Stewart.

likewise deducted, and this total additional deduction of \$10,500.00 was subtracted from the net income of \$23,392.00, leaving \$12,892.00 which Mr. Hannoeh calls the "net income" applicable to land before payment of taxes. He then estimated or appraised the value of the land as "raw land" at \$27,761.00. He allows a return on the "raw land" of 6% plus 5% per annum for payment of taxes, making a total percentage allowance of 11%, and allows the sum of \$3,054.00 which is stated to be the "requirement of net income to support raw land", leaving a surplus income (the net income of \$12,892.00 above referred to, less the sum of \$3,054.00) of \$9,838.00. Mr. Hannoeh then arbitrarily capitalizes the surplus income at 20%, allowing a return of 15% per year and amortization of the full amount over a period of ten years less an allowance of 5% for payment of taxes and arrives at a capitalized value of the "surplus income" of \$37,187.00, to which he then adds the value of the "raw land" of \$27,761.00, giving him an estimated land value of \$64,948.00. He testified that, in his opinion, based on this method of appraisal, the land had a value on October 1, 1939, of \$65,000.00. "Raw land" was defined by the City attorney as land which has no particular use. Commissioner Huegel, of the State Board of Tax Appeals, stated that, in his opinion, "raw land" was simply "vacant land".

Mr. Hannoeh calls this method of arriving at value the "surplus income process" or "land residual method". He stated that the method of valuation is based on the net income received from the property after making due allowances for expenses of operation, depreciation and other allowances. He further testified that in applying this method to the valuation of land, the value would

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Affidavit of Charles H. Stewart.

increase or decrease as the net income or net residue from the operation of the business increased or decreased.

As heretofore stated, Mr. Hannoeh valued the land in question (Block 2408, Lot 1, 2-44 Cornelia Street) at a unit price of 25¢ a square foot, or
10 \$27,761.00, which is near the value of \$24,200.00, the value of the land testified to by Mr. Flaster, the witness of the petitioner, and the assessed value of \$26,100.00 at which the State Board of Tax Appeals fixed the true value of the land in the years 1937, 1938, and 1939. It was not contended by the City or its witness, Mr. Hannoeh, that there were any material changes in the locality on or prior to October 1, 1939, which would enhance the value of the land and therefore support the in-
20 creased assessment by the City.

Mr. Hannoeh also testified that the value of the land in Block 2409, Lot 1, 1-43 Joseph Street, was the same identical value as he placed upon Block 2408, Lot 1, 2-44 Cornelia Street, viz., base value \$27,671.00 (value reached by surplus income process \$65,000.00).

Mr. Hannoeh also testified to the value of Block 2451, Lot 1, 46-88 Cornelia Street, which contains
30 114,638 square feet, at 25¢ per square foot, making a value of \$28,600.00, but explains that he has not considered the land as having additional value further than "raw land" because he felt it had not been developed to an extent that it was part of the Farmers Market, although he testified that concrete platforms are constructed on the land and that there is a building constructed on the corner of Albert Avenue and Cornelia Street.

It is submitted that the testimony of Mr. Hannoeh fixing the value of the land and theory on
40 which his conclusions are based, viz., the "surplus

Affidavit of Charles H. Stewart.

income value" or value obtained by the use of the alleged "surplus income process" or "land residual method" is arbitrary, improper and illegal, and cannot be made the basis for valuation of the land in question for taxation purposes; and that the State Board of Tax Appeals erred in receiving and considering such testimony in arriving at the "true value" of the petitioner's property. Such basis of valuation has been held to be improper by the Supreme Court in *State, Easton Delaware Bridge Co., Pros. v. Metz*, 31 N. J. L. 378; *State, Hurd v. Cook*, 60 N. J. L. 70; *State v. Collector of Jersey City*, 24 N. J. L. 108-118; and by the Court of Errors & Appeals in the case of *Gibbs v. State Board of Taxes*, 101 N. J. L. 371 (1925). 10

It is further contended that even if assessment of land by the application of any such arbitrary and improper theory can be supported, that it was clearly evident and demonstrated by Mr. Hannoch that in arriving at his value, he used as a basis for his testimony the total revenue received from the operation of the market and allocated such income to the parcels, to wit, Block 2408, Lot 1, 2-44 Cornelia Street, and Block 2409, Lot 1, 1-43 Joseph Street, instead of allocating the income between the five parcels owned by petitioner and used in the operation of the market, and, therefore, such testimony before the State Board of Tax Appeals cannot support the judgment. 20 30

The only proper, competent and legal evidence of "true value" (Block 2408, Lot 1, 2-44 Cornelia Street) before the State Board of Tax Appeals was that of petitioner's witness, Mr. Flaster, who valued the land as of October 1, 1939, at \$24,420.00. The testimony of Mr. Hannoch that the base value of the land was \$27,761.00 corroborated the testimony of Mr. Flaster, and the State Board of 40

Affidavit of Charles H. Stewart.

Tax Appeals, on the testimony before it, should have reduced the assessment on Block 2408, Lot 1, 2-44 Cornelia Street, to the sum prayed for in the appeal of petitioner, i.e., land \$26,100.00, improvements \$50,000.00, total \$76,100.00.

10 The State Board of Tax Appeals erred in fixing the value of said property known as Block 2408, Lot 1, 2-44 Cornelia Street, at \$92,000.00, being \$42,000.00 on land and \$50,000.00 on improvements, and the judgment should be reversed and the assessment reduced by this Court in accordance with the testimony and prayer of petitioner.

CHARLES H. STEWART.

20 Subscribed and sworn to before me }
this 18th day of December, 1942. }

YETTA R. BLANK

Notary Public of N. J.

My commission expires Feb. 4, 1943.

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Rule to Take Depositions.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

On Application
for Writ of
Certiorari.

Rule to Take
Depositions.

Block 2408, Lot 1
2-44 Cornelia
Street.

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Application being made to the Court by Harrison & Roche, attorneys of Newark Farmers Market, Inc., a corporation, prosecutor, for leave to take depositions to be used on the argument of the above stated cause, and this rule being consented to by the attorney for the defendant, The City of Newark,

It is, on this 9th day of January, 1943, ORDERED that the prosecutor and the defendant, The City of Newark, have leave to take depositions before a Supreme Court Commissioner in accordance with the rules and practice of this Court to be used on the argument of this cause.

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Let the above rule be entered in the minutes.

CHARLES W. PARKER,
Justice of the Supreme Court.

I hereby consent to the making and entry of the foregoing rule.

RAYMOND SCHROEDER,
Attorney for The City of Newark.

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Writ.

(Filed January 14, 1943.)

STATE OF NEW JERSEY, SS.:

[SEAL] THE STATE OF NEW JERSEY TO THE
STATE BOARD OF TAX APPEALS AND
THE CITY OF NEWARK, GREETING:

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We being willing, for certain reasons, to be certified of a judgment made by the State Board of Tax Appeals on September 22, 1942, upon the petition of appeal of the Newark Farmers Market, Inc. from the assessment by the said City of Newark of certain land and building for the year 1940 known as Block 2409, Lot 1, 1-43 Joseph Street, do command you, the said State Board of Tax Appeals, that the said judgment, together with all things touching and concerning the same as fully and completely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 3rd day of February, 1943, you certify and send, together with this, our writ, that therein may be done what of right and justice, and according to the laws of the State of New Jersey, ought to be done.

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WITNESS, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this

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14th day of January, 1943.

FRED L. BLOODGOOD,
Clerk.

On motion of:

HARRISON & ROCHE,
Attorneys for Prosecutor.

I allow this writ. Let it be sealed.

Dated: January 9, 1943.

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CHARLES W. PARKER,
Justice, Supreme Court.

Writ.

(Filed January 14, 1943.)

STATE OF NEW JERSEY, ss.:

[SEAL] THE STATE OF NEW JERSEY TO THE
STATE BOARD OF TAX APPEALS AND
NEWARK FARMERS MARKET, INC.,
GREETING: 10

We being willing, for certain reasons, to be certified of a judgment made by the State Board of Tax Appeals on September 22, 1942, upon the petition of appeal of the City of Newark from the judgment of the Essex County Board of Taxation fixing the valuation of certain lands and building for the year 1940 known as Block 2409, Lot 1, 1-43 Joseph Street, do command you, the said State Board of Tax Appeals, that the said judgment, together with all things touching and concerning the same as fully and completely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 3rd day of February 1943, you certify and send, together with this, our writ, that therein may be done what of right and justice, and according to the laws of the State of New Jersey, ought to be done. 20

WITNESS, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 14th day of January, 1943. 30

FRED L. BLOODGOOD,
Clerk.

On motion of:

RAYMOND SCHROEDER,
Attorney for Prosecutor.

I allow this writ. Let it be sealed.

Dated: January 9, 1943.

CHARLES W. PARKER, 40
Justice, Supreme Court.

Notice of Application for Writ.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

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NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

On Application
for Writ of
Certiorari.

Notice of
Application for
Writ.

Block 2409, Lot 1
1-43 Joseph Street.

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*To The State Board of Tax Appeals of the State
of New Jersey:*

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TAKE NOTICE that on Saturday, the 26th day of
December, 1942, at 10 o'clock in the forenoon, or
as soon thereafter as counsel can be heard there-
on, we shall apply to the Honorable Charles W.
Parker, a Justice of the New Jersey Supreme
Court, at his chambers in the Court House, New-
ark, New Jersey, for the issuance of a writ of cer-
tiorari in the above entitled cause to review a
judgment of the State Board of Tax Appeals
made on September 22, 1942, fixing an assessment
for the year 1940 by the said City of Newark on
the lands and building known and designated as
Block 2409, Lot 1, 1-43 Joseph Street, on the offi-
cial tax maps of the City of Newark, and that said
application is based upon the affidavits of George
E. Haines, President of Newark Farmers Market,

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Notice of Application for Writ.

Inc., a corporation, and Charles H. Stewart,
copies of which are herewith served upon you.

Respectfully yours,

HARRISON & ROCHE,
Attorneys for Prosecutor.

Dated: December 14, 1942.

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Service of the within notice and affidavit is
hereby acknowledged this 24th day of December,
1942.

STATE BOARD OF TAX APPEALS,
By CHAS. E. COOK,
Secretary.

Notice of Application for Writ.

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(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,

Defendants.

On Application
for Writ of
Certiorari.

Notice of
Application for
Writ.

Block 2409, Lot 1
1-43 Joseph Street.

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*To Raymond Schroeder, Esq., Attorney for City
of Newark:*

TAKE NOTICE that on Saturday, the 26th day of
December, 1942, at 10 o'clock in the forenoon, or

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Notice of Application for Writ.

10 as soon thereafter as counsel can be heard there-
on, we shall apply to the Honorable Charles W.
Parker, a Justice of the New Jersey Supreme
Court, at his chambers in the Court House, New-
ark, New Jersey, for the issuance of a writ of cer-
tiorari in the above entitled cause to review a
judgment of the State Board of Tax Appeals
made on September 22, 1942, fixing an assessment
for the year 1940 by the said City of Newark on
the lands and building known and designated as
Block 2409, Lot 1, 1-43 Joseph Street, on the of-
ficial tax maps of the City of Newark, and that
said application is based upon the affidavits of
George E. Haines, President of Newark Farmers
Market, Inc., a corporation, and Charles H.
Stewart, copies of which are herewith served
20 upon you.

Respectfully yours,

HARRISON & ROCHE,
Attorneys for Prosecutor.

Dated: December 14, 1942.

Service of the within notice and affidavit is
hereby acknowledged this 22nd day of December,
1942.

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RAYMOND SCHROEDER,
Attorney for City of Newark.

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Affidavit of George E. Haines.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

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On Application
for Writ of
Certiorari.

Affidavit.

Block 2409, Lot 1
1-43 Joseph Street.

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STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

GEORGE E. HAINES, of full age, being duly sworn according to law, upon his oath deposes and says:

I am President of Newark Farmers Market, Inc., a corporation of the State of New Jersey, and I am familiar with the matters and things hereinafter set forth and duly authorized to make this affidavit on behalf of said Newark Farmers Market, Inc.

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The Newark Farmers Market, Inc. is a corporation of the State of New Jersey. The stock of the corporation is divided into two classes. The ownership of Class "A" stock is limited to farmers, and the ownership of Class "B" stock is limited to farmers and tenants of stores owned by the corporation. Class "B" stockholders only have voting powers in case of dissolution or in case of a proposal to change the amount of stock

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Affidavit of George E. Haines.

that may be issued or to create a new class of stock.

10 The corporation owns approximately ten acres of land in the easterly outlying section of Newark, which are used in the operation of the Newark Farmers Market. The property is located in an industrial area and a zone designated as an industrial zone under the Newark Zoning Ordinance. Annexed hereto and made a part hereof is a copy of a map showing the property owned by the Newark Farmers Market and contiguous property. The corporation is the owner of the following property shown on said map, to wit:

20 All of Block 2408
 " " " 2409
 " " " 2451
 Lots 24 to 31 in Block 2423
 " 32 " 46 " " 2423
 Lots 1 & 7 in Block 2423.

30 Block 2408, Lot 1, known as 2-44 Cornelia Street, has a frontage on Cornelia Street of 555 feet, a frontage on Catherine Street of 555 feet, and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue and on the north by Albert Avenue, and constitutes an entire City block. It contains approximately 111,000 square feet. On the Cornelia Street side of the block is erected a group of one-story buildings, 60 feet in depth, which face, not on Cornelia Street, but towards an open plaza situate on that portion of the premises in question fronting on Catherine Street. On Euclid Avenue, between Catherine Street and Cornelia Street, is another group of one-story buildings running to within 120 feet of Cornelia Street and 60 feet in depth.
 40 On the remainder of the block, in front of the

Affidavit of George E. Haines.

buildings above referred to, there is erected an open concrete plaza in which individual farmers daily rent a space or stand from which their farm produce is sold. The stores in the buildings are rented to tenants for a monthly or annual rental.

Block 2409, Lot 1, 1-43 Joseph Street, has a frontage of approximately 555 feet on Joseph Street and a frontage of 555 feet on Catherine Street and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue, on the north by Albert Avenue, and constitutes an entire City block. Erected on this tract is a group of one-story buildings, smaller in area than the buildings on Cornelia Street, but also 60 feet in depth. This group of buildings is erected on that portion of the block fronting on Joseph Street but faces on an open plaza which is constructed on the remainder of the block and which fronts on Catherine Street. On the Euclid Avenue end of this block is erected another one-story building running from Catherine Street eastwardly toward Joseph Street and about 125 feet in length. This block (2409, Lot 1, 1-43 Joseph Street) is assessed by the City of Newark as a separate entity from Block 2408, Lot 1, first above referred to.

The corporation also owns the entire block known and designated as Block 2451, Lot 1, 46-88 Cornelia Street. This block has a frontage of 545 feet on Cornelia Street, 582 feet on Catherine Street, and a depth of 100 feet on each street. It is bounded on the north by Lister Avenue and on the south by Albert Avenue, and contains approximately 114,000 square feet. Erected on this tract is a building at the corner of Albert Avenue and Cornelia Street, which is also part of the Farmers Market. This block is separately assessed by the City, and the State Board of Tax Appeals, by

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Affidavit of George E. Haines.

judgment entered on September 22, 1942, fixed the assessment for 1940 at, land \$25,000.00, and building \$7,900.00, which land value is at the rate of approximately 22¢ a square foot.

10 The corporation also owns a parcel of land known and designated as Block 2423, Lot 24-31, 76-90 Albert Avenue. This parcel has a frontage on Albert Avenue of 202 feet, a depth of 101 feet, and is bounded on the east by Joseph Street and on the west by Catherine Street. No building is erected on this parcel, but a concrete pavement has been constructed on a portion of it and is used in the operation of the market. This parcel is separately assessed by the City of Newark, and the State Board of Tax Appeals, by judgment entered on September 22, 1942, fixed the assessment
20 for 1940 at, land \$4,800.00, which is at the rate of approximately 23½¢ a square foot.

The Newark Farmers Market, Inc. operates the market, collects the rentals both from the stores monthly, and daily from the farmers who rent the "spaces" or "stands" in the plaza. The corporation furnishes, at its own cost and expense, the necessary policing of the area, takes care of the collection of garbage, the daily cleaning and electric lighting of the plaza, and performs many
30 other functions necessary and essential to the successful operation of its business. The corporation employs a manager to oversee the management and operation of the market, a bookkeeper, a market master who supervises the plaza operations, and hires men to perform other essential services. The operation of the market, not only requires the use of Block 2408, Lot 1, known as 2-44 Cornelia Street, but also the use of Block 2409, Lot 1, known as 1-43 Joseph Street, and also
40 the use of Block 2451, Lot 1, 46-88 Cornelia Street, and Lots 24-31 in Block 2423, known as 76-90 Al-

Affidavit of Charles H. Stewart.

bert Avenue, and Lots 32-46 in Block 2423, known as 54-82 Catherine Street.

GEORGE E. HAINES.

Subscribed and sworn to before me }
 this 16th day of December, 1942. }

JOHN F. CONNOLLY, 10
 A Master in Chancery of New Jersey.

Affidavit of Charles H. Stewart.

NEW JERSEY SUPREME COURT.

NEWARK FARMERS MARKET, INC.,
 a corporation of the State of
 New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
 OF THE STATE OF NEW JERSEY,
 and THE CITY OF NEWARK,
 Defendants.

On Application
 for Writ of
 Certiorari.

Prosecutor's
 Affidavit.

Block 2409, Lot 1,
 1-43 Joseph Street.

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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

CHARLES H. STEWART, being duly sworn accord-
 ing to law, upon his oath deposes and says:

I am the agent and attorney for Newark Farm-
 ers Market, Inc., a corporation of the State of New
 Jersey, and I am familiar with the matters and
 things hereinafter set forth, and duly authorized 40

Affidavit of Charles H. Stewart.

to make this affidavit on behalf of said Newark Farmers Market, Inc.

10 On or about October 1, 1939, the City of Newark, pursuant to the provisions of the statute in such case made and provided, levied a tax assessment for the year 1940 against lands and premises of the Newark Farmers Market, Inc., located in the City of Newark, County of Essex and State of New Jersey, known and designated as Block 2409, Lot 1, 1-43 Joseph Street, consisting of land and buildings. The assessment for the year 1940, as of October 1, 1939, levied by the City of Newark against said premises, was, land \$111,000.00, improvements \$56,000.00, total \$167,000.00.

20 On or about July 29, 1940, Newark Farmers Market, Inc., conceiving that its property had been taxed in excess of its true value, filed with the Essex County Board of Taxation its petition of appeal from the said assessment, praying that the assessment be reduced to the following amounts: land \$26,100.00, improvements \$56,000.00, total \$82,100.00. The Essex County Board of Taxation, after the hearing, reduced the assessment to, land \$36,300.00, improvements \$56,000.00, total \$92,300.00.

30 On or about December 10, 1940, Newark Farmers Market, Inc. filed its petition of appeal from the said assessment as reduced by the Essex County Board of Taxation to the State Board of Tax Appeals. Petitioner's appeal and the cross appeal of the City of Newark came on for hearing before the State Board on April 22, 1942, and April 23, 1942. Testimony of witnesses was taken before the State Board of Tax Appeals. By a judgment filed on September 22, 1942, the State Board of Tax Appeals increased the assessment as reduced by the Essex County Board of Taxa-

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tion to \$98,000.00, being \$42,000.00 on land and \$56,000.00 on improvements.

There was introduced in evidence before the State Board of Tax Appeals the following tax history of the assessments against the said lands and premises for the years 1936, 1937, 1938 and 1939:

In 1936, the State Board of Tax Appeals reduced the land assessment to \$29,000.00.

In 1937, the State Board of Tax Appeals reduced the land assessment to \$26,100.00.

In 1938, the State Board of Tax Appeals reduced the assessment to, land \$26,100.00.

In 1939, the State Board of Tax Appeals reduced the assessment to, land \$26,100.00, buildings \$56,000.00, the reduction on improvements being by consent.

The Newark Farmers Market, Inc. is a corporation of the State of New Jersey. The stock ownership in the corporation, "Class A" is limited to farmers, "Class B" to farmers and tenants of the stores owned by the corporation, "Class B" stockholders only having voting powers in case of dissolution or in case of a proposal to change the amount of stock that may be issued or to create a new class of stock. The corporation owns approximately ten acres of land in the easterly outlying section of Newark, of which the premises in question are a part. The property is located in an industrial area and a zone designated as an industrial zone under the Newark Zoning Ordinance.

Annexed hereto and made a part hereof is a photostatic copy of that portion of the Robinson City Atlas for 1927 showing the general location of the Newark Farmers Market and contiguous property. Newark Farmers Market, Inc. is the

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owner of the following property shown and delineated thereon, to wit:

- All of Block 2409
 “ “ “ 2408
 “ “ “ 2451
 10 Lots 24 to 31 in Block 2423
 “ 32 to 46 “ “ 2423
 Lots 1 and 7 in Block 2423

Appeals from assessments for 1940, levied by the City of Newark, were taken to the Essex County Board of Taxation and thence to the State Board of Tax Appeals on all of the aforesaid parcels and said appeals were tried before the State Board of Tax Appeals as separate appeals at the same hearing.

- 20 The tract in question, Block 2409, Lot 1, 1-43 Joseph Street, has a frontage of approximately 555 feet on Joseph Street and a frontage of 555 feet on Catherine Street and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue and on the north by Albert Avenue, and constitutes an entire City block. It contains approximately 111,000 square feet. On the Joseph Street side of the block is erected a group of one-story buildings, 60 feet in depth, which
 30 face, not on Joseph Street, but towards an open plaza situate on that portion of the premises in question fronting on Catherine Street. On the Euclid Avenue end of the block is erected a one-story building running from Catherine Street eastwardly toward Joseph Street and about 125 feet in length. On the remainder of the block in front of the buildings above referred to there is erected an open concrete plaza in which individual farmers
 40 daily rent a place or stand from which their farm

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produce is sold. The stores in the buildings are rented to tenants for a monthly or annual rental.

Block 2408, Lot 1, 2-44 Cornelia Street, has a frontage on Cornelia Street of 555 feet, a frontage on Catherine Street of 555 feet, and a depth of 100 feet on each street. It is bounded on the south by Euclid Avenue and on the north by Albert Avenue, and constitutes an entire City block. It contains approximately 111,000 square feet. On the Cornelia Street side of the block is erected a group of one-story buildings, 60 feet in depth, which face, not on Cornelia Street, but towards an open plaza situate on that portion of the premises in question fronting on Catherine Street. On Euclid Avenue, between Catherine Street and Cornelia Street, is another group of one-story buildings running to within 120 feet of Cornelia Street and 60 feet in depth. On the remainder of the block, in front of the buildings above referred to, there is erected an open concrete plaza in which individual farmers daily rent a space or stand from which their farm produce is sold. The stores in the buildings are rented to tenants for a monthly or annual rental.

The corporation also owns the entire block known and designated as Block 2451, Lot 1, 46-88 Cornelia Street. This block has a frontage of 545 feet on Cornelia Street, 582 feet on Catherine Street, and a depth of 100 feet on each street. It is bounded on the north by Lister Avenue and on the south by Albert Avenue, and contains approximately 114,000 square feet. Erected on this tract is a building at the corner of Albert Avenue and Cornelia Street, which is also part of the Farmers Market. This block is separately assessed by the City, and the State Board of Tax Appeals, by judgment entered on September 22, 1942, fixed the assessment for 1940 at, land \$25,000.00, and build-

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ing \$7,900.00, which land value is at the rate of 22¢ a square foot.

10 The corporation also owns a parcel of land known and designated as Block 2423, Lot 24-31, 76-90 Albert Avenue. This parcel has a frontage on Albert Avenue of 202 feet, a depth of 101 feet, and is bounded on the east by Joseph Street and on the west by Catherine Street. No building is erected on this parcel, but a concrete pavement has been constructed on a portion thereof and is used in the operation of the market. This parcel is separately assessed by the City of Newark, and the State Board of Tax Appeals, by judgment entered on September 22, 1942, fixed the assessment for 1940 at, land \$4,800.00, which is at the rate of 23½¢ a square foot.

20 The Newark Farmers Market, Inc. operates the market and collects the rentals both from the stores monthly, and daily from the farmers who rent the "spaces" or "stands" in the plaza. The corporation furnishes, at its own cost and expense, the necessary policing of the area, takes care of the collection of garbage, the daily cleaning and electric lighting of the plaza, and performs many other functions necessary and essential to the successful operation of its business. The corporation employs a manager to oversee the management and operation of the market, a book-keeper, a market master who supervises the plaza operations, and hires men to perform other essential services. The operation of the market, not only requires the use of Block 2409, Lot 1, known as 1-43 Joseph Street, but also the use of Block 2408, Lot 1, known as 2-44 Cornelia Street, and other land and buildings of the Farmers Market contiguous to these two parcels, and constituting
30 one other entire City block partially improved with
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buildings and concreted plaza and another half City block.

Mr. Leo Flaster, a duly licensed real estate broker of the City of Newark and State of New Jersey, who specializes in the sale and leasing of industrial property, was produced on behalf of petitioner. Mr. Flaster testified that he had appraised and had valued the land known as Block 2409, Lot 1, 1-43 Joseph Street, at the sum of \$24,420.00 as of October 1, 1939, being the block assessed by the City. In arriving at this valuation, he valued the land at \$20.00 per front foot for the frontage on Joseph Street and Catherine Street, which has a total frontage on both streets of 1,110 feet, making a value of \$22,200. To this value Mr. Flaster added 10% for plottage, corner and frontages, making a total value as of October 1, 1939, of \$24,420.00. In arriving at this valuation, Mr. Flaster took into consideration his experience, knowledge of real estate values, and sales of other comparable property in the vicinity.

Mr. Flaster also testified to the value of Block 2408, Lot 1, 2-44 Cornelia Street, and placed a value on this parcel at a unit price of \$20.00 per front foot for a frontage of 1,110 feet on Cornelia Street and Catherine Street, making a value of \$22,200.00, and added 10% for plottage, corners, and frontages, making a total value of \$24,420.00.

Mr. Flaster also testified to the value of Block 2451, Lot 1, 46-88 Cornelia Street, and placed a value on this parcel at a unit price of \$20.00 per front foot for a frontage of 1127 feet on Cornelia Street and Catherine Street, making a value of \$22,540.00, and added 10% for plottage, corners and frontages, making a total value of \$24,794.00.

Mr. Flaster also testified as to the value of a parcel known and designated as Block 2423, Lot

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24-31, 76-90 Albert Avenue, above referred to, and placed a value on this parcel at a unit price of \$20.00 per front foot for a frontage of 202 feet on Albert Avenue, and added 10% for plottage, corners and frontages, making a total value of \$4,444.00.

- 10 Mr. Frank Hannoeh, a real estate broker of the City of Newark, was produced and testified on behalf of the City of Newark as to the value of Block 2409, Lot 1, 1-43 Joseph Street. Mr. Hannoeh placed a value on the land in question at 25¢ per square foot for 111,046 square feet, making a total valuation for the land of \$27,761.00. Mr. Hannoeh testified that the value of the building erected on the block in question and other improvements, such as paving of the plaza, platforms, lights, etc., was \$53,450.00.

- 20 There is no dispute in the issues herein involved as to the valuation of the building and the improvements.

It was stipulated and agreed that the testimony of Mr. Hannoeh as to the value of Block 2408, Lot 1, 2-44 Cornelia Street, would be the same as, and apply to, Block 2409, Lot 1, known as 1-43 Joseph Street.

- 30 Mr. Hannoeh testified, over the objection of petitioner, to the gross income received by the petitioner, Newark Farmers Market Inc., for the year 1938, amounting to \$39,000.00, representing fees received from farmers for daily rentals, and \$70,268.00 collected for store rentals from Block 2408, Lot 1, and Block 2409, Lot 1; and for the year 1939, of \$42,622.00, representing fees received from farmers for daily rentals and \$68,809.00 collected for store rentals from the above mentioned two blocks. The income from
- 40 store rentals was averaged for the years 1938 and

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1939. The income received from farmers' daily rentals of "stalls" was arbitrarily treated as a separate and distinct business operation. Mr. Hannoeh then assumed that the plaza could be rented to a supposititious lessee, who would pay 25% of the gross income received from the market plaza, viz., \$42,600.00, and that the Farmers Market would, therefore, receive an annual rental of \$10,650.00. One-half of this estimated rental value of the plaza, amounting to \$5,325.00, is then added to one-half of the averaged store rentals actually received by the Farmers Market and Mr. Hannoeh reaches a figure of \$39,615.00, which he terms "total estimated gross income", representing, in the opinion of Mr. Hannoeh, the estimated gross income allocated to Block 2408, Lot 1, 2-44 Cornelia Street; the other one-half being allocated to Block 2409, Lot 1, 1-43 Joseph Street. The remaining property of the Farmers Market, although used in the operation, was not considered in Mr. Hannoeh's calculations. An allowance was then made for a promoter's share amounting to \$3,961.00, which was deducted from the estimated gross income, leaving what is called "effective gross income" of \$35,654.00. From this "effective gross income" was deducted one-half of the averaged expenses for the years 1938 and 1939 for salaries of employees, manager, and all other expenses, which amounted to \$12,262.00. This sum, representing one-half of the expenses, was deducted from the "effective gross income" of \$35,654.00, leaving what is called "net income" before taxes or depreciation, of \$23,392.00. Mr. Hannoeh then made further additional deductions from net income as follows: interest at 6% and depreciation at 10% per annum on \$50,000.00, his (Mr. Hannoeh's) estimated physical building

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value, which produced \$8,000.00; taxes on the building value of \$50,000.00 at 5% per annum, amounting to \$2,500.00, were likewise deducted, and this total additional deduction of \$10,500.00 was subtracted from the net income of \$23,392.00, leaving \$12,892.00 which Mr. Hannoeh calls the
10 "net income" applicable to land before payment of taxes. He then estimated or appraised the value of the land as "raw land" at \$27,761.00. He allows a return on the "raw land" of 6% plus 5% per annum for payment of taxes, making a total percentage allowance of 11%, and allows the sum of \$3,054.00 which is stated to be the "requirement of net income to support raw land", leaving
20 a surplus income (the net income of \$12,892.00 above referred to, less the sum of \$3,054.00) of \$9,838.00. Mr. Hannoeh then arbitrarily capitalizes the surplus income at 20%, allowing a return of 15% per year and amortization of the full amount over a period of ten years less an allowance of 5% for payment of taxes and arrives at a capitalized value of the "surplus income" of \$37,187.00, to which he then adds the value of the "raw land" of \$27,761.00, giving him an estimated land value of \$64,948.00. He testified that,
30 in his opinion, based on this method of appraisal, the land had a value on October 1, 1939, of \$65,000.00. "Raw land" was defined by the City attorney as land which has no particular use. Commissioner Huegel, of the State Board of Tax Appeals, stated that, in his opinion, "raw land" was simply "vacant land".

Mr. Hannoeh calls this method of arriving at value the "surplus income process" or "land residual method". He stated that the method of valuation is based on the net income received from
40 the property after making due allowances for ex-

Affidavit of Charles H. Stewart.

penses of operation, depreciation and other allowances. He further testified that in applying this method to the valuation of land, the value would increase or decrease as the net income or net residue from the operation of the business increased or decreased.

As heretofore stated, Mr. Hannoeh valued the land in question (Block 2409, Lot 1, 1-43 Joseph Street) at a unit price of 25¢ a square foot, or \$27,761.00, which is near the value of \$24,200.00, the value of the land testified to by Mr. Flaster, the witness of the petitioner, and the assessed value of \$26,100.00 at which the State Board of Tax Appeals fixed the true value of the land in the years 1937, 1938, and 1939. It was not contended by the City or its witness, Mr. Hannoeh, that there were any material changes in the locality on or prior to October 1, 1939, which would enhance the value of the land and therefore support the increased assessment by the City.

Mr. Hannoeh also testified that the value of the land in Block 2408, Lot 1, 2-44 Cornelia Street, was the same identical value as he placed upon Block 2409, Lot 1, 1-43 Joseph Street, viz., base value \$27,671.00 (value reached by surplus income process \$65,000.00).

Mr. Hannoeh also testified to the value of Block 2451, Lot 1, 46-88 Cornelia Street, which contains 114,638 square feet, at 25¢ per square foot, making a value of \$28,600.00, but explains that he has not considered the land as having additional value further than "raw land" because he felt it had not been developed to an extent that it was part of the Farmers Market, although he testified that concrete platforms are constructed on the land and that there is a building constructed on the corner of Albert Avenue and Cornelia Street.

Affidavit of Charles H. Stewart.

It is submitted that the testimony of Mr. Hano-
noch fixing the value of the land and theory on
which his conclusions are based, viz., the "sur-
plus income value" or value obtained by the use
of the alleged "surplus income process" or "land
residual method" is arbitrary, improper and ille-
gal, and cannot be made the basis for valuation of
the land in question for taxation purposes; and
that the State Board of Tax Appeals erred in re-
ceiving and considering such testimony in arriv-
ing at the "true value" of the petitioner's prop-
erty. Such basis of valuation has been held to be
improper by the Supreme Court in *State, Easton*
Delaware Bridge Co., Pros. v. Metz, 31 N. J. L.
378; *State, Hurd v. Cook*, 60 N. J. L. 70; *State v.*
Collector of Jersey City, 24 N. J. L. 108-118; and
by the Court of Errors & Appeals in the case of
Gibbs v. State Board of Taxes, 101 N. J. L. 371
(1925).

It is further contended that even if assessment
of land by the application of any such arbitrary
and improper theory can be supported, that it was
clearly evident and demonstrated by Mr. Hano-
noch that in arriving at his value, he used as a basis for
his testimony the total revenue received from the
operation of the market and allocated such income
to the parcels, to wit, Block 2409, Lot 1, 1-43
Joseph Street, and Block 2408, Lot 1, 2-44 Cor-
nelia Street, instead of allocating the income be-
tween the five parcels owned by petitioner and used
in the operation of the market, and, therefore, such
testimony before the State Board of Tax Appeals
cannot support the judgment.

The only proper, competent and legal evidence
of "true value" of the premises in question (Block
2409, Lot 1, 1-43 Joseph Street) before the State
Board of Tax Appeals was that of petitioner's

Affidavit of Charles H. Stewart.

witness, Mr. Flaster, who valued the land as of October 1, 1939, at \$24,420.00. The testimony of Mr. Hannoeh that the base value of the land was \$27,761.00 corroborated the testimony of Mr. Flaster, and the State Board of Tax Appeals, on the testimony before it, should have reduced the assessment on Block 2409, Lot 1, 1-43 Joseph Street, to the sum prayed for in the appeal of petitioner, *i. e.*, land \$26,100.00, improvements \$56,000.00, total \$82,100.00. 10

The State Board of Tax Appeals erred in fixing the value of said property known as Block 2409, Lot 1, 1-43 Joseph Street, at \$98,000.00, being \$42,000.00 on land and \$56,000.00 on improvements, and the judgment should be reversed and the assessment reduced by this Court in accordance with the testimony and prayer of petitioner. 20

CHARLES H. STEWART.

Subscribed and sworn to before me }
this 18th day of December, 1942. }

YETTA R. BLANK,
Notary Public of N. J.
My Commission expires Feb. 4, 1943.

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Rule to Take Depositions.

(Filed January 14, 1943.)

NEW JERSEY SUPREME COURT.

10	NEWARK FARMERS MARKET, INC., a corporation of the State of New Jersey, <p style="text-align: right;">Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY, and THE CITY OF NEWARK, <p style="text-align: right;">Defendants.</p>	On Application for Writ of Certiorari. Rule to Take Depositions. Block 2409, Lot 1 1-43 Joseph Street.
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20 Application being made to the Court by Harrison & Roche, attorneys of Newark Farmers Market, Inc., a corporation, prosecutor, for leave to take depositions to be used on the argument of the above stated cause, and this rule being consented to by the attorney for the defendant, The City of Newark,

30 It is, on this 9th day of January, 1943, ORDERED that the prosecutor and the defendant, The City of Newark, have leave to take depositions before a Supreme Court Commissioner in accordance with the rules and practice of this Court to be used on the argument of this cause.

Let the above rule be entered in the minutes.

CHARLES W. PARKER,
Justice of the Supreme Court.

I hereby consent to the making and entry of the foregoing rule.

40 RAYMOND SCHROEDER,
Attorney for The City of Newark.

Order Consolidating Writs.

(Filed January 30, 1943.)

NEW JERSEY SUPREME COURT.

<hr/> <p>NEWARK FARMERS MARKET, INC., a corporation of the State of New Jersey, Prosecutor, <i>vs.</i></p>	10	
<p>THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY and THE CITY OF NEWARK, Defendants. Block 2408, Lot 1 2-44 Cornelia Street</p>		
<p>THE CITY OF NEWARK, a municipal corporation of the State of New Jersey, Prosecutor, <i>vs.</i></p>		
<p>THE STATE BOARD OF TAX APPEALS OF THE STATE NEW JERSEY and NEWARK FARMERS MARKET, INC., Defendants. Block 2408, Lot 1 2-44 Cornelia Street</p>	20	On Writs of Certiorari. Order Consolidating Writs.
<p>NEWARK FARMERS MARKET, INC., a corporation of the State of New Jersey, Prosecutor, <i>vs.</i></p>		
<p>THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY and THE CITY OF NEWARK, Defendants. Block 2409, Lot 1 1-43 Joseph Street</p>	30	
<p>THE CITY OF NEWARK, a municipal corporation of the State of New Jersey, Prosecutor, <i>vs.</i></p>		
<p>THE STATE BOARD OF TAX APPEALS OF THE STATE NEW JERSEY and NEWARK FARMERS MARKET, INC., Defendants.</p> <hr/>		
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This matter being opened to the Court by Harrison & Roche, attorneys for Newark Farmers Mar-

Order Consolidating Writs.

ket, Inc., and Raymond Schroeder, by Vincent J. Cassale, attorney for the City of Newark; and it appearing that the issues of law and fact in the above entitled causes are the same and that it is agreed between the respective parties that one copy of the testimony taken before the State Board
 10 of Tax Appeals shall be returned with the record; and the consent of both parties being hereunto attached;

It is, therefore, on this 23d day of January, 1943, ORDERED that the aforesaid causes be consolidated for purposes of hearing and printing of the record; and,

It is further ORDERED that one copy of the testimony taken before the State Board of Tax Appeals on April 22, 1942, and April 23, 1942, on the appeals
 20 of the Newark Farmers Market, Inc., from the assessments on all of its properties in the City of Newark, and the cross appeals of the City of Newark from the judgment of the Essex County Board of Taxation, be returned by said State Board of Tax Appeals to all of said writs.

Let this rule be entered.

CHARLES W. PARKER,
 Justice, Supreme Court.

30 We hereby consent to the making and entry of the foregoing order.

HARRISON & ROCHE,
 Attorneys for Newark Farmers

Market, Inc.
 RAYMOND SCHROEDER,
 Attorney for City of Newark.

Prosecutor's Reasons.

(Filed March 23, 1943.)

NEW JERSEY SUPREME COURT.

NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY,
and THE CITY OF NEWARK,
Defendants.

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On Writ of
Certiorari.

Prosecutor's
Reasons.

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Prosecutor, Newark Farmers Market, Inc., a corporation, presents the following reasons for reversing and setting aside the judgments of The State Board of Tax Appeals filed September 22, 1942, increasing the assessments for the year 1940 on prosecutor's lands and premises known and identified as follows:

Block 2408—Lot 1
2-44 Cornelia Street
Newark, New Jersey

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Block 2409—Lot 1
1-43 Joseph Street
Newark, New Jersey

brought before this Honorable Court by the writs of certiorari in the above entitled cause:

1. The judgment and determination of the State Board of Tax Appeals is contrary to the competent and legal evidence before the said Board.

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Prosecutor's Reasons.

2. The State Board of Tax Appeals, in arriving at and determining the full and fair market value of each parcel of prosecutor's properties for taxation, erred in receiving, over objection of prosecutor, and considering the testimony of the City's witness, Franklin J. Hannoeh, of the amount received from the operation of the market plaza, expenses of operation, deductions and allowances allegedly resulting in a "surplus income" derived by prosecutor, and the capitalization of such "surplus income."
3. The State Board of Tax Appeals, on the testimony before it, erred in fixing the value of Block 2408, Lot 1, at Land \$42,000.00, Improvements \$50,000.00, Total \$92,000.00, and Block 2409, Lot 1, at Land \$42,000.00, Improvements \$56,000.00, Total \$98,000.00, and should have fixed said assessments on the respective parcels at the sum of Land \$26,100.00, Improvements \$50,000.00, Total \$76,100.00, and Land \$26,100.00, Improvements \$56,000.00, Total \$82,100.00.
4. There was no competent or legal evidence before The State Board of Tax Appeals to support the judgment of The State Board of Tax Appeals in fixing the assessment of each parcel of land at \$42,000.00, and the assessment of land for each parcel should have been reduced to \$26,100.00.
5. The judgment and determination of said Board is founded upon erroneous principles of law and is contrary to the clear intent and meaning of the Taxing Laws and the Constitution of the State of New Jersey.
6. The judgment of The State Board of Tax Appeal is, in divers other respects, erroneous,

Prosecutor's Reasons.

illegal, arbitrary and unreasonable, and should be set aside and for nothing holden.

HARRISON & ROCHE,
Attorneys for Prosecutor.

Service of a copy of the within Reasons is hereby acknowledged and consent given to the filing of the same as within time, this 19th day of March, 1943. 10

RAYMOND SCHROEDER,
Attorney for City of Newark.

Prosecutor's Reasons.

(Filed March 30, 1943.)

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NEW JERSEY SUPREME COURT.

THE CITY OF NEWARK, a municipal corporation of the State of New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY, and NEWARK FARMERS MARKET, INC.,

Defendants.

On Writ of
Certiorari.
Prosecutor's
Reasons.

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Prosecutor, The City of Newark, a municipal corporation of the State of New Jersey, presents the following reasons for reversing and setting aside the judgments of The State Board of Tax 40

Prosecutor's Reasons.

Appeals, filed September 22, 1942, decreasing the assessments for the year 1940 on defendant's lands and premises known and identified as follows:

- 10 Block 2408—Lot 1
 2—44 Cornelia Street,
 Newark, New Jersey.
- Block 2409—Lot 1
 1—43 Joseph Street,
 Newark, New Jersey.

brought before this Honorable Court by the writs of certiorari in the above entitled cause:

1: The judgment and determination of the State Board of Tax Appeals is contrary to the
20 competent and legal evidence before the said Board.

2: The State Board of Tax Appeals, in arriving at and determining the true value of such properties for taxation, erred in not considering the testimony of the City's witness, Franklin J. Hannoeh, as to the special use of the properties and the income derived therefrom.

3: The State Board of Tax Appeals, on the
30 testimony before it, erred in fixing the value of Block 2408, Lot 1, at Land \$42,000.00, Improvements \$50,000.00, Total \$92,000.00, and Block 2409, Lot 1, at Land \$42,000.00, Improvements \$56,000.00, total \$98,000.00; and should have fixed said assessments on the respective parcels at the sum of Land \$65,000.00, Improvements \$50,000.00, Total \$115,000.00; and Land \$65,000.00, Improvements \$56,000.00, Total \$121,000.00;

4: There was no competent or legal evidence
40 before the State Board of Tax Appeals to support

Prosecutor's Reasons.

the judgment of The State Board of Tax Appeals in fixing the assessment of each parcel of land at \$42,000.00, and the assessment of land for each parcel should have been increased to \$65,000.00.

5: The judgment and determination of said Board is founded upon erroneous principles of law and is contrary to the clear intent and meaning of the Taxing Laws and the Constitution of the State of New Jersey. 10

6: The judgment of the State Board of Tax Appeals is, in divers other respects, erroneous, illegal, arbitrary and unreasonable, and should be set aside and for nothing holden.

RAYMOND SCHROEDER,
Attorney for Prosecutor. 20

Service of a copy of the within Reasons is hereby acknowledged and consent given to the filing of the same as within time, this 29th day of March, 1943.

HARRISON & ROCHE,
Attorneys for Defendants.

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Certificate of Secretary.

(Filed February 3, 1943.)

10 I, CHAS. E. COOK, Secretary of the State Board
of Tax Appeals, do hereby certify and send to the
Justices of the Supreme Court the foregoing
transcript, as a true and correct transcript of the
evidence given before said Board upon the hear-
ing of the appeals of Newark Farmers Market,
Inc., from the assessment of property in the City
of Newark, and the appeals of City of Newark
from the action of the Essex County Board of
Taxation in reducing the assessment on property
of Newark Farmers Market, Inc., situate in the
City of Newark, County of Essex, for the year
20 1940, said evidence having been submitted at the
hearings on Wednesday, April twenty-second, and
Thursday, April twenty-third, 1942.

IN WITNESS WHEREOF I have hereunto set my
hand and affixed the official seal of the Board, at
Trenton, this third day of February, 1943.

CHAS. E. COOK.

(SEAL)

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Certificate of Stenographer.

(Filed February 3, 1943.)

I, JOHN F. TRAINOR, the stenographer designated by the State Board of Tax Appeals to report stenographically the evidence given before said Board upon the hearing of the appeals of Newark Farmers Market, Inc., from the assessment of property in the City of Newark, and the appeals of City of Newark from the action of the Essex County Board of Taxation in reducing the assessment on property of Newark Farmers Market, Inc., situate in the City of Newark, County of Essex, for the year 1940, do hereby certify that the foregoing is a true and correct transcript of the evidence given before said Board at the hearings on Wednesday, April twenty-second, and Thursday, April twenty-third, 1942.

IN WITNESS WHEREOF I have hereunto set my hand and seal this third day of February, 1943.

JOHN F. TRAINOR.

(SEAL)

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Petition.

transcript under the seal of said Board hereto annexed more fully appears.

STATE BOARD OF TAX APPEALS,

By CHAS. E. COOK,
Secretary.

(SEAL)

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Petition.

IN THE MATTER

of

The application of NEWARK FARMERS
MARKET, INC., for the reduction of
the tax assesment for the year 1940
on property situate in the City of
Newark, county of Essex and State
of New Jersey.

Petition.

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To the State Board of Tax Appeals:

Your petitioner, Newark Farmers Market, Inc.,
having its office (P. O. address) No. 41 Joseph
Street, City of Newark, in the county of Essex and
State of New Jersey, respectfully shows that it
is the owner of certain property situated in the
taxing district of Newark, County of Essex, con-
sisting of a plot of land 555.23' on Joseph St.,
555.28' on Catherine St., by a depth of 200', on
which are erected one-story concrete block (brick
front) commission houses (except that the corner
of Joseph St. and Albert Ave. is a two-story build-
ing for a distance of 36'), containing 26 stores,

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Petition.

improvements—cold water, toilet and electric light, and known as Block 2409, lot 1, street Nos. 1-43 Joseph Street.

10 That said property has been assessed for the purpose of taxation for the year 1940 at a valuation of Land, \$111,000.00; Improvement, \$56,000.00; Personal, \$.....; Total, \$167,000.00, at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value.

That an appeal from said assessment has been filed with the Essex County Board of Taxation, which appeal said Board disposed of as follows: Ordered reduction of \$74,700 on land, (reducing said land value to \$36,300),

20 Your petitioner, therefore, prays that said assessment of Land, \$36,300.00; Impt., \$56,000.00; Pers., \$; Total, \$92,300.00, for the year 1940, be reduced to the true value of the property, to wit: Land, \$26,100.00; Impt., \$56,000.00; Pers., \$; Total, \$82,100.00.

Dated December 10, 1940.

NEWARK FARMERS MARKET, INC.,

(Signed) By GEORGE E. HAINES,
President.

30

Attest:

NICHOLAS YURCHUCK
Secretary.

(SEAL)

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Petition.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

GEORGE E. HAINES, President of Newark Farmers Market, Inc., the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true. 10

GEORGE E. HAINES.

Sworn and subscribed before me this }
 10th day of December, 1940. }

ANTOINETTE E. HINE,
 Notary Public of New Jersey. 20

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

DONALD P. TAYLOR, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on James F. X. O'Brien, Corporation Counsel of the City of Newark, personally, this 11th day of December, 1940. 30

DONALD P. TAYLOR.

Sworn and subscribed before me this }
 11th day of December, 1940. }

YETTA R. BLANK,
 A Notary Public of New Jersey. 40

Petition.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 DONALD P. TAYLOR, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Edward D. Balentine, Secretary of the Essex County Board of Taxation, personally, this 11th day of December, 1940.

DONALD P. TAYLOR.

Sworn and subscribed before me this }
 11th day of December, 1940. }

20 YETTA R. BLANK,
 A Notary Public of New Jersey.

For decision in this case, see case No. 43640B.

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Docket Entries.

NEWARK FARMERS MARKET, INC., Petitioner, <i>vs.</i> NEWARK, Co. OF ESSEX, Respondent.	}	43639 B 10
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DOCKET

Assessment of 1940.

Property: Blk. 2409, lot 1,
1-43 Joseph St.

Amount, \$92,300	Judgment, \$	
L. 36,300	L.	20
B. 56,000	B.	
P.	P.	

1940

Dec. 12 Petition filed.

1942

March 24 Hearing fixed for April 22d at Newark
and notice sent.

Referred to Commissioner Huegel.

April 22 Case heard and continued to Thurs-
day, April 23d. 30

" 23 Hearing concluded.

Sept. 22 Report received.

For decision in this case, see No. 43640B.

Petition.

IN THE MATTER

of

10 The application of CITY OF NEWARK
 from the action of the Essex County
 Board of Taxation in reducing the
 tax assessment levied for the year
 1940 on property of Newark Farm-
 ers Market situate in the City of
 Newark, county of Essex and State
 of New Jersey.

} Petition.

To the State Board of Tax Appeals:

20 Your petitioner, City of Newark in the county
 of Essex and State of New Jersey respectfully
 shows that Newark Farmers Market is the owner
 of certain property situate in the taxing district
 of Newark—Twelfth District County of Essex
 consisting of Real Estate and known as 1-43
 Joseph Street, Block 2409, Lot 1.

 That said property was assessed for the pur-
 pose of taxation for the year 1940 by the City of
 Newark at a valuation of Land, \$111,000; Improve-
 ment, \$56,000; Total, \$167,000.

30 That an appeal from said assessment was filed
 with the Essex County Board of Taxation by the
 said Newark Farmers Market, which appeal said
 Board disposed of as follows: Reduction Land
 \$74,700 at which reduced assessment your peti-
 tioner is aggrieved, because it is less than the true
 value of such property.

 Your petitioner, therefore, prays that the said
 reduced assessment of Land, \$36,300; Impt.,
 40 \$56,000; Total, \$92,300 for the year 1940, be in-

Petition.

creased to the true value of the property, to wit:
Land, \$111,000; Impt., \$56,000; Total, \$167,000.

Dated December 13, 1940.

THE CITY OF NEWARK

BOARD OF COMMISSIONERS OF THE CITY 10
OF NEWARK

(Signed) WILLIAM N. UNTERMANN
Prest.

Board of Assessment and Revision of
Taxes.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.: 20

Wm. M. Untermann, President of Board of Assessment and Revision of Taxes, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

WILLIAM M. UNTERMANN
Prest. 30

Board of Assessment and Revision of
Taxes.

Sworn and subscribed before me this }
13th day of December, 1940. }

JAS J. FITZSIMMONS
Notary Public of New Jersey
My Commission Expires Mar. 19, 1944.

Petition.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 Olindo Luciani, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Miss A. E. Hine, Ass't Sec. respondent taxpayer, personally, this 14th day of December, 1940.

OLINDO LUCIANI

Sworn and subscribed before me this }
 14th day of December, 1940. }

JAMES L. O'BRIEN
 Notary Public of New Jersey
 My Commission Expires Oct. 11, 1943.

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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

30 William P. Schorn, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Edward D. Balentine (Secretary) of the Essex County Board of Taxation, personally this 16th day of December, 1940.

WILLIAM P. SCHORN

Sworn and subscribed before me this }
 16th day of December, 1940. }

JAMES L. O'BRIEN
 Notary Public of New Jersey
 My Commission Expires Oct. 11, 1943.

40

Judgment.

STATE OF NEW JERSEY

STATE BOARD OF TAX APPEALS

IN THE MATTER

of

Appeal of City of Newark from
the action of the Essex County
Board of Taxation in reducing
the assessment on property of
Newark Farmers Market situ-
ate in the City of Newark,
County of Essex, for the year
1940.

10

Judgment.

20

An appeal in writing having been filed with the State Board of Tax Appeals, duly verified according to the rules of practice prescribed by said Board, by City of Newark in which it is alleged that an injustice has been done the said complainant by the action of the Essex County Board of Taxation in reducing the tax assessment levied for the year 1940 on certain property of Newark Farmers Market located at City of Newark, in the County of Essex, consisting of Land and building and known as Blk. 2409, lot 1, 1-43 Joseph St., and that said reduced assessment is lower than the true value of such property.

30

After hearing evidence produced on the part of said complainant and the said respondents, and the argument of Vincent Casale, Atty. for the complainant; Charles H. Stewart, Atty. for the said respondent taxpayer and for the Essex County Board of Taxation, and after considering

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Judgment.

the same, it is on this 22nd day of September, nineteen hundred and forty-two, at a session of the State Board of Tax Appeals, ORDERED, ADJUDGED and DECREED, under and by virtue of the authority conferred by law, that the assessment of \$92,300, being \$36,300 on land and \$56,000 on improvements, as reduced by the County Board of Taxation from \$167,000, levied for the year 1940 on the above described property, be increased to \$98,000, being \$42,000 on land and \$56,000 on improvements.

DONALD M. WAESCHE, *President.*
 R. J. HARRIGAN,
 J. WM. HUEGEL,
 JOSEPH S. HOFF,

State Board of Tax Appeals.

ATTEST:

CHAS. E. COOK,
Secretary.

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Docket Entries.

DOCKET

CITY OF NEWARK, Petitioner, <i>vs.</i> NEWARK FARMERS MARKET, INC., Co. of ESSEX, Respondent.	43640 B	10
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Assessment of 1940.

Property: Blk. 2409, lot 1,
 1-43 Joseph St. 20

Amount, \$92,300	Judgment, \$98,000
L. 36,300	L. 42,000
B. 56,000	B. 56,000
P.	P.

1940

Dec. 16 Petition filed.

1942

March 24 Hearing fixed for April 22d at Newark
 and notice sent.
 Referred to Commissioner Huegel. 30

April 22 Case heard and continued to Thurs-
 day, April 23d.

“ 23 Hearing concluded.

Sept. 22 Report received.

“ “ Judgment entered.

Petition.

 IN THE MATTER

of

10 The application of NEWARK FARMERS
 MARKET, INC., for the reduction of
 the tax assesment for the year 1940
 on property situate in the City of
 Newark, county of Essex and State
 of New Jersey. } Petition.

To the State Board of Tax Appeals:

20 Your petitioner, Newark Farmers Market, Inc.,
 having its offices (P. O. address) No. 41 Joseph
 Street, City of Newark, in the county of Essex
 and State of New Jersey, respectfully shows that
 it is the owner of certain property situated in the
 taxing district of Newark, County of Essex, con-
 sisting of a plot of land 555.23' on Cornelia St.,
 555.28' on Catherine St., by a depth of 202', on
 which are erected one-story concrete block (brick
 front) commission houses, containing 26 stores,
 improvements—cold water, toilet and electric
 30 light, and known as Block 2408, Lot 1, street Nos.
 2-44 Cornelia Street.

That said property has been assessed for the
 purpose of taxation for the year 1940 at a valua-
 tion of Land, \$111,000.00; Improvement, \$50,-
 000.00; Personal, \$; Total \$161,000.00, at
 which assessment your petitioner is aggrieved,
 because the said assessment is in excess of its true
 value.

40 That an appeal from said assessment has been
 filed with the Essex County Board of Taxation,

Petition.

which appeal said Board disposed of as follows:
 Ordered reduction of \$74,700 on land, (reducing
 said land value to \$36,300).

Your petitioner, therefore, prays that said as-
 sessment of Land, \$36,300.00; Impt., \$50,000.00;
 Pers., \$; Total, \$86,300.00, for the year 1940,
 be reduced to the true value of the property, to 10
 wit: Land, \$26,100.00; Impt., \$46,800.00; Pers.,
 \$; Total, \$72,900.00.

Dated December 10, 1940.

NEWARK FARMERS MARKET, INC.,

(Signed) By GEORGE E. HAINES
 President.

Attest:

NICHOLAS YURCHUCK
 Secretary.

20

(SEAL)

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

George E. Haines, President of Newark
 Farmers Market, Inc., the above-named peti-
 tioner, being duly sworn according to law, on his 30
 oath says that he has read the above petition and
 knows the contents thereof, and that the state-
 ments set forth and contained therein are true.

GEORGE E. HAINES

Sworn and subscribed before me this }
 10th day of December, 1940. }

ANTOINETTE E. HINE
 Notary Public of New Jersey.

40

Petition.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 Donald P. Taylor, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on James F. X. O'Brien, Corporation Counsel of the City of Newark, personally, this 11th day of December, 1940.

DONALD P. TAYLOR

Sworn and subscribed before me this }
 11th day of December, 1940 }

YETTA R. BLANK
 A Notary Public of New Jersey.

20

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

30 Donald P. Taylor, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Edward D. Balentine, Secretary of the Essex County Board of Taxation, personally, this 11th day of December, 1940.

DONALD P. TAYLOR

Sworn and subscribed before me this }
 11th day of December, 1940 }

YETTA R. BLANK
 A Notary Public of New Jersey.

For decision in this case, see case 42647B.

40

Docket Entries.

NEWARK FARMERS MARKET, INC., Petitioner,	}				
<i>vs.</i>					
NEWARK, Co. OF ESSEX, Respondent.		42646 B			10

DOCKET

Assessment of 1940.

Property: Blk. 2408, lot 1,
2-44 Cornelia St.

Amount, \$86,300	Judgment,	
L. 36,300	L.	20
B. 50,000	B.	
P.	P.	

1940

Dec. 12 Petition filed.

1942

March 24 Hearing fixed for April 22d at Newark
and notice sent.

Referred to Commissioner Huegel.

April 22 Case heard and continued to Thurs- 30
day, April 23d.

" 23 Hearing concluded.

Sept. 22 Report received.

For decision, see No. 42647 B.

Petition.

IN THE MATTER

of

10 The Application of City of Newark from the action of the Essex County Board of Taxation in reducing the tax assessment levied for the year 1940 on property of Newark Farmers Market situate in the City of Newark, county of Essex and State of New Jersey.

Petition.

20 *To the State Board of Tax Appeals:*

Your petitioner, City of Newark, residing at, in the county of Essex and State of New Jersey respectfully shows that Newark Farmers Market is the owner of certain property situate in the taxing district of Newark—Twelfth District, County of Essex, consisting of Real Estate and known as 2-44 Cornelia Street, Block 2408, Lot 1.

30 That said property was assessed for the purpose of taxation for the year 1940 by the City of Newark at a valuation of, Land, \$111,000; Improvement, \$50,000; Personal, \$.....; Total, \$161,000.

40 That an appeal from said assessment was filed with the Essex County Board of Taxation by the said Newark Farmers Market, which appeal said Board disposed of as follows: Reduction Land, \$74,700, at which reduced assessment your petitioner is aggrieved, because it is less than the true value of such property.

Petition.

Your petitioner, therefore, prays that the said reduced assessment of Land, \$36,300; Impt., \$50,000; Pers., \$.....; Total, \$86,300, for the year 1940, be increased to the true value of the property, to wit: Land, \$111,000; Impt., \$50,000; Pers., \$.....; Total, \$161,000.

Dated Dec. 13, 1940.

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THE CITY OF NEWARK

BOARD OF COMMISSIONERS OF
THE CITY OF NEWARK

(Signed) WILLIAM M. UNTERMANN,
Prest.

Board of Assessment and
Revision of Taxes.

20

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

WM. M. UNTERMANN, Pres., Bd. of Asst. & Rev. of Taxes, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

30

WILLIAM M. UNTERMANN, Prest.,
Board of Assessment and Revision
of Taxes.

Sworn and subscribed before me }
this 13th day of Dec., 1940. }

JAS. J. FITZSIMMONS

Notary Public of New Jersey

My Commission Expires Mar. 19, 1944.

40

Petition.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 OLINDO LUCIANI, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Miss A. E. Hine, Ass't Sec., respondent taxpayer, personally, this 14th day of Dec., 1940.

OLINDO LUCIANI.

Sworn and subscribed before me }
 this 14th day of Dec., 1940. }

JAMES L. O'BRIEN
 Notary Public of New Jersey
 My Commission Expires Oct. 11, 1943.

20

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

30 WILLIAM P. SCHORN, being duly sworn, according to law, on his oath says that he served a copy of the above petition and affidavit on Edward D. Balentine (Secretary) of the Essex County Board of Taxation, personally, this 16th day of December, 1940.

WILLIAM P. SCHORN.

Sworn and subscribed before me this }
 16th day of December, 1940. }

JAMES L. O'BRIEN
 Notary Public of New Jersey
 My Commission Expires Oct. 11, 1943.

40

Judgment.STATE OF NEW JERSEY
STATE BOARD OF TAX APPEALS

IN THE MATTER

of

Appeal of City of Newark from
the action of the Essex County
Board of Taxation in reducing
the assessment on property of
Newark Farmers Market situ-
ate in the City of Newark,
County of Essex, for the year
1940.

10

Judgment.

20

An appeal in writing having been filed with the State Board of Tax Appeals, duly verified according to the rules of practice prescribed by said Board, by City of Newark in which it is alleged that an injustice has been done the said complainant by the action of the Essex County Board of Taxation in reducing the tax assessment levied for the year 1940 on certain property of Newark Farmers Market located at City of Newark, in the County of Essex, consisting of Land and building and known as Blk. 2408, lot 1, 2-44 Cornelia St., and that said reduced assessment is lower than the true value of such property.

30

After hearing evidence produced on the part of said complainant and the said respondents, and the argument of Vincent Casale, Atty. for the complainant; Charles H. Stewart, Atty. for the said respondent taxpayer and for the Essex County Board of Taxation, and after considering

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Judgment.

the same, it is on this 22nd day of September, nineteen hundred and forty-two, at a session of the State Board of Tax Appeals, ORDERED, ADJUDGED and DECREED, under and by virtue of the authority conferred by law, that the assessment of \$86,300, being \$36,300 on land and \$50,000 on improvements, as reduced by the County Board of Taxation from \$161,000, levied for the year 1940 on the above described property, be increased to \$92,000, being \$42,000 on land and \$50,000 on improvements.

DONALD M. WAESCHE, President.

R. J. HARRIGAN,

J. WM. HUEGEL,

JOSEPH S. HOFF,

State Board of Tax Appeals.

20

ATTEST:

CHAS. E. COOK,
Secretary.

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Minutes.

STATE HOUSE, TRENTON, NEW JERSEY,

Tuesday, March 24, 1942.

The Board met at 10:30 A. M. on the above date.
Present, President Quinn, Commissioners
Sharp, Kreamer and Huegel.

Absent, Commissioners Margerum, Harrigan 10
and Smith.

* * * * *

The Board fixed the following dates for hearing
appeals:

* * * * *

Wednesday, April 22, 1942: Hall of Records,
Newark, 65 Newark cases.

* * * * *

The hearing of Newark cases on April 22d * * * 20
at Newark was referred to Commissioner Huegel.

* * * * *

HALL OF RECORDS, NEWARK, NEW JERSEY,

Wednesday, April 22, 1942.

Commissioner Huegel was present at 10:30 A. M.
for the purpose of hearing appeals referred to him.

* * * * *

The following appeals were called for hearing: 30

* * * * *

Newark Farmers Market, Inc. *vs.* City of New-
ark;

City of Newark *vs.* Newark Farmers Market,
Inc.;

Newark Farmers Market, Inc. *vs.* City of New-
ark;

City of Newark *vs.* Newark Farmers Market,
Inc.

* * * * *

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Docket Entries.

	CITY OF NEWARK, Petitioner,	}	
	<i>vs.</i>		
10	NEWARK FARMERS MARKET, INC., Co. of ESSEX, Respondent.		42647 B

DOCKET

Assessment of 1940.

Property: Blk. 2408, lot 1,
2-44 Cornelia St.

20	Amount, \$86,300	Judgment, \$92,000
	L. 36,300	L. 42,000
	B. 50,000	B. 50,000
	P.	P.

1940

Dec. 16 Petition filed.

1942

March 24 Hearing fixed for April 22d at Newark
and notice sent.

Referred to Commissioner Huegel.

30 April 22 Case heard and continued to Thurs-
day, April 23d.

" 23 Hearing concluded.

Sept. 22 Report received.

" " Judgment entered.

Minutes.

Cases partly heard, Mr. Charles H. Stewart appearing on behalf of the taxpayer, and Mr. Vincent Casale appearing on behalf of the City of Newark. The testimony of Franklin Hannoeh was heard on behalf of the City of Newark. Hearing was continued to April 23, 1942, at Newark.

* * * * * 10

HALL OF RECORDS, NEWARK, NEW JERSEY,
Thursday, April 23, 1942.

Commissioner Huegel was present at 10:30 A. M. for the purpose of hearing appeals referred to him.

The following appeals were called for hearing:

* * * * *

Newark Farmers Market, Inc. *vs.* City of Newark;

City of Newark *vs.* Newark Farmers Market, Inc.; 20

Newark Farmers Market, Inc. *vs.* City of Newark;

City of Newark *vs.* Newark Farmers Market, Inc.

Cases concluded, Mr. Charles H. Stewart appearing on behalf of the taxpayer, and Mr. Vincent Casale appearing on behalf of the City of Newark. The testimony of Leo Flaster was heard on behalf of the taxpayer.

* * * * * 30

STATE HOUSE, TRENTON, NEW JERSEY,

Tuesday, September 22, 1942.

The Board met at 10:30 A. M. on the above date. Present, President Waesche, Commissioners Harrigan, Hoff, Huegel, Kreämer and Smith. Absent, Commissioner Sharp.

* * * * * 40

Minutes.

Commissioner Huegel reported on appeals heard by him on April 22d * * * at Newark, recommending as follows:

* * * * *

Newark Farmers Market, Inc. *vs.* City of Newark;

- 10 City of Newark *vs.* Newark Farmers Market, Inc., *et al.*

That the assessment of \$92,300, being \$36,300 on land and \$56,000 on improvements, as reduced by the County Board of Taxation from \$167,000, levied for the year 1940 on block 2409, lot 1, 1-43 Joseph St., be increased to \$98,000, being \$42,000 on land and \$56,000 on improvements.

Newark Farmers Market, Inc. *vs.* City of Newark;

- 20 City of Newark *vs.* Newark Farmers Market, Inc., *et al.*

That the assessment of \$86,300, being \$36,300 on land and \$50,000 on improvements, as reduced by the County Board of Taxation from \$161,000, levied for the year 1940 on block 2408, lot 1, 2-44 Cornelia St., be increased to \$92,000, being \$42,000 on land and \$50,000 on improvements.

* * * * *

- 30 The foregoing recommendations of Commissioner Huegel were adopted as the action of the Board after a review and consideration of the testimony taken at the hearings, and judgments were ordered entered accordingly. President Waesche and Commissioner Hoff did not enter into the consideration of these cases, as they were not members of the Board when they were tried.

* * * * *

Secretary's Certificate.

STATE OF NEW JERSEY

STATE BOARD OF TAX APPEALS

I, CHAS. E. COOK, Secretary of the State Board of Tax Appeals, DO HEREBY CERTIFY, that the foregoing are true copies of the petitions, judgments and proceedings in the matter of the appeals of Newark Farmers Market, Inc., from the assessment of property in the City of Newark, and the appeals of City of Newark, from the action of the Essex County Board of Taxation in reducing the assessment on property of Newark Farmers Market, Inc., situate in the City of Newark, County of Essex for the year 1940, as the same are taken from and compared with the originals, filed in the office of the State Board of Tax Appeals, on the twelfth day of December and other dates, A.D. 1940 and 1942, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton this third day of February, A.D. 1943.

CHAS. A. COOK,
Secretary. 30

(SEAL)

Testimony.

STATE BOARD OF TAX APPEALS.

10 NEWARK FARMERS MARKET, INC.,
 Petitioner-Respondent,
vs.
 CITY OF NEWARK,
 Respondent-Petitioner.

20 Transcript of testimony taken in the above en-
 titled matter before Commissioner J. WILLIAM
 HUEGEL, at the Hall of Records, Newark, New
 Jersey, on Wednesday, April 22, 1942 at 10:30 a. m.

Appearances:

CHARLES H. STEWART, Esq., for the Petitioner-
 Respondent.

RAYMOND SCHROEDER, Esq., by VINCENT J.
 CASALE, Esq., for the Respondent-Peti-
 tioner.

30

62. Newark Farmers Market, Inc. *vs.* City of
 Newark.

Blk. 2423, lot 24-31, 76-90 Albert Avenue.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
Land.....	\$6,400	\$4,800	\$4,500
63. Same <i>vs.</i> Same.			

40

Case.

Blk. 2423, lot 32-46, 54-82 Catherine Street.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
Land.....	\$11,500	\$9,600	\$7,700

64. Same *vs.* Same. 10

Blk. 2423, lot 1, 67 Lister Avenue.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
Land.....	\$700		\$500

Appeal to County Board dismissed.

65. Newark Farmers Market, Inc. *vs.* City of Newark. 20

Blk. 2409, lot 1, 1-43 Joseph Street.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
Land.....	\$111,000	\$36,300	\$26,000
Imps.	56,000	56,000	56,000
	<hr/>	<hr/>	<hr/>
	\$167,000	\$92,300	\$82,100

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66. City of Newark *vs.* Newark Farmers Market,
et al.

Blk. 2409, lot 1, 1-43 Joseph Street.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
Land.....	\$111,000	\$36,300	\$111,000
Imps.	56,000	56,000	56,000
	<hr/>	<hr/>	<hr/>
	\$167,000	\$92,300	\$167,000

40

*Case.*67. Newark Farmers Market, Inc. *vs.* City of Newark

Blk. 2408, lot 1, 2-44 Cornelia Street

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
10 Land.....	\$111,000	\$36,300	\$26,100
Imps.	50,000	50,000	46,800
	<hr/>	<hr/>	<hr/>
	\$161,000	\$86,300	\$72,900

68. City of Newark *vs.* Newark Farmers Market,
et al.

Blk. 2408, lot 1, 2-44 Cornelia Street.

	Assessed 1940	Co. Bd. Action	Wants Further Reduced
20 Land.....	\$111,000	\$36,300	\$111,000
Imps.	50,000	50,000	50,000
	<hr/>	<hr/>	<hr/>
	\$161,000	\$86,300	\$161,000

69. Newark Farmers Market, Inc. *vs.* City of Newark.

Blk 2451, lot 1, 46-88 Cornelia Street.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced
30 Land.....	\$33,400	\$27,800	\$23,100
Imps.	7,900	7,900	7,900
	<hr/>	<hr/>	<hr/>
	\$41,300	\$35,700	\$31,000

Case.

70. City of Newark vs. Newark Farmers Market,
et al.

Blk. 2451, lot 1, 46-88 Cornelia Street.

	1940 Assessed	Co. Bd. Action	Wants Further Reduced	
Land.....	\$33,400	\$27,800	\$33,400	10
Imps.	7,900	7,900	7,900	
	<hr/> \$41,300	<hr/> \$35,700	<hr/> \$41,300	

Mr. Casale: We will try these cases as one case; in other words, there are city appeals and owner's appeals.

The Commissioner: You mean cross appeals.

Mr. Casale: And have the testimony as to one apply to both.

The Commissioner: These are individual applications that have been filed, like we are going to take Block 2423, Lot 24-31.

Mr. Stewart: I don't think Counsel means that he wants to try all the six cases as one case.

The Commissioner: You can't do it.

Mr. Stewart: I was going to say we can't do that.

Mr. Casale: Oh, no, not all six cases. We will take the city's appeal and your appeal and try that as one case.

The Commissioner: You can take the cross appeal and your appeal as one case, but the others are individual. We can't do that.

Mr. Stewart: Before you start, I would like to offer in evidence a photostatic copy of the tax map so that the Commissioner can follow the testimony.

Mr. Casale: How about this nice white one here.

(Discussion off the record.)

Case.

The Commissioner: Let's start on Number 62, Block 2423.

Mr. Stewart: Before we go ahead, Mr. Commissioner, I would like to ask the City which one they are going to take up first.

10 The Commissioner: Well, we will follow the calendar.

Mr. Stewart: Which one are you going to take up first? I haven't got the calendar.

Mr. Casale: 76-90 Albert Avenue. There is only a question of land.

I first offer in evidence this plan of the location and the blocks upon which this land is located and the buildings as they were on the assessing date, with one building, which is marked out, not to be considered as being in on the assessing date. I offer this.

20 Mr. Stewart: I have no objection to it.

Mr. Casale: For the understanding of the testimony. May I have that marked?

(Received in evidence and marked Exhibit R-1.)

Mr. Casale: May I suggest this, rather than following the calendar as given, I find it would be more convenient for us if we started with the two big cases.

30 Mr. Stewart: I think that would be better.

Mr. Casale: And I think Mr. Stewart would think that that would be better.

Mr. Stewart: I do think it is better. That is what I was going to suggest in the first place.

Mr. Casale: I think so, and that would be——

The Commissioner: No. 65?

Mr. Casale: That would be 67 and 68.

The Commissioner: That would take in 67?

40 Mr. Casale: Yes, 65, 66, 67 and 68. We are going to take 67 first, that would be 2-44 Cornelia Street, Block 2408, Lot 1.

Case.

The Commissioner: One minute. Don't lets get confused here.

Mr. Casale: We won't get confused, for this reason, Commissioner: we will give the numbers of the streets as to each case that is being testified to, so they can be allocated to the numbers of the calendar.

10

The Commissioner: You've got three cross appeals here, haven't you, 65 and 66, 67 and 68, and 69 and 70?

Mr. Casale: That's three cross appeals.

Mr. Stewart: Four.

Mr. Casale: Four and then you have 63.

The Commissioner: There are three.

Mr. Casale: That's right, three cross appeals.

The others are your appeals only.

The Commissioner: Why don't we start with 65 and 66?

20

Mr. Casale: We start in your study of this with 67; in other words, we start from the Cornelia Street end. It won't make any difference.

The Commissioner: It is not according to our calendar here.

Mr. Casale: They can be allocated to the numbers in the calendar; in other words, start with No. 67 on the calendar. Then as we go along we will mention the numbers.

30

Mr. Stewart: Mention the number, lot and block.

Mr. Casale: Lots, block and street numbers.

Mr. Stewart: I don't think you will have any trouble, Commissioner.

Mr. Casale: And we will go along and we will finish our case right through and then you will start your cross examination of the whole business.

40

Case.

The Commissioner: At the very beginning, I think there are some buildings here that are going to be consented to, aren't there?

Mr. Stewart: I think on 2—to 44 Cornelia Street, and that is something I wanted to mention. The City assessed the building for 1940 at
10 \$50,000.

Mr. Casale: That is right.

Mr. Stewart: Now, in 1939 and 1938 the City consented to a reduction from \$50,000 to \$46,800 on those buildings.

The Commissioner: That is what I understood.

Mr. Stewart: I have the State judgments here which show it, and have the testimony which was taken.

Mr. Casale: We are not consenting to that for
20 this year, Judge, because we are trying this case on a different theory than we tried it before, and we are trying it as a total, land and building proposition.

The Commissioner: One moment here. You are just going to try it your own way, is that it?

Mr. Casale: No.

The Commissioner: Just the way you want to try it.

Mr. Casale: No, no, I am simply saying we are
30 not consenting to any building.

The Commissioner: Well, that is strange. Somebody came up to me here before and he said, "We go along." He requested that I mark the calendar. I am not saying who it was, but—

Mr. Casale: I am handling this case and I am absolutely surprised that anybody consented to any buildings for this year that is in question, because we are not. I put a lot of study and preparation on this case.

40

Case.

The Commissioner: Has there been any change in those buildings?

Mr. Stewart: None, nothing there but the deterioration.

Mr. Casale: We can't try this case separating buildings from land. Now, that is the situation. If this was tried before, by doing that, it was wrongly tried by the City. Now, I am trying it. 10

The Commissioner: It wasn't tried before. It was consented before when they came before me.

Mr. Casale: Now, therefore, that is something that we really have got to cancel from our minds because of the fact that this case, if it was tried by the City—

The Commissioner: In other words, this is a trial *de novo*. Whatever happened before doesn't mean anything. 20

Mr. Casale: This is a trial *de novo* and I am frank to state to the Commissioner that I am handling this case for the first time as a contested case and I have certain ideas as to how this should be tried and it cannot be tried separating land and buildings.

The Commissioner: All right; let's go.

Mr. Casale: So that as Judge Stewart has said, in conformity to my suggestion, it will be helpful to try this case with the two big pieces first and that would— 30

Mr. Stewart: No, I don't agree with that.

Mr. Casale: Start with 67.

Mr. Stewart: I don't agree with that at all. You will try 2 to 44 Cornelia Street as one case and 1 to 43 Joseph Street as one case.

Mr. Casale: Yes, but I am starting with one of the big ones, then going on to the other building one and going on throughout the case. 40

Case.

The Commissioner: I don't see why we shouldn't start in the regular order instead of jumping all over the lot.

Mr. Casale: Well, it doesn't make any difference to you, Commissioner, but it would make to us because of the way we have prepared the case.

10 Mr. Stewart: Well, I don't know, but I begin to smell a rat.

Mr. Casale: Don't smell rats.

Mr. Stewart: I don't say that in an offensive sense at all. I begin to gather now that what they want to do is to try this case as an entire proposition, all the properties to be considered as one unit and try to bring their testimony out. Now, if that is their idea I am going to object to that because it isn't assessed that way.

20 Mr. Casale: We will have valuations as to 2 to 44 Cornelia Street by themselves. We will give you valuations of 1 to 43 Joseph Street by themselves.

The Commissioner: Why shouldn't we start the way that the appeals are listed on the calendar?

Mr. Stewart: I am willing.

The Commissioner: We will go down the line.

30 Mr. Casale: Can there be any reason for starting at No. 67 when we will give block and lot numbers and street numbers?

The Commissioner: I know, but it is going to be confusing to us here.

Mr. Casale: I don't think——

(Off the record.)

Franklin Hannoeh, for City of Newark—Direct.

FRANKLIN HANNOCH, sworn for the City of Newark:

Mr. Stewart: Which piece are we taking up?

Mr. Casale: The same testimony will apply to the corresponding case; in other words, there being cross appeals. 10

Mr. Stewart: But, I mean, we are taking up which piece of property now?

The Commissioner: 2 to 44 Cornelia Street.

Mr. Stewart: That is block 2408, Lot 1.

The Commissioner: All right.

Mr. Casale: I suppose there is no question of qualifications as I have no question of qualifications as to your witnesses. 20

Mr. Stewart: No.

Direct examination by Mr. Casale:

Q. Mr. Hannoeh, as of the assessing date, October 1, 1939 for the year 1940, what would be the fair value, the true value of the property at 2 to 44 Cornelia Street as between a willing buyer and a willing seller, one not compelled to buy and the other not compelled to sell? First, give us your total and then allocations as between land and building for that, which will be block 2408, Lot 1. A. \$115,000 as a total. 30

The Commissioner: That is 2 to 44 Cornelia Street?

Mr. Casale: That is right.

Mr. Stewart: That is land and buildings?

The Witness: Land, \$65,000; improvements, \$50,000.00. 40

Franklin Hannoch, for City of Newark—Direct.

Q. Now, tell as how you arrived at this value.

A. My basis of valuation is at the rate of 25 cents per square foot for the land as raw land.

The Commissioner: How many square feet in the land?

10 Mr. Casale: No, that is simply the basis of valuation as raw land.

The Commissioner: Raw land?

The Witness: Yes.

Mr. Stewart: Land without improvements, I take it, you mean.

The Witness: It's land as land of all land in the neighborhood, not considering the special utility of the land.

20 In addition to valuing the land as raw land at 25 cents per square foot, I have ascribed an additional value based on the surplus income that comes from the use of this property, and in fixing that surplus income I have taken the amount required to support the raw land to write off the buildings in ten years, allow taxes and interest on the buildings and to capitalize this additional income that remains after making all allowances at a rate of 15 percent, with

30

Q. Now, will you explain why you do that and give the steps by which you do it? A. Well, it's my contention, from a value standpoint, that a willing buyer having full knowledge of all the circumstances in connection with this property would be justified in paying, as of October 1st, 1939, \$115,000 for the block No. 2 to 44 Cornelia Street, because he would receive a gross income of \$39,615 in rent and after making liberal charges for operation.

40

Franklin Hannoeh, for City of Newark—Direct.

The Commissioner: That's in your opinion.

The Witness: Yes.

Q. Where did you get the amount of this rent?

A. I have proof to show what these rents are. He would have a net income, after making charges for operations, of \$23,392 before deducting taxes and depreciation. 10

Mr. Stewart: Twenty-three thousand how much?

The Witness: \$23,392.00.

Mr. Stewart: For taxes and depreciation?

The Witness: Yes.

Mr. Casale: Charlie, I have that all here, so you won't have to take it down (handing paper to Mr. Stewart). 20

The Witness: There would be a net income of \$23,392 before depreciation and taxes and this amount would allow the purchaser to fully amortize the value of the improvements over a ten-year period plus 6 per cent interest on the land and the buildings and in addition would give him an annual profit of \$7,976, which, while I have limited it for only ten years, this profit might continue indefinitely. 30

Q. When you say that, you mean that the profit would be for more than ten years, although you have limited it for ten years. A. I have stopped it at ten years.

Q. Why do you say a ten-year period? A. Because I can see in the use of this property there is a certain element of speculation.

Q. And for that reason— A. For that reason I feel that a purchaser would be justified in tak- 40

Franklin Hannoeh, for City of Newark—Direct.

ing that into consideration and he would be entitled, because of the speculative element, to a return of fifteen per cent and to limit his investment to only ten years.

Q. That would be short, would it not? A. I would say that would be a short period.

10 Q. Continue. A. Now, shall I give a description of the property?

Q. Yes. A. Of course, the Farmers Market, as the Commissioner knows is situated in the East end of Newark in a section that is devoted largely to industrial uses and to some modest type of residential—

The Commissioner: Now, one minute. Let's pause for a moment.

20 You know, Mr. Casale, you may in many of these cases here, the papers prepared by various witnesses, we generally ask them the fact if they would testify, they would testify as the paper was drawn up by them; then you hand a copy over to your adversary to cross examine him.

Mr. Casale: I don't think that would be fair to my adversary in this case because it's a—

30 Mr. Stewart: Specialized study of the thing.

Mr. Casale: It's a specialized study and I don't think that just handing it to him he can grasp it in a way to start cross examining right from it. Therefore, I think that this way would be the fairer way to my adversary as well as for the presentation of the case and for the record.

The Commissioner: I thought perhaps during the recess—

40 Mr. Casale: I thought perhaps Mr. Stewart would agree to that. I wouldn't

Franklin Hannoeh, for City of Newark—Direct.

want him to do it to me. I don't think it would be fair. So I think if we proceed this way with these explanations as the witness gives them, by word of mouth, by hearing them, there is an understanding of it which you don't get by just reading a printed page. 10

Mr. Stewart: I will agree with you.

The Commissioner: All right; go ahead.

Mr. Casale: I realize what the Commissioner has in mind, but we can't do it in this case.

Q. Go ahead. A. The Farmer's Market, as a whole, consists of two fully developed blocks; one block that is partially developed and one other area of a half block that is owned and presumably for future growth. 20

The Commissioner: For future growth, you say?

The Witness: For future growth of the market. I mean, there is some land that isn't—

The Commissioner: Is that one part that is not developed part of this appeal here?

Mr. Stewart: No, sir.

The Witness: No. It's one of the four appeals. I am describing the general market situation. 30

Now, the combined Farmers Market represents an accepted area now of sort of a confined area for a market that has been accepted by the general public. It is owned by the Newark Farmers Market, Inc., all of it. It was started to provide farmers with an open market for the sale of their goods, and it is my understanding that only farmers can be members of this corporation. 40

Franklin Hannoeh, for City of Newark—Direct.

10 Now, I would say that from the very beginning there was some promotional activity in the creating of this market. It was necessary to get tenants to come into this concentrated area to rent stores and it was necessary to get the farmers to come here with their trucks and display their merchandise and sell it.

Now, these blocks—we will take the one in question now, which runs from Euclid Avenue to Albert Avenue—

The Commissioner: Now, one minute. Lets get this straight. Do you have a copy of it? Do you have a copy of the map there?

Mr. Stewart: If you look at the one I gave you you can find it very readily.

20 (Discussion off the record.)

The Witness: Do you have the location of that?

The Commissioner: Yes.

30 The Witness: This block runs from Euclid Avenue to Albert Avenue and from Cornelia Street to Cathrine Street and is identical in size with the block immediately adjoining it, which is under title of 1 to 43 Joseph Street; both pieces of land are identical. They measure 202.64 feet by 555.23. All four streets are paved.

40 Now, the land is improved with one story buildings of cement block construction, uniform in design, and these buildings contain stores. The section along Cornelia Street, from Albert Street east almost to Euclid Avenue, is entirely lined with store buildings, and there is another store building unit fronting on Euclid Avenue at the corner of Cathrine Street.

Franklin Hannoch, for City of Newark—Direct.

Mr. Stewart: That runs from Cornelia to Catherine, does it, or not quite?

The Witness: Not quite. There is an open area at the corner.

The building along Cornelia Street extends 475 feet east of Albert Street and the building along Euclid Avenue, 90 feet. 10

Mr. Stewart: May I interrupt so that we get this straight?

Mr. Casale: Yes.

Mr. Stewart: This one that you say is 90 feet, you mean it starts at Catherine Street and runs westerly 90 feet along Euclid?

The Witness: Well, it runs along Euclid. I would say that was in a southerly direction. 20

Mr. Stewart: No. It's southwest, is what it is; it's southwest. And when you say the one that is 475 feet long, you mean it starts at the corner of Cornelia and Albert and runs, we'll call it southerly, towards Euclid Avenue 475?

The Witness: That's right.

Mr. Stewart: So it leaves about 65 feet there unimproved?

The Witness: That's open, yes. 30

Mr. Stewart: All right.

The Witness: The buildings have a depth of 60 feet from the street to the plaza.

Mr. Stewart: That is, from Cornelia Street.

The Witness: From Cornelia Street to the open plaza in the middle of these two blocks.

Mr. Stewart: If you show the Commissioner this map you have here, he will understand what you are talking about 40

Franklin Hannoeh, for City of Newark—Direct.

when you are talking about the open plaza, and if he doesn't, I will explain it to him.

(Exhibit R-1 is handed to the Commissioner.)

10 Mr. Stewart: If you will look, Commissioner, there on Cornelia Street, you will see what is indicated as stores.

The Witness: This is a street (indicating).

Q. When you say "this" you are pointing to?
 20 A. Cornelia Street is a paved street, and facing Cornelia Street is this row of store buildings, and just beyond that is an open plaza with a concrete floor and concrete platforms, which is a large open area and reaches over to the property known as 1 to 43 Joseph Street, which is also lined with buildings. These buildings form a "U" surrounding the property, with the open concrete plaza in the middle. The open plaza is where the farmers come in and back their trucks against the concrete platforms and display their merchandise on these platforms.

30 The Commissioner: You are going beyond the Cornelia Street appeal now, are you not?

Mr. Casale: They are all the same. There are two blocks exactly the same.

The Witness: See the platforms are also on the Cornelia Street—

40 Mr. Stewart: No. They really face on Catherine Street. When you say the stores on Cornelia Street face Cornelia Street, actually they do not. It's the back of the store that is on Cornelia Street and the front of the store is on the plaza.

Franklin Hannoch, for City of Newark—Direct.

The Witness: That's correct, yes. They have two frontages.

The Commissioner: In other words, you are going into the Joseph Street appeal now, are you not?

The Witness: Well, to properly describe the property it is important to show that these buildings form a "U", a self-contained unit with the concrete plaza in the middle so that the farmers can come into this property, into the plaza and serve all the stores that surround the plaza. 10

Mr. Stewart: No, they don't; they don't serve the stores at all. You've got a wrong idea.

The Witness: They are for the benefit of storekeepers if they want to patronize them. 20

Mr. Stewart: I am not sure, Mr. Commissioner, in order to get this thing straight, you see, what they are going to do is to approach this subject as an income proposition and base their valuation on income. You might just as well recognize that right at the start, and I think Mr. Hannoch will say so and you will say so.

Mr. Casale: Oh, income certainly has a lot to do with it. In other words, you haven't got raw land here, and you've got a specialized use which must be handled in a specialized way. 30

Mr. Stewart: Now, I think Mr. Hannoch said——

Mr. Casale: That is why I say that this is really a trial *de novo*, because I am trying to——

Mr. Stewart: This was tried this way the last time, or at least tried—— 40

Franklin Hannoch, for City of Newark—Direct.

Mr. Casale: Not by me.

Mr. Stewart: But they tried to try it this way the last time.

10 Mr. Casale: It was botched up because the buildings were considered separately and land separately; that is why the thing got botched up.

Mr. Stewart: I don't think it was botched up. The theory was wrong, that is all.

Mr. Casale: As far as the presentation.

The Commissioner: I think if we continue this way we will be all botched up, as you call it.

20 Mr. Casale: No. The thing will clear up very nicely as we go along. Now you have your plan before you and Mr. Hannoch has explained the lay-out, the stores which form the "U" around this plaza in the center—I am just repeating the testimony.

Mr. Stewart: I have no objection.

Mr. Casale: This paved plaza.

The Commissioner: At the present time you are just giving an out-line of the Farmers Market, is that it?

30 Mr. Casale: That is right. We have got to do that for the record, and that is what has been given to you, the description.

The Commissioner: As far as the values are concerned, you are going to confine yourself to Cornelia Street?

Mr. Casale: That is right.

40 Mr. Stewart: I merely want to interject this: Mr. Hannoch said, as I understood him, that these stores faced on Cornelia Street as though they had two bases of entrance and so forth. These stores back up on Cornelia Street and they don't do busi-

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ness from that end of the street at all; they do it from the plaza side.

The Witness: That's correct.

Mr. Stewart: I want to get that straight.

Mr. Casale: That is correct and they have an entrance from the other side for purposes of delivery. In other words, you have them on the plaza and on the street. 10

Mr. Stewart: You have a single door entrance, just an ordinary door like that one (indicating), is on Cornelia Street to each store.

The Commissioner: I looked at this before. I think I will look at it again after we have finished.

Q. Continue with your description. A. The buildings have a depth of 60 feet from the street to the plaza frontage and each store has a canopy of corrugated iron extending over the sidewalk to the— 20

The Commissioner: Are you talking about Cornelia Street?

The Witness: Yes.

Mr. Stewart: Not the canopy over Cornelia Street; the canopy extends over the plaza. 30

Mr. Casale: Yes, but he is talking about the property on Cornelia Street.

Mr. Stewart: Yes, that is correct.

Q. And the canopy is supported how? A. Is supported by a steel frame. In the stores the floors are half wood and half concrete and the walls are unfinished.

Q. What kind of material? A. Cement block walls. The roofs are covered with a guaranteed 40

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roofing composition covering. No heat in the buildings except where the tenant makes provision for his own heat. There are five cellars in all the buildings and these are provided only for such merchants who have perishable goods where there must be some cellar space for storage, such
 10 as bananas during the ripening season.

Mr. Stewart: Five cellars, is that in the Cornelia Street group of stores or is that in all the stores?

The Witness: That's all the stores combined.

Mr. Stewart: Yes, I think that is correct. That not only takes in Cornelia Street but takes in Joseph.

20 The Commissioner: I was going to suggest to you, Mr. Stewart, that you pay strict attention to his description of this property so when your witness goes on he won't have to go over this whole thing again.

Mr. Stewart: That is the reason I am interrupting every now and then.

Mr. Casale: And I am not objecting to it.

Mr. Casale: So as to clear it up.

30 Mr. Casale: And I don't object to the interruption at all because we want this to be cleared.

A. Now, the plaza, and in describing the plaza and what is in there, I suppose I can show it just for this block, but that is the area in between the walls of the buildings and it is covered with concrete. Then running north and south, I call it, but off of Catherine Street, there are concrete platforms, there are 12 of those on these two
 40 blocks, 60 on the block in question and they are

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concrete platforms that measure 93 feet long and 15 feet wide.

Q. How are they spaced? A. They are spaced 60 feet apart and then there is a lamppost on each end which furnishes light to the plaza.

The Commissioner: This is on Cornelia Street? 10

The Witness: Yes. There are six of those platforms on Cornelia Street; not facing Cornelia Street but this block known as 2 to 44 Cornelia Street.

Q. Point it out on the map. A. (Indicating) This is the block under appeal right now and these are these concrete platforms.

The Commissioner: I don't want to be jumping from here over to there. (Indicating) 20

Mr. Stewart: May I interrupt right there to ask you a question? Those platforms are raised above the level of the land about six or eight inches?

The Witness: About six or eight inches, yes.

The Commissioner: All right.

The Witness: And the purpose of those is for the trucks to come in and back up against the platform and display the merchandise on the platform. 30

Mr. Stewart: And leaves a space in between for customers to walk on those platforms. In other words, the truck backs in—we will take this first one on Cornelia Street and Catherine, which is indicated as a platform. A truck backs in on the southerly side of that and another truck 40

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backs in on the northerly side of it and they unload some of their goods on that platform and, between where the goods are unloaded is left a space for customers to walk up and down to inspect the goods.

The Witness: That's correct.

10

The Commissioner: All right; so much for that part.

Q. How many trucks can be handled in the plaza, the whole plaza? A. From my understanding, it has a capacity of 600 trucks.

Mr. Stewart: When you say that, you mean to back up against the platforms?

20

The Witness: Yes, to back up against the platforms to cover all of the parking area.

Mr. Stewart: You mean all the parking area, not only this Cornelia Street that we are talking about, but the whole business. Well now, of course, I don't think it makes any difference. Six hundred trucks for the whole works, but it would be much less than that for this particular block.

30

Mr. Casale: Oh, absolutely.

The Witness: Yes.

Mr. Casale: That is understood. That is what I said, for the whole area inside. In other words, when you say the plaza, it is one thing; part of it is on this block 2 to 44 Cornelia Street and the other is on the block 1 to 43 Joseph Street.

40

Mr. Stewart: I want to interrupt here to say that Mr. Van Riper told me that it isn't developed to take care of 600 trucks at the present time; I mean, where it indi-

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cates those aisles, as we call them on your map.

The Commissioner: What difference does that make?

Q. What do these trucks pay? A. The farmers in parking in this plaza area pay a dollar per day or one dollar per nite for the use of the area and for the parking privilege and the display of their merchandise on the platform. 10

Mr. Stewart: For one stand, as they call it.

The Witness: Yes, it's a spot rental.

Q. Now, continue with your description so that we will have the description all over with, as to the operation, collection of rentals and so forth. 20

A. The operation of the plaza and the collection of the rentals for the stores, the stores are individually rented, is under the direction and the handling of the Market Corporation and the policing and the cleaning of the area is a function of the Market Corporation. Now, sofar as the stores are concerned, they are direct rentals. So far as the plaza and the parking is concerned, under its present operation it is definitely, in my opinion, a business. 30

Q. Was that so on the assessing date? A. Yes.

Mr. Stewart: When you say that the rental of the stores is under the supervision of the market and the rental of the stands is a business, you don't mean to indicate that the rental of the stands is not also under the supervision of the market, of the corporation?

The Witness: No. I say that the entire project is under the direction of the Mar- 40

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10 ket Corporation, but the renting of stores is a real estate proposition, where the plaza and the operation of it and the cleaning and the policing is a business function for which they collect a dollar per truck as a parking rate; where with the stores a rental per month is paid for the rental of the store. In other words, the Farmers Market Corporation doesn't participate in the profits of the store tenants. That is their business. They rent them the store space.

Mr. Stewart: They don't participate in the profits of the farmer either, do they?

The Witness: No, but they participate in the profits, if any, from the parking plaza.

20

Q. Continue with your description as to methods and operations? A. Now, in order to find the place of demarcation between what is rental here and what is business, in order to reach a rental value for this property I attempted to establish a rental value for the plaza organization, for the parking area and to take that out of the business function of the market. In other words, we have rentals for the stores and we have a parking area in the center.

30

The Commissioner: Do you have the rentals for the stores?

The Witness: Yes.

The Commissioner: Given to you by the Farmers' Market?

The Witness: Yes, we are accepting all their figures.

40

Mr. Stewart: We gave them the detail of our income and expense broken down and allocated to these particular blocks.

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The Commissioner: What you are driving at now is what, in your opinion, the rent ought to be, is that it?

Mr. Casale: No, we are taking exactly the rent as given without any check on it and there is no question, therefore, as to figures.

The Witness: But there is one thing that is necessary to create here and that is a rental for the parking area, because that is not rented out. That is run by the Market Corporation as a business. 10

Mr. Stewart: That is simply his viewpoint.

The Commissioner: That is what I say.

Mr. Stewart: That is merely his arbitrary viewpoint.

The Commissioner: I am asking where he is going to get his figures from. 20

Mr. Stewart: Where he got his figures from, is that we gave him a sheet which showed what we got from Farmers' fees.

Mr. Casale: In other words, whatever figures we will give as to the rental of the stores will be the figures which the Farmers Market have given us and we have taken them as they are.

The Commissioner: They are the actual figures that the Farmers Market gave you. What is he trying to do now? 30

Mr. Casale: What he is doing now is to arrive at the rental value of the rest of the space which is used as a business and he is going to explain how he does that and why he does that. In other words, we have the rental value of the stores and what is the rental value of the space in between where the plaza is, is that not so? 40

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The Witness: Thats what I am attempting to do.

Q. And that is what you are going to go into now.

10 Mr. Stewart: That is where I am going to object, because that is pure speculation on his part. We know what we get from the operation of that plaza and we gave him the figures that show for 2 to 44 Cornelia Street and 1 to 43 Joseph Street, that they got rentals of \$68,809 and that there were expenses allocated to that of \$39,989, which left a net of \$28,810; from the rentals of a little property or two properties, one on the other side of Albert Avenue and Cornelia Street, a 72-foot store there, I think it is, that we have and a little
20 one family house down here on Lister Avenue that we got for that \$2,765, expenses, \$1,600, left a net of \$1,165; all other operations, which is this farmers' fees that he is talking about, we received \$42,621.95 and the expenses allocated to it were \$21,779, which left a profit there of \$20,842; but what he is going to try to testify is not what we get but what he thinks
30 we ought to get.

The Witness: No.

Mr. Stewart: And I object to that because that is purely speculative.

The Commissioner: One minute. Lets hear what Mr. Casale has to say.

Mr. Casale: That isn't so. There is no question at all about these figures. Now Judge Stewart is trying to surmise, in a way, what we are going to do. Now, he
40 will have a perfect opportunity—

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Mr. Stewart: I am a jump ahead of you.

Mr. Casale: I don't think you are because we wouldn't be treating you fairly if we did what you say. We wouldn't be doing that, because you are entitled to certain deductions and certain profit, isn't that so?

The Witness: Yes.

Mr. Casale: Which we are going to give you, but if we did it the way you say it you would be penalized; but that isn't the way we are going to do it. Therefore, what you actually derive in profit from your books isn't the fair measure to apply to this and you will see that we have given you credit for things, probably, that you thought we wouldn't give you credit for.

The Commissioner: Let's proceed.

Mr. Casale: Let us proceed and, Judge, you will have the fullest opportunity to understand this and to cross examine on it. Now, we have a method which we are using and let's give it, but if we did what you say and took those figures you would be penalized improperly. Now, let us show you how we do do it.

A. Now, the operation of the plaza for the coming and the going of the farmers at the rate of a dollar a truck I consider as a business and this business must be converted into a rental value in order to establish a full rental value for the entire block.

Now, this set-up is not unlike the operation of an open air parking station.

The Commissioner: In other words, in my opinion, you are trying to inform me here that this isn't put to the best and highest use.

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The Witness: Oh, no.

Mr. Casale: It is.

10 The Witness: I say it is used to the very highest and best use that it could possibly be used. Every inch of this property is being used well. But I say that for this block along—well, for this parking area where fees of \$42,622 were paid, this is just for farmers' fees at one dollar per truck.

The Commissioner: Are those the actual amounts?

20 The Witness: Actual amounts in 1939, and \$39,000 in 1938. That was the gross business done in this plaza alone from the collection of parking fees. Now, out of that the Farmers Market had all the expenses, the cleaning and the policing and the supervising and attempted also to make a profit out of that, I assume.

Mr. Stewart: That isn't quite correct. We didn't charge it all up against the farmers' fees, the policing and lighting and cleaning and all that. That is, as you know, partially allocated to the stores.

The Witness: Yes, I know that.

30 Q. All right; continue with your explanation.
A. Now, I say that out of these farmer's fees the corporation paid all expenses for upkeep, management and attempts to make a profit. It seems fair that a statement should be made as to what the fair rental value of this parking area would be by some individual who would take over this whole function and pay the expenses themselves and pay rent for the use of the space.

The Commissioner: Who would do that?

40 The Witness: Well, I think anybody who

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would rent an open air parking station would be interested in renting a parking area—I say that a prudent operator of an open air parking station would be justified in paying a rental of \$10,000 a year in order to collect \$40,000 in fees, and out of that \$30,000 overage between what he would pay for rent and his income, he would pay the expenses of operation of the open plaza, with the exception of taxes. 10

The Commissioner: Do you think that place down there would be adapted for a parking station?

The Witness: Why, for the very purpose it's being used now. Instead of the market running the business, lease that concession out to someone who would pay a rent for it and do all the work. 20

Mr. Stewart: And instantly that that was done, we would go broke. Our farmers would leave the place. That is the reason they come down there, is because it is a farmer-controlled market. That is the reason they wouldn't go down to Miller Street when the City wanted them to go down to Miller Street and bought that useless ground down there around the Miller Street Market over the protest of a whole City Hall full of farmers. We had a protest meeting down there before we developed this, and said, "Don't Mr. City, go down and buy that place, because you will go broke. We farmers won't come down there." If we were to turn this plaza over to a man to run as an independent business, you wouldn't have thirty-five farmers down there in two nights. 30 40

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Mr. Casale: But we are not saying that.

Mr. Stewart: You are saying that is what you ought to be able to do.

10 Mr. Casale: No, no. We are saying, what is the rental value of this piece of land other than the stores, because with regard to the stores you know what the rental value is. Now, what is the rental value—

Mr. Stewart: You are placing that rental value solely on what the man, who would take it as a parking station, would go in there and make what you think he would make.

Mr. Casale: It is a parking station. There is no question about it.

Mr. Stewart: I don't agree with that.

20 Mr. Casale: Don't let us confuse the thing altogether. It is a parking station for farmers; no question about it.

The Commissioner: That is a specialized business, isn't it?

Mr. Casale: Now, what is the rental value of that? We are coming to that and I think that that is the point of the thing.

30 It isn't that we say, instead of the farmers using it for a parking business; that is, running the parking business, some individuals should do it. No, we are not saying that.

The Witness: It could be Mr. VanRiper. He could handle this thing and pay a rent for it and pay the \$45,000 in fees.

Mr. Casale: What is the rental value of that? That is all. It is a real estate proposition.

40 The Commissioner: What is Mr. Hannoeh's purpose in trying to show—

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Mr. Casale: What the rental value of that is so you will have everything on the same basis, rental value, and therefore you arrive at a valuation.

The Commissioner: What does he predicate that on?

The Witness: I am trying to get all the business out of this block. Everything that is a business I am trying to wipe out and put it all on a rental basis. The only thing that is still a business is the parking area for the farmers. Now, I say there are fees of \$40,000 from that parking area. 10

Q. And that can be translated into rental. A. But the fair rental for that \$40,000 parking income— 20

The Commissioner: Is that what it brings in now?

The Witness: Yes.

A. —would be \$10,000.00.

Mr. Stewart: That is what it brought in, \$42,000 in 1939.

Mr. Casale: On the assessing date. We are talking about the assessing date. 30

A. That an operator for anyone taking over that parking concession could afford to pay \$10,000 a year to collect the \$40,000.

The Commissioner: Why do you say that?

The Witness: Because from the experience I have had in connection with parking lots, an operator can pay 25 per cent of the expected income and he pays all 40

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expenses, pays for his help, with the exception of taxes, and he makes a profit.

Mr. Stewart: Well, that gets right back to what I say. It is an impractical proposition that he is talking about.

10 Mr. Casale: It isn't a proposition; it is value.

Mr. Stewart: Would the person pay for the thing if he knew he went in there and rented on any such basis as he is talking about and the patrons were going to desert him overnight? He wouldn't pay it.

Mr. Casale: Why should they desert when we are talking of an actual fact of forty-some thousand dollars?

20 Mr. Stewart: I will tell you why they will desert.

Mr. Casale: I mean, we have an income here, or, rather, a gross of \$40,000 for this parking privilege. Now, it is Mr. Hannoeh's opinion as a real estate expert that one would pay \$10,000 a year; that is, the rental value for that would be \$10,000 a year.

The Commissioner: That is his opinion.

Mr. Casale: That is his opinion and he has explained why it is his opinion.

30 Q. In other words, is it or is it not fair to say that to make \$40,000, or is it \$42,000? A. Average about \$40,000.

Q. About \$40,000 a year one would pay \$10,000 a year rental? A. By the same virtue the owners of this Farmers Market concession, the plaza concession, could allocate, in my opinion, \$10,000 of this \$40,000 income to what might be called occupancy cost or rent.

40 Q. That is what you are talking about. A. That is what I am talking about.

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Q. It isn't that you want somebody else to run it. What is the occupancy cost or the occupancy rent that should be allocated?

Mr. Stewart: This is all theory.

Q. Go ahead. Continue. A. I can go into the actual calculation. 10

Q. You, go into the actual calculation if you have finished all the explanation.

Mr. Stewart: What page are you on now?

The Witness: Now we come to a lot of figures.

(Discussion off the record.)

A. Now, the gross income from store rents actually paid, an average for '38 and '39, for this block was \$34,290. 20

The Commissioner: What is this \$39,615 I have down here?

The Witness: That is the total.

In addition to the \$34,290, I make the estimated rental value of the parking plaza—

The Commissioner: What was the actual rent of that plaza, do you know? 30

The Witness: That was run as the business. That is where they took \$40,000 in.

Mr. Stewart: We didn't take in \$40,000 on that one piece.

Mr. Casale: No, all.

Mr. Stewart: We took it in on all our parking; that's on Cornelia Street and on Joseph Street and on the northeast side of Albert Avenue. 40

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The Witness: I am only allocating \$5,325.

The Commissioner: What did you say the rent was on this plaza?

Mr. Casale: Altogether, \$40,000.

The Commissioner: You are talking about the whole entire market, aren't you?

10 Mr. Stewart: That is right. He is talking about the entire place.

The Witness: Entire parking area was \$40,000. We'll say it was \$20,000 for each half and I am allowing \$5,325, which is approximately twenty-five per cent of what was actually taken in. I say a man to have the parking privilege of that block could afford to pay \$5,325 a year in order to collect the \$20,000 in fees.

20 The Commissioner: In your opinion.

The Witness: Yes.

Mr. Casale: That is the occupancy cost.

The Witness: So that there would be a total estimated gross income from all of this block of \$39,615.

Q. When you say "all of this block," you mean the 2 to 44 Cornelia Street? A. 2 to 44 Cornelia Street property.

30 Q. Now, do you make any allowances? A. Yes, I do.

Q. What do you make as an allowance and why? A. I immediately make an allowance of ten per cent which I call an allowance for an entrepreneur, or a promoter in connection with this whole project, because I said earlier in my testimony that this whole project showed evidence of a promotion right from the start and also carrying on through its operation.

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Q. And for that reason should there be or should there not be an allowance made for that?

A. Well, I have made it.

Q. And is this where you have made it? A. Yes.

Q. On this block 2 to 44 Cornelia Street? A. Yes, I have made it on each block.

10

Q. And you have made it on each? A. Yes.

Q. Now, that is in the way of a deduction, is it not? A. That is a deduction.

Q. In other words, where you have arrived at \$39,615 as the gross income, you now cut that down to \$35,654 by allowing this percentage. A. That's correct.

Q. For the promotion of the proposition? A. That's right.

Q. And is that being fair in doing that? A. I think it's fair. 20

Q. In other words, you are not considering the actual income then; you are considering actual income and making an allowance therefrom, are you not? A. I am making that deduction from the actual—

Q. All right; go on from there. A. Now, I have allowed operating expenses as shown by a statement furnished by the Farmers Market Corporation.

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Q. What are those items? A. Well, they represent both blocks and I have divided them in half to allocate one-half of the expense to each block. They cover items for a secretary and bookkeeper.

The Commissioner: These are actual expenses furnished you by the Farmers Market?

The Witness: That's correct.

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Q. What are those items? A. Do you want the individual figures?

Q. Yes. A. Secretary and bookkeeper, in 1938, \$1,748, in 1939, \$1,764; manager, in 1938, \$3,510, in 1939, \$3,510; the President; in 1938, \$250, in 1939, \$250. There is a miscellaneous charge of
10 \$4,201 in 1938 and \$4,250 in 1939. There was an item for stationery and printing in 1938 of \$359 and \$246 in 1939. Telephone charge, \$128 in 1938, \$135 in 1939. Heat and light in 1938, \$1,332, in 1939, \$1,544; water, \$405 in 1938, \$216 in 1939; cleaning of the market in 1938, \$3,120, \$2,652 in 1939.

Q. Wasn't there another cleaning item, too?
A. Oh, yes. Cleaning, general, \$823 in 1938 and \$819 in 1939.

20 Q. That is outside of the cleaning the market item that you gave a minute ago. A. Yes, there were two items given us by the Farmers Market. Repairs, \$887 in 1938, \$592 in 1939; advertising, \$518 in 1938, \$1,065 in 1939; general expense, \$3,342 in 1938 and \$3,610 in 1939.

Mr. Stewart: Wait a minute. How much for 1939?

The Witness: \$3,610.

30 A. (Continuing) Insurance, fire and liability, \$720 in 1938 and \$720 in 1939; miscellaneous insurance, in 1938, \$1,857 and \$1,857 in 1939; old age tax, \$97 in 1938 and \$93 in 1939; unemployment insurance, \$391 in 1938, \$293 in 1939; legal fees, \$821 in 1938, \$921 in 1939.

Q. Making a total for 1938? A. Of \$24,509.

Q. And for 1939? A. \$24,537. Those deductions do not include taxes or depreciation or interest on mortgage.

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Q. And those deductions are the exact items of expense as given to you by the Farmers Market? A. That's correct.

Q. And you have taken their figures as they gave them to you? A. Without question.

Q. Now, that, therefore, taking 2 to 44 Cornelia Street by itself, would allocate how much to 2 to 44 Cornelia Street? A. \$12,262, which is one-half of the total expenses for the two properties. 10

Q. And you have averaged the two years, have you not? A. I have averaged the two years at \$24,523 and I have allowed one-half of it to 2 to 44 Cornelia Street, which, when deducted from the gross income, leaves a net income of \$23,392.

Q. What would that be? A. That's the net income in rent from this one block before deducting taxes or depreciation on buildings. 20

Q. Now, go on from there. A. I estimate the building value, net, at \$50,000, which is after allowing a fifty per cent depreciation from replacement cost.

Q. And you have how many cubic feet? A. There are 443,956 cubic feet, estimated at fifteen cents a cubic foot for replacement in one building, or a total of \$66,593.00.

In the second building there are 81,553 cubic feet, estimated at fifteen cents, \$12,233.00. 30

There are 75,000 square feet, approximately, of paving, which I estimate at twenty cents per square foot as a suitable type of paving, although the type of concrete flooring in there now would be more expensive than twenty cents, which would be \$15,000.00., or a total replacement of improvements of \$93,826 and I charge it with fifty per cent for depreciation for a period of less than ten years, leaving a net building value of \$46,913. 40

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In addition to that I estimate \$3,000 for the platforms, the lighting fixtures and such other miscellaneous items which brings it up to a round figure of \$50,000 for improvements.

10 Q. Continue now with any additional deductions from net income, if there are any. A. In order to arrive at a land value from a net income, it is necessary to take out the amount of the net income that is required for the support of the buildings and we eliminate the buildings in that way.

Q. Did you do that? A. I did that.

Q. How did you do it? A. I allowed six per cent for interest on the buildings, in addition to which I allowed ten per cent per year for depreciation of the buildings.

20 Q. Isn't that a high amount? A. Well, that limits the remaining life to ten years; a total charge of sixteen per cent against the \$50,000 building value, depreciation building value, which required \$8,000 of the net income. Then I allowed taxes on the buildings at the rate of five percent of \$50,000 or \$2,500, a total of \$10,500 deduction from the net income of \$23,392, leaving \$12,892 to apply to the land.

30 Q. And applying it to the land, how do you arrive at its value? A. I take the land area first, of 111,046 square feet, which I estimate has a value in a raw state of twenty-five cents per square foot, or \$27,761 and I allow a six per cent return on the land as raw land, plus five per cent taxes, or eleven per cent, and my requirement of the net income to support the raw land is \$3,054, and I still have a surplus income of \$9,838, which is a profit, which must be applied to the land because of the special use of the land, and I capitalize this at the high rate of fifteen percent, a total of twenty
40 per cent, allowing fifteen per cent for interest and

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five per cent for taxes, and I limited this surplus income for ten years only. I don't say that it goes on indefinitely, but I cut it short at the end of ten years by using an annuity factor which fixes the value of \$37,187 as the present worth of \$9,838 a year for ten years. I mean, that's what someone could afford to pay for an income of \$9,838.00. A man could afford to pay \$37,000 today and allow himself fifteen per cent return. 10

Q. What would the annuity factor be? A. The annuity factor is 3.78; in other words three times the rent. It's worked out on a table. That is the value of the surplus income or the feature of this land which designates it as a special use. That land value, in addition to the raw land value of \$27,761, fixes the total land value, in my opinion, of \$64,948. 20

Q. For 2 to 44 Cornelia Street. A. For 2 to 44 Cornelia Street and makes the total value in round numbers of \$65,000 for land, \$50,000 for improvements, a total of \$115,000.

The Commissioner: Well, gentlemen—

Mr. Casale: Do you want to start cross examining on that piece first?

Mr. Stewart: No. It is quarter after one.

AFTER RECESS. 30

FRANKLIN HANNOCH, resumes the witness stand:

The Commissioner: Off the record.

(Discussion off the record.)

Cross examination by Mr. Stewart:

Q. Now, your land value that you have placed on here, raw, as you call it, was \$27,761. Now, I 40

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take it that what you mean by that is that if that land had no improvements on it, wasn't being used for any purpose, that would be the value which you think a willing buyer would pay for that land from a willing seller, is that it? A. Yes, to use if for an industrial purpose or for—

10 Q. Use it for any purpose he wanted to use it for. A. Well, no, I wouldn't say that. To use it for the purpose that the general area is used for, which is an industrial use.

Q. Well now, do you know of other sales of comparable land in the vicinity? A. At twenty-five cents per square foot?

Q. Yes. A. There are a number of sales that I considered in fixing this 25-cent figure.

20 Q. Whereabouts? A. Well, there was a sale on Lockwood Street that Mr. Flaster made that showed twenty cents a square foot, and by comparison certainly this, in my opinion, was somewhat better land because of the four street frontages that it enjoys, where that block of land has only a single street front. There was some vacant land sold on Roanoke Avenue.

Q. Where is Roanoke Avenue? A. It's in the general industrial area.

30 Q. How near to this? A. It's south of Ferry Street.

Q. How near to this? A. I would say it was probably eight or nine blocks away.

Q. What about that? A. There was 70,666 square feet of vacant land in that plot that showed 24.7 cents or 25 cents a square foot. That was a sale from Kenneth, Earl and David Oppenheimer to the Housing Authority of Newark. It was a direct sale. It wasn't through condemnation; it was a straight negotiation.

40 Then there was the sale of Public Service to the Standard Oil Company at Lockwood Street

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and the Raymond Boulevard and a large frontage on the ramp which runs down from the skyway. Of course, there also was a special use for a gas station which was in operation under a lease and it was purchased from the owners, the Public Service, at a rate of sixty cents a square foot.

Q. That included the improvements, I suppose? 10

A. Well, the improvements were very mediocre. The Standard Oil Company had put the improvements on themselves, and since the purchase they have torn them down and have created a new, more modern type of service station, lubritorium and all that sort of thing.

Q. But at the time that the person made the purchase—who did you say bought it? A. Standard Oil Company of New Jersey.

Q. It did have improvements on, didn't it? A. 20
It had improvements which they themselves had built at their own expense.

Q. Built them at their own expense, but they were owned by the owner. Didn't they become part of the fee when the lease expired? A. Well, the lease hadn't expired.

Q. It hadn't, but wasn't that the terms of the lease? A. I would agree with you that a building put on the land would logically become the property of the owner, but these were small service stations. The most it could have been worth was \$1,500. They were torn down since, which was within a year since the deal was made, so that the Standard Oil Company apparently didn't place much value on them. 30

Q. You think the gas station that was erected there with the other equipment could have been put up for \$1,500? A. It was worth that at the time of the sale. No, it couldn't have been put up for that, no. 40

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Q. When was that sale? A. That sale was in April, 1940.

Q. Do you know any others that you had? A. No, those were the sales I considered, because they were vacant land, and in treating vacant land I like to compare sales of vacant land. The ques-
10 tion of buildings doesn't enter into it.

Q. This method of appraising this property and finding the land value, as you have done it, is what they call the land residual method, is it? A. Well, it's a land residual method, but it's a surplus in-
20 come process.

Q. What you actually do is to fix the value of the land by the net income that is left after mak-
ing certain allowances against the buildings and
against depreciation and that sort of thing, isn't
20 it? A. That's correct.

Q. And therefore the land value will increase or decrease as that net residue that you apply to land increases or decreases? A. That is also cor-
rect.

Q. And so, if this market was not to be used as a market anymore but some other type of business went in there, why, your land value would change according to what the income was, wouldn't it?

Mr. Casale: Wait a minute. I object to
30 that. I object on the basis that you had, on the assessing date, a certain use of this property and we are valuing it at that time, not with another use thereon; therefore, it would be immaterial.

Mr. Stewart: I don't think that is so at
all. The fact that we had it for a certain
use and it was producing a certain income
doesn't alter the fact that if some other use
had been there the land would have been
40 worth more or less according to the income.

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The Commissioner: Judge, shouldn't we confine ourselves just to what we have before us now?

Mr. Stewart: No, I don't think so. I think this goes to the root of his theory.

In other words, what you actually do is to tax income; that's what you actually do on your theory. If the income increases, your land increases and therefore your tax increases. 10

Mr. Casale: I object to the question. It isn't a question. I have no objection to the Judge asking the question.

Mr. Stewart: I am asking if that isn't the fact.

The Commissioner: Are we speaking in generalities? 20

Mr. Stewart: No, sir; I am dealing in facts. His theory is one which causes the land value to increase or decrease according to income, and therefore what he is taxing is not land value but he is taxing income value.

The Commissioner: Isn't that a matter for me to wrestle with?

Mr. Stewart: I am asking him if that isn't so as to his theory. 30

Mr. Casale: Well, now, that isn't the question, because the Judge is really summing up, and my summation would be—

Mr. Stewart: I am not summing up at all. I am finding out how he gets at his theory.

Mr. Casale: In other words, I say that we are talking valuation here as of a certain date with a certain use to the property on that date. I think that is what the witness has been giving. 40

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Mr. Stewart: You are using a certain theory to get at that value.

The Commissioner: That is true.

Mr. Casale: That is true. What the theory is is another thing.

10 Q. As a matter of fact, there are other theories of valuing land on income, the building residual theory, isn't there? A. Yes.

Q. And there is another theory that is called, I think, the annuity basis. A. I have used that here.

Q. And if you use those different theories you come to different values of land with the same identical income, don't you? A. No, you wouldn't, not if it were done properly.

20 Q. You wouldn't? A. No.

Q. The American Institute of Real Estate Appraisers, is that what you call this book? And here is a lecture in here, I presume they call it a lecture, by George L. Schmutz, M. A. I., which, I suppose because he is a member of the American Institute, that is what it means, that M. A. I. after— A. That's right.

Q. You've got to have a lot of letters after your name nowadays. A. Mr. Flaster is a member.

30 Q. And here is an example in here which I will show you where the land residual method, straight line depreciation, is used and which ultimately results in the land value, based upon income of \$41,667, but if you use the sinking fund depreciation, land residual method, you get a value of that same land, instead of \$41,667 you get a land value of \$59,417. A. That's probably so, but I think if you go further into that you will find that Mr. Schmutz will explain which is the

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proper method to use and why one is faulty and the other isn't.

Q. He doesn't say that any of them are faulty.

A. He has told me many times.

Q. Well, he doesn't say it in his lecture. And if you use the annuity premise for valuation, using the same identical figures otherwise, you get a land value of \$71,250 as against the first value of \$41,667 and the second value of \$59,417. Now, doesn't that indicate that these various methods are not particularly reliable as a basis of establishing land values? A. I wouldn't say so, Judge. I think we have reached a point in appraising where we are closer to accuracy than we ever were before. 10

Q. Do you agree with this statement of his: "The land residual method is so sensitive that it should be employed by none but the highly skilled appraiser. Even so its use may indicate an unreasonable value during times either of rising or falling price levels, and prices are rising or falling most of the time." Do you agree with that statement? A. Yes, I agree that it should be handled by someone who knows how to handle it. 20

Q. And you agree that it is a very sensitive method? A. In times like these all methods are sensitive. You've got to take them as of a certain date. No one can appraise, I would say, accurately to the dollar. There must be a reasonable allowance for conditions and opinion. 30

Q. Now, under your theory, if the expenses of operating this market were so high that it left nothing to be capitalized for land value, you wouldn't then say that the land had no value, would you? A. Certainly not.

Q. You would still say it had at least raw value? A. That is correct. 40

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Q. So that the value, as you establish it, depends on the income of the business that is being conducted there? A. It depends on the use of the property and the surplus income as conducted; that's correct.

10 Q. That is practically what I said, isn't it? A. Yes, that's right, Judge.

Q. Now, also this land value would change if, instead of using a ten-year period of depreciation for the buildings, you used a longer period of depreciation. That would make a change in your land value, wouldn't it? A. Yes, I'd have a higher land value.

Q. And if you took a shorter term, you would have a lower land value. A. That's right; that's where the appraiser's judgment comes in.

20 Q. That is where your judgment, which is purely arbitrary comes in. It may be based on experience and that sort of thing, which is purely arbitrary. A. That's correct.

30 Q. And likewise if you used a different percentage—you have different percentages here on different things. For example, you say return on raw land, eleven per cent. Now, that is eleven per cent of \$27,761, which, if I remember correctly, is your land value, plus that \$3,000 worth of improvements or something of that kind for light and cement walk— A. \$50,000 was my estimate of the building. The eleven per cent represents six per cent for interest and five per cent for taxes, using a stabilized five-dollar rate.

Q. But what I am saying is that this eleven per cent is eleven per cent of—you've got \$27,761. A. Oh, yes.

40 Q. Now, that \$27,761 is your raw land value plus the cost of those improvements, which consisted of the cement sidewalk and the electric lights or

Franklin Hannoch, for City of Newark—Cross.

what? A. No, Judge. The \$27,000 is my estimate of the raw land value and this—

Q. \$761 is what you wiped off to make it in round figures \$27,000? A. The platforms and light and concrete flooring are improvements, in my opinion.

Q. Let me ask you this: if you will turn to page 10
3 you will see what I am asking about.

The Commissioner: Is that \$27,761?

Mr. Stewart: Yes, sir.

The Commissioner: Does that just take in the Cornelia Street property?

The Witness: Yes, sir.

Mr. Stewart: Yes, sir; that is 2 to 44 Cornelia Street.

Q. Do you see it? A. Yes. 20

Q. What is that \$27,761? A. That's my opinion of the raw land for 111,046 square feet of land.

The Commissioner: How much?

The Witness: 111,046 square feet of land in this one block calculated at twenty-five cents a square foot, and that makes \$27,761.

Q. And so in turn, if you allowed less or more than six per cent for return on raw land value you would get a different figure opposite that figure of \$27,761, which is \$3,054. If you allot an eight per cent return and five per cent or five dollars for taxes you would get a different figure there, wouldn't you? A. Unquestionably, yes. 30

Q. And it would make a difference in your land value in your final analysis, wouldn't it? A. That's true.

Q. So that the percentage of return that you allow on land is also arbitrary, what in your best 40

Franklin Hannoch, for City of Newark—Cross.

judgment the land ought to produce? A. That's right.

Q. And some other appraiser might disagree with you entirely on even using this method that you have used? A. It's possible, yes.

10 Q. Now, in your testimony you said that this particular area had been accepted by the general public as a farmers market? A. Yes.

Q. Just what did you mean by that? A. Well, I mean that this area has been accepted as the farmers market.

Q. There are other farmers markets in Newark. A. There is only one other that I know of.

Q. And that is the one down at Miller Street? A. Yes.

20 Q. And that is an inconsequential sort of affair. A. Well, of course it doesn't cover the area that this one does and I wouldn't say that it was quite as important as this.

Q. Now, why did you capitalize the balance of the income at fifteen years? Why did you take fifteen years? A. I didn't take fifteen years. I took fifteen per cent because I recognized the risk would exist to the extent that the purchaser of this property would be entitled to a return of fifteen per cent on his money.

30 Q. You recognize the fact that you have to find a purchaser who wanted to conduct a farmers market there in order for this particular piece of land to produce the income that it is now producing, don't you? A. That's right.

Q. So that in your opinion it is a specialized use and one in which there wouldn't be a ready market.

40 A. Well, it's a specialized use. I believe that an investor could be found who would be willing to pay \$115,000 for the opportunity of obtaining this income.

Franklin Hannoeh, for City of Newark—Cross.

Q. Now, wait a minute. Not for the opportunity of obtaining the income, but would he pay that without knowing whether the farmers would come down there and patronize this market or not? A. I don't think so.

Q. And you know that this market is operated solely by the farmers, don't you? A. Yes. 10

Q. Is it your idea that this is a cooperative market? A. I understand it is a corporation where the stockholders are all farmers.

Q. But not a cooperative market. Do you know the distinction that I am making between a cooperative—you know under our State law there may be cooperative markets, cooperative farmers' establishments in which all the persons must be farmers and in which the profit is limited to eight per cent. A. I am not familiar with that. 20

Q. But this, you understand, is a straight corporation. A. That's right.

Q. Now, do you understand that all the farmers who come to the market to sell their goods are stockholders in the corporation? A. No. I understand that they are not all.

Q. And you understand that a large percentage of the men who own stock in the market, in the corporation, do not come down there and patronize it. A. That I don't know. 30

Q. You don't know where the other farmers go who don't come down to our market, do you? A. No.

Q. Where they go to sell their goods? A. No.

Q. Do you know that the farmers who may come to the Newark Farmers Market on Monday and Tuesday night may go to the Bronx or the Wallaba Market on Wednesday and Thursday nights? A. I don't know, but I should think that would be probable. 40

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Q. You know that they go where they think they are going to get the highest prices, don't you? A. I would say so. It sounds like good business.

10 Q. Do you take into consideration when you are talking about a purchaser buying this property that a large number of these farmers simply come down to this market because it is a farmer-owned operation? A. Well, I had those facts, that it was a farmer-owned proposition, and that probably would enter into it.

Q. You would think that would influence the farmer in coming down? A. I should think so, yes.

Q. So that if a private individual tried to run this market he might not have the same number of farmers come down there.

20 Mr. Casale: Well, now, I object to that.

Mr. Stewart: I am asking whether he took that into consideration.

The Commissioner: He answered before, I believe.

30 Mr. Casale: No, he didn't. I object to that because you are entering into something different. We have to restrict ourselves to what the proposition is at hand. It is the valuation of this land in the ownership of the people that have it on the assessing date. This is purely a valuation proposition. Now, what its value might be with some other use is another case entirely. I don't think it is going to be helpful to go into. In other words, the valuation of this, as given by the expert here, is a valuation on a certain date as of the condition it had on that date.

40 Mr. Stewart: No. He is going further than that, may it please the Board. He is

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saying that a prospective purchaser would be willing to buy this market and pay \$115,000 for this particular piece on the theory that all these people would come down there and trade.

Mr. Casale: It is on the theory that what you have there is so, and we have taken your own figures at what you have there. In other words, you have the hypothetical buyer and the hypothetical seller as the law requires us to do. Now, what would the hypothetical buyer who is not compelled to buy and a hypothetical seller not compelled to sell be willing and able to pay for land used as this is used on the date when we have to assess it? And that's fair market value. 10

The Commissioner: But you don't go far enough, do you? 20

Mr. Casale: Yes. When you do that you are coming right foursquare within the requirements of the statute and the tax laws, that you must have fair value of land. In other words, the proposition is this; the fair value isn't the raw land. The fair value is something beyond what the raw land would be. Now, we say it is what we have put as the value considering it's use. 30

The Commissioner: In other words, you inject the income.

Mr. Casale: You've got to inject the income as a rental value and that is a recognized method of valuation, otherwise how are you going to value that? You will value it then as raw land and it won't be properly valued, and what the witness is trying to do is to value it different from raw land be- 40

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10 cause it isn't raw land, valuing it as he finds it on the assessing date and trying to give all consideration for everything that should be given consideration in this period, the ten-year period, in the percentage that is used, and the factors that are used and the different things that are deducted. Now, there is your picture. Now he is doing it as he found it on the assessing date, not in some other situation.

20 Mr. Stewart: He is doing more than that. When he says that someone would pay, \$115,000 for that he is taking into consideration that that prospective purchaser would also take into consideration whether he was going to retain that trade or whether he wasn't. If he wasn't sure he was going to retain that trade, Mr. Hannoeh has just said the man wouldn't pay that for it.

Mr. Casale: But you've got to consider it with that trade there. If you haven't got that, if you just have raw land, of course, it hasn't got this value.

30 Mr. Stewart: I am not talking about whether it is raw land or not. I am talking about it being developed just as it is. If the purchaser wasn't sure whether he was going to be able to retain that trade there, he wouldn't pay that amount for it and I think Mr. Hannoeh agrees with that. I think he said so.

The Witness: Are you asking me a question?

Mr. Casale: Ask him the question.

40 Q. Yes, I will ask you that. A. The experience shows that there was this income for a period of

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two years, and based on the experience he would be justified in paying \$115,000; but he would expect, because of the risk that it might go down, a return of fifteen percent. I mean, if he was sure he was going to get that all the time, indefinitely, he certainly wouldn't be entitled to the fifteen percent because that is a highly speculative rate. 10
We'd all invest our money at fifteen percent if we could.

Q. He would take into consideration whether he was going to be able to hold that trade for one year, two years or three years, wouldn't he? A. Yes, he would.

Q. Now, in your testimony also you have in here—where is that French word we had in here? A. Entrepreneur.

Q. Here it is, right here, which you said was the allowance for promotion, if I gathered you right. 20
A. That's the way I interpret the word entrepreneur.

Q. I am not going to go into the definition of the word. What I am going to go into is the question of promotion. What do you mean by promotion there? A. Well, I feel that in starting this originally there was the element of promotion developed in getting the thing created, purchasing the land, building the buildings, bringing all those store 30
tenants together and creating a place for the farmers to come. That didn't just grow by itself; it required promotion, and even after it was started. I assume that it did develop by itself from success to success through its own momentum, but there was constantly, through the whole operation—and I can see it now—the presence of a guiding spirit to keep this market together, to keep all the functions coordinated.

Q. How do you arrive at this figure of \$4,057? 40
A. Where is that?

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Q. It is back in those calculations here, about page 11 or somewhere along there. Maybe I've got the wrong page.

The Witness: You are working on the wrong property. It's \$3,961, which is an allowance of ten per cent, Judge.

10

Q. It is \$3,961 instead of the figures I used.

How do you arrive at that figure? A. That's a ten per cent figure arbitrarily fixed as sort of a management charge in addition to all the manager's expenses that were furnished by the owner. I wanted to be ultimately fair in this matter, and while some of these functions might be included in the expenses for the secretary or the manager or the president or the miscellaneous, if they weren't, if one of those expenses covered the person that I had in mind and the guiding spirit for this thing, I wanted to provide for it and I arbitrarily allowed ten per cent of the income to take care of it.

20

Q. That is the annual promotion charge, then, and not the original promotion charge? A. That's an annual charge.

Q. You have nothing in here anywhere for the original promotional costs? A. No, there couldn't be that because——

30

Q. I say——

Mr. Casale: Let him finish.

A. Because the thing has already been promoted. I had to value it as I found it on October 1st, 1939.

Q. Now, with regard to these rentals of the market stands, unless the entire market was operating, the stands would not have the same value as they do today, would they? A. If this was not a market, those stands would not have the value. There is no question about that.

40

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Q. And you have only used the actual figure which the market took in to estimate that rental value of those stands only? A. We took the individual rents for the stands as furnished by the Market Corporation.

Q. When you talked about somebody that did this on the same basis as you would a parking lot, you didn't have in mind that a man might come in there and stay two hours and pay his dollar fee and then go out and somebody else come in and take the same stand and pay another fee for it or anything of that kind, did you? A. Well, now, when you said "stands," you meant the stores. 10

Q. No, I don't mean the stores. I mean the places where they back up against the raised platform. A. I treated that purely on the actual income that you received, whether they stay there for two hours or ten hours. I mean, there was actual income of \$40,000 and I say that a person would be willing to pay \$10,000 a year in order to collect that \$40,000 and then pay the expenses in connection with it. 20

Q. Of course, you didn't take into consideration whether anyone other than the Farmers Market could operate that thing successfully or not, did you? You didn't know anything about that. You didn't know whether any trials had ever been made in that line. A. No, but I must assume that as long as the farmers are successfully operating in that plaza area by coming there and selling their merchandise that they are going to continue. The experience has shown— 30

Q. You don't know farmers.

Mr. Casale: Let him finish.

A. The experience has shown that it is a very successful venture. 40

F. Hannoch, for City of Newark—Re-direct.

Q. On the other hand, you don't know whether the same farmers are coming there all the time or not, do you? A. No, I do not.

Q. You don't know whether some farmers used to come there and became dissatisfied and went somewhere else, do you? A. No, I do not.

10 Q. And you don't know whether farmers come there maybe for the early part of the season and then all the rest of the season desert the place? A. I don't know that either, but I do know that \$40,000 was paid——

Q. That is all you know?

Mr. Casale: Let him finish, please.

A. —in fees for parking in that area, and it wasn't for one year but it was for 1939 and 1938
20 and it may continue on.

Mr. Stewart: I think that is all.

Re-direct examination by Mr. Casale:

Q. When you use the ten-year period Mr. Stewart referred to, why did you use ten years?

A. In addition to the allowance of fifteen per cent as an element of speculation, I limited it to only ten years. I say that this surplus income in my
30 calculations will not exist longer than ten years, although it may; but in my value I provide that it can last for only ten years.

Q. And using the ten-year period was considering the use as a farmers' market? A. The use as a farmers' market and the speculation involved in that use.

Q. Not only did that ten-year period include that, did the fifteen per cent which you used also have that in mind? A. Yes, indeed, because the
40 fifteen per cent if capitalized in perpetuity would

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provide a much higher value than capitalizing at fifteen per cent for a limited period of ten years.

Q. And the six per cent that was used in your return on the raw land, which was part of the eleven per cent, the other five per cent being for taxes, would you use a different percentage than six per cent interest? A. No. I would say six per cent is a normal basic rate for a return on land of this type. 10

Q. So that after your cross examination and the questions that you have heard put to you with regard to the percentages, do you now say that they ought to be changed? A. No, I do not. I think they are ultimately fair.

Q. Is this method of valuation of land that you have given here a recognized method? A. Yes, it is. 20

Q. And by it do you arrive at the valuation of the land on a certain date? A. I arrive at the value of the land, yes.

Q. And is it the true value? A. It is, in my opinion, the true value.

Q. The fair market value? A. The fair market value.

Q. And if you were valuing this for the Newark Farmers Market, Inc., would you use this same method or some other method? A. I'd value it exactly the same. 30

Mr. Casale: That is all.

The Commissioner: You say this is the recognized method?

The Witness: This is a recognized appraisal method for fixing value.

The Commissioner: Where?

The Witness: Anywhere in the United States by competent appraisers. You will 40

Colloquy of Counsel.

find it in that book that Judge Stewart was referring to.

The Commissioner: Is that the first time you used—

The Witness: Oh, no. Surplus income? No.

10 Mr. Stewart: It is a method that has come into existence in the last few years, the three or four methods that I spoke of. I say last three or four years, maybe it is ten years, but not before that; and it is not recognized, as far as I know, by any courts anywhere as the method of valuing land for taxing purposes. I said so far as I know. Now, if you know any courts I will be glad to hear of them.

20 Mr. Casale: No courts have had an occasion to say whether or not a method is right or wrong. The courts say what is valuation. Now, you can arrive at valuation by this method here, and we say it is the proper method. In another case you arrive at valuation by some other method, but in this specialized use that we have here we say that this is the proper method. Now, you won't find any courts passing on that. The courts pass on valuation. In other words, 30 is it fair to say that this land is only worth twenty-five cents a square foot? Obviously the simple stating of it gives the answer. No, it isn't. Well, what is the value here? Well, we say here we have a method of arriving at value. We have given that. The city thinks it is a higher value. Our expert thinks it has a lower value than the city gave in its assessing; but it isn't a case of 40 whether you look in a law book and say this

Colloquy of Counsel.

method is the method to use. You never find that, of course.

Mr. Stewart: I think you will find a case, while this method wasn't being used, you will find the case that involved the Phillipsburg-Easton bridge way back in 1844, where they tried to do this same identical thing. 10
They tried to use the toll charges as the basis for assessing that bridge valuation, and the court sat on it and squelched it right then and there.

Mr. Casale: Of course, that's all they used, the toll charges.

Mr. Stewart: That wasn't all they used. That was a part of what they used. They used the same identical theory as we are using here without the French words tacked 20
on.

Mr. Casale: No, it wasn't this method at all. It was used, just as in the beginning when we were developing our case Mr. Stewart was trying to tell us what the actual income was and I said if we used that it wouldn't be fair because that would be like using the tolls. It isn't fair to use what the actual income is. You've got to take the actual income, know how to analyze 30
it and give proper deductions, give the proper time; that is, ten years because it is a speculative proposition, therefore you only give it a life of ten years and you give it a high percentage of fifteen per cent return, which is very high considering the type. For that reason you have to bring all those elements into it so as to bring it within the scope of reasonableness and that is what we have tried to do. 40

Colloquy of Counsel.

10 Mr. Stewart: I don't want to take the Court's time up with it right now, but here is the case decided in 101 New Jersey Law by Justice Katzenbach, a Court of Errors case, where the local assessor assessed a parcel of land for \$4,500; the Camden County Board of Taxation increased it to \$65,000; on appeal to the State Board it was affirmed; a writ of certiorari taken to the Supreme Court and that affirmed it and a writ was taken to the Court of Errors and the Court of Errors reversed; and it shows in this case that what they were using there, in addition to the fact that there was a mis-
20 take of ten acres in the amount of land involved but that was immaterial for the principle, it showed in this case what they were really doing was using income to base his assessments on.

30 The park was rented by the appellant to the Clementon Park Association on a long term for \$4,000 a year, which included a dance floor, restaurant, moving picture theatre, etcetra, one hundred boats, in addition to the land. The Clementon Park Association leased the property to Myer Michelson for \$8,400, retaining the boats and boat house and a strip of land. Later this property was sublet to Michelson for a further sum of \$5,000 a year, making a total rent paid by Michelson to the Clementon Park Association of \$13,400. Now, the Clementon Park Association was not the owner. They were lessees. The appellant claims that this rental was the sole basis of the increased valuation, and was the only
40 evidence upon which the State Board af-

Colloquy of Counsel.

firmed the increase of valuation from \$4,500 to \$65,000.

The rental paid by Michelson was not a proper yardstick for assessing the value of the appellant's property. It was not paid to the appellant. It was an income return upon all the property, real and personal, of the amusement park. Income is only an element to be taken into consideration where a property is so situated that the yearly rental reflects its true value. It is no criterion for an assessor in making a valuation for the purpose of taxation. It is no standard by which to assess land upon which is located an amusement park. Amusement parks depend for their income upon patrons. Patrons of these classes of amusements are fickle. They soon tire of old amusements. When a new playground with new attractions, is opened they desert the old and flock to the new to try the new thrills which it has to offer. There was no justification in using the income of the property as a basis for assessments. Now, they did it in this case here just as Mr. Hannoeh is trying to do here.

The Commissioner: What is the date of that? 30

Mr. Stewart: It is 101 New Jersey Law. That is only a few years back.

Mr. Casale: That is quite a few years back.

Mr. Stewart: Well, it isn't very many years back, 101.

Mr. Casale: We are up to 129, 130.

Mr. Stewart: All right; say it is twenty years back.

Colloquy of Counsel.

Mr. Casale: What is the name of the case?

Mr. Stewart: Gibbs *vs.* the State Board.

10 Mr. Casale: Now, of course I don't know what the date is of that, but it is at least twenty years back, if not more. On the general proposition of income, of course, the courts have changed since then. Vice Chancellor Berry just a couple of years ago in the apartment house case, the Wrights case, said that their income was the sole criterion that should be used because it being an income producing property and utilized to its highest use—

Mr. Sewart: That wasn't a tax case.

20 Mr. Casale: That was valuation. We are talking about valuation. Let's not confuse a tax case or not a tax case. A tax case is a case of valuation. There is no question about that. What is the value?

30 Now, furthermore, in this Gibbs case the court was proper because they used the income solely as the method, and then furthermore, they said in this case, anyway income shouldn't be considered because it wasn't paid to the appellant, which is another distinguishing feature.

40 If in the Gibbs case you could find an application of the principle as we give it here considering the time elements, giving the income its proper allocation as to risk, where we only give a life of ten years, which is short, because we realize it is a business which must be given a short life, fifteen per cent instead of five or six per cent, which is the ordinary return; but you don't find that in that case. So therefore

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that case does not, by any means, show—

The Commissioner: Aren't we getting away from the fact that we are trying to take testimony on these cases today rather than summation?

Mr. Casale: But I had to answer it.

The Commissioner: Aren't you gentlemen 10
summing up?

Mr. Stewart: No, sir. I am not summing up. I raised the question in answer to what Mr. Casale said, that there was no question but what income or his basis, his theory was the one to proceed on, in answer to a question which I asked, which is so far back now I can't tell you what it was. I guess he said it was a recognized method and I said it wasn't. I guess that is where 20
we got to.

Re-cross examination by Mr. Stewart:

Q. Mr. Hannoeh, you don't apply this method of valuation to one family houses when you are valuing there, do you?

Mr. Casale: I object to that. Isn't it immaterial? We are not talking about one family houses.

Mr. Stewart: I've got a right to know 30
whether it is a general principle that he applies everywhere or whether it is one that he applies to this one type of structure or improvement or business.

The Commissioner: I think he is qualified to answer.

Mr. Casale: Go ahead.

A. I have had no case in a one family house. In 40
the first place a one family house is not valued on

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the basis of income. A one family house is primarily an owner's—

Q. You have answered it. You said you wouldn't apply it to a one family house. A. I wouldn't apply any income to a one family house.

10 Q. Now, how large a multiple occupied building would it have to be before you begin to use this method? A. Well, it could apply in any apartment house if the elements of surplus income existed. You don't apply it unless it is there.

Q. Unless there is a surplus there, you don't apply it. A. That's correct.

Q. But you wouldn't apply it to a three-family house? A. You might if it existed.

Q. It wouldn't be usual, would it? A. No.

20 Q. It would have to be a large apartment house before you begin to apply it to residential buildings? A. Well, I applied it to an apartment house in Ridgewood, New Jersey, where it definitely existed because—

Q. How many apartments?

Mr. Casale: Let him finish, please, Judge.

A. —because there was only one other apartment building in the town of Ridgewood.

30 Mr. Stewart: I asked him how many apartments there would have to be before he would apply it. He is telling me something different than what I asked him.

Mr. Casale: You didn't ask him that question. You asked him another one. Let him finish one at a time.

A. Which question do you want me to answer?

40 Q. I want to know how many multiple occupancies would have to be in a building before you

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began to apply this method? A. It could be any size.

Q. It could be, but I am asking how many would it be before you would start to use it, before you think it would be good judgment to use it? A. There is no answer to that question. If the income from an apartment house was so great that it exceeds the value of the land and building as physical entities, then there is a surplus income, and you have that same parallel here in the Farmers Market. 10

Q. In other words, the income must exceed the value of the physical entities of land and building, is that what you said? A. The normal physical value of land and building, right.

Q. Would you apply that same theory, that same method of valuation, for example, to Bamberger's land on Market and Halsey Street and Washington Street? 20

Mr. Casale: I object. I think we are going very far afield.

Mr. Stewart: No.

Mr. Casale: We are talking about land down near the meadows or very close to the meadows, and when you talk about land on Market Street, it seems to me that you have two horses of different colors. 30

Mr. Stewart: What difference does it make?

Mr. Casale: It makes a big difference. We want to keep to the case.

Mr. Stewart: What difference does it make where the land is? He applies it in certain cases where there is income in excess of the physical value of the land and the physical value of the building, he said.

The Commissioner: I think he answered the question some time ago when you asked 40

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him about multiple buildings and apartment houses.

10 Mr. Stewart: That only was with regard to apartment houses, and the reason I am asking it, may it please the Commissioner, I find in these lectures here that in these theories they don't apply to certain things and they do apply to others. I want to know whether he would apply this same theory that you have here to the land and the building owned by Bamberger on Market and Halsey Street.

20 Mr. Casale: I object to it. I think if there is any question that might be asked in elucidation of what Schmutz says in his book, that it would be proper question if along this line, but this is not that kind of a question and it is mixing Market Street land with land down in the meadows. I don't know how far we are going to get when we do that.

The Commissioner: I think that is a little far afield, Judge.

Mr. Stewart: It isn't mixing the land. It is a theory.

30 The Commissioner: We can be sitting here all day discussing this theory. We will be just as far when we finish as when we started.

Q. Well, let me ask you this question: you would not apply this same theory to all lands anywhere in the City of Newark, would you? A. I'd apply it wherever there was a surplus income existing.

Q. And those are the only places you could apply it? A. That's the only way it would be proper.

40 Mr. Stewart: That is all.

F. Hannoeh, for City of Newark—Re-direct.

Re-direct examination by Mr. Casale:

Q. Now, what is the value, the true value as between a willing buyer and willing seller on the assessing date of Block 2409, Lot 1, known as 1 to 43 Joseph Street, which is the whole block opposite the block that you just now testified to? A. \$118,450. 10

Mr. Stewart: May I inquire what page you are reading from?

The Witness: First page.

Q. How much for the land? A. Land, \$65,000; improvements, \$53,450.

Q. Now, the allocation of the land in this case is the identical figure as the allocation of the land in the last case. Does that mean that these two pieces of land are the same size? A. Exactly. 20

Q. And for that reason the same way you arrived at the \$65,000 in 2 to 44 Cornelia Street would be the way you would arrive at the \$65,000 for 1 to 43 Joseph Street? A. Exactly.

Q. And the reasons would be the same? A. Exactly.

Q. Now, tell us how you get the allocation of \$53,450 for the improvements? A. Well, they are a little larger, little greater cubical contents to the buildings on this plot which would allow for the difference. 30

Q. Give that cubical content for the record. A. There is one unit of 162,918 cubic feet, replacement at fifteen cents, \$24,438. There is another unit of 377,120 cubic feet at fifteen cents, \$56,568. There is another portion, a two-story brick building of 29,337 cubic feet at twenty cents, \$5,867.

Q. That is reproduction cost at twenty cents there? A. Twenty cents reproduction cost. The 40

F. Hannoch, for City of Newark—Re-direct.

concrete, I will call it floor. It's the area over the plaza that's covered with concrete.

10 Q. Is that the pavement? A. That's the pavement of 70,000 square feet at twenty cents, \$14,000. Total of \$100,873, less fifty per cent depreciation, leaving \$50,436; to which I add \$3,000 as an estimate for those additional improvements, such as platforms and lighting fixtures and so forth; a total of \$53,436.

Q. For the buildings? A. For the improvements.

Mr. Casale: You will note, if the Commissioner pleases, that with regard to those cases the building is not appealed, as I have it here; is that right?

20 The Commissioner: What are you talking about?

Mr. Casale: 65 and 66.

The Commissioner: No, there is no appeal.

Mr. Casale: Off the record.

(Discussion off the record.)

Mr. Casale: Do you want to cross examine each case?

30 Mr. Stewart: Well, I think what ought to go on the record is that the cross examination in reference to 2 to 44 Cornelia Street shall be considered as cross examination and answers that would have taken place here.

Mr. Casale: I agree to that.

Mr. Stewart: They are the same identical questions all the way through.

Mr. Casale: There is only a little difference in the building.

F. Hannoeh, for City of Newark—Re-direct.

Re-direct examination by Mr. Casale:

Q. Now, Mr. Hannoeh, what other properties have you valued as of the assessing date, giving the true value thereof to complete this case? A. No. 46 to 88 Cornelia Street.

Q. That would be case number 69.

Will you point that out to the Commissioner on Exhibit R-1, please? 10

A. Yes, I have.

The Commissioner: Does that have three platforms in that?

The Witness: Yes, there are three of those concrete platforms.

The Commissioner: There is no building on there?

The Witness: There are two buildings. 20
One has been erected since.

The Commissioner: But that is marked out.

Mr. Stewart: There is a building on the corner of Albert Avenue and Cornelia Street.

The Commissioner: There is no appeal on the building anyhow.

Mr. Stewart: No, sir; I don't think there was any appeal on the buildings. 30

Q. Will you tell us what your valuation of that is? A. \$28,600 the value of the land, and it consists of 114,638 square feet valued at twenty-five cents a square foot.

The Commissioner: I imagine this is the raw land, is that it?

Mr. Casale: Practically.

The Witness: Well, I haven't considered this anything further than raw land because 40

F. Hannoch, for City of Newark—Re-direct.

I feel that it hasn't been developed to the extent that it is fully a part of the Farmers Market.

The Commissioner: All right.

10 Q. And there is an intervening street? A. Albert Street is in between one of the fully developed lots, but this covers a square block with streets on all sides.

Q. With only one corner with a building? A. Only one building on the assessing date.

Q. Now, what is the other property? A. 76 to 90 Albert Avenue.

Q. What is the value of that land? A. \$5,130. That's based on 20,531 square feet at twenty-five cents.

20 Q. Is there anything— A. There are no buildings on that land at all, some concrete pavements.

Mr. Stewart: That also then was just the raw land value at twenty-five cents a square foot, wasn't it?

The Witness: That's right.

Q. Any other? A. That's all.

Mr. Casale: Cross examine.

30 Before we start cross examining I would like you to look over these pictures and I want to put them in evidence.

(Handed to Mr. Stewart.)

The Commissioner: One moment here. This one, Case 62, 76 and 90 Albert Avenue and the other one says 54 and 82 Catherine Street—

40 Mr. Stewart: 54 and 82 Catherine Street are on the inside of Block 2423, if you have

Harold McCabe, for City of Newark—Direct.

the map there, Commissioner, that I gave you.

The Commissioner: Yes, but there are two separate appeals here.

Mr. Stewart: Do you have the map there like this that I gave you?

The Commissioner: I have the map. 10

Mr. Stewart: If you look at the east side of Catherine Street, it starts in back of the lots butting on Albert Avenue, the first lot in there, and runs all the way down to the lots butting on—

The Commissioner: Yes, but we've got to have a value on 54 and 82.

Mr. Casale: I will have Mr. McCabe testify on that. Mr. Hannoeh evidently wasn't given those two for some reason. It was an oversight. 20

(Discussion off the record.)

Mr. Casale: Just mark the pictures.

(Received in evidence and marked Exhibit R-2-A to R-2-I, inclusive.)

Mr. Stewart: I think it ought to go in the record when those pictures were taken.

(Discussion off the record.) 30

HAROLD McCABE, sworn for the City of Newark.

Direct examination by Mr. Casale:

Q. Mr. McCabe, take 54-82 Catherine Street and give us the true value of that as between a willing buyer and willing seller as of October 1, 1939. A. \$9,500.00. 40

Harold McCabe, for City of Newark—Direct.

Q. And that is arrived at how? A. This land is on the east side of Catherine Street. It has a frontage of 379.95 feet.

The Commissioner: By what?

10 The Witness: Well, some of it is a hundred feet deep and some of it is 116, then there are two triangles.

Q. Where are the triangles? A. It doesn't run back at right angles at both ends.

Q. You get the triangle at the back, don't you? A. One in the front and one in the back. There is a hundred feet of it that is 116 feet in depth; the rest is all a hundred.

20 Q. How did you get your valuation? A. Twenty-five cents a square foot. There are 38,172 square feet in it.

Q. Is this raw land? A. It's raw land.

Mr. Casale: Now, let Mr. McCabe give the other two, then you can cross examine.

Mr. Stewart: That Lister Avenue is a pie-shaped piece on the corner of Catherine Street and Lister Avenue on the southeast corner.

The Commissioner: All right.

30 Mr. Stewart: Right along side of that 6-family house.

The Commissioner: Give your value.

Q. What is your valuation? A. \$600.00.

40 Q. What is the size and how many square feet and how much a square foot? A. It's on the southeast corner of Lister Avenue and Catherine Street. It has 27.64 feet frontage on Lister Avenue and 100 feet deep. Catherine Street doesn't run off at right angles from Lister Avenue, so that the lot narrows down to eight feet in the rear.

Harold McCabe, for City of Newark—Cross.

The Commissioner: You value that at \$600.00?

The Witness: \$600.00.

The Commissioner: Square foot or foot?

The Witness: There are 1,782 square feet in it at thirty cents and ten per cent for the corner influence.

10

The Commissioner: Thirty cents a square foot?

The Witness: Yes, and ten per cent for the corner influence.

Q. That is raw land, too? A. Yes.

Mr. Casale: I think that cleans it up, doesn't it?

The Commissioner: That cleans up yours.

20

Mr. Stewart: Let me examine on that little corner piece there.

Cross examination by Mr. Stewart:

Q. That is not very suitable for an improvement because of the way it narrows down in the back, isn't that so? A. That's right.

Q. And at the rear that is only eight feet, I think. A. That's right; eight feet in the rear.

Q. When you refer to it as raw land, you refer to it just as Mr. Hannoeh did, unimproved land?

30

A. That's right.

Q. Now, Catherine Street along there is not an improved street, is it? A. It is not.

Q. It hasn't any facilities in except sewer, I think, or do you know that? A. This lot gets its utilities from Lister Avenue; it's facing on it and all improvements are on Lister Avenue.

Mr. Stewart: All right; I think that is all.

Mr. Casale: That is all.

40

(Discussion off the record.)

Colloquy of Counsel.

STATE BOARD OF TAX APPEALS.

10	NEWARK FARMERS MARKET, INC., Appellant,	<i>vs.</i>	CITY OF NEWARK, Respondent.	}	Blk. 2423—Lot 24-31 76-90 Albert Avenue Blk. 2423—Lot 32-46 54-82 Catherine St. Blk. 2423—Lot 1 67 Lister Avenue Blk. 2409—Lot 1 1-42 Joseph St. Blk. 2408—Lot 1 2-44 Cornelia St. Blk. 2451—Lot 1 46-88 Cornelia St. Blk. 2409—Lot 1 1-43 Joseph St. Blk. 2408—Lot 1 2-44 Cornelia St. Blk. 2451—Lot 1 46-88 Cornelia St.
		<i>vs.</i>	CITY OF NEWARK, Appellant,		
20	NEWARK FARMERS MARKET, INC., Respondent.				

Transcript of testimony taken before Commissioner J. WILLIAM HUEGEL, at the Sheriff's Sales Room, Essex County Court House, Newark, New Jersey, on Thursday, April 23, 1942, at 10:30 A. M.

Appearances:

- 30 CHARLES H. STEWART, Esq., for the Appellant.
RAYMOND SCHROEDER, Esq., by VINCENT J. CASALE, Esq., for the Respondent.

Mr. Stewart: I think the first piece that we took here yesterday was 2-44 Cornelia Street.

The Commissioner: Yes.

- 40 Mr. Stewart: I would like to call the Board's attention to the fact that this property has been up under appeal for a number of years, and the State Board has consistently reduced the tax up

Colloquy of Counsel.

to and including 1939. The City assessed this real estate at \$36,300.

The Commissioner: If you want to give the tax history in the case, you can give that.

Mr. Stewart: That is what I was going to do.

The Commissioner: You can do that.

Mr. Stewart: The City assessed this at \$36,300. 10

The Commissioner: For what years?

Mr. Stewart: For every year since 1934, and we took the consistent appeals and it was regularly reduced.

In 1936, the County reduced it to \$22,200.

The Commissioner: We are not concerned with the county. We are concerned with our Board.

Mr. Stewart: In 1937, the State Board reduced it to \$26,100. In 1938, the State Board reduced it to \$26,100. In 1939, the State Board reduced it to \$26,100. 20

The Commissioner: All right.

Mr. Stewart: In 1938 and 1939, by agreement between the City and the Farmers Market, the assessment on the buildings was reduced from \$50,000 to \$46,800.

The Commissioner: All right.

Mr. Stewart: And I have the State judgments here.

Mr. Casale: Of course, I want to say with regard to that, what the State Board has done in the past, of course, you know as well as we do, it is a matter of record; but this case is a trial *de novo* for the year in question, and the case is being tried this time with a great deal of care and attention and along lines that we think are the proper lines and proper ways in evaluating this property. 30

The Commissioner: Who is your first witness?

Leo Flaster, for Appellant—Direct.

LEO FLASTER, being duly sworn in behalf of the Appellant, testified as follows:

Mr. Stewart: Mr. Flaster's qualifications are admitted?

Mr. Casale: Yes.

10 *Direct examination by Mr. Stewart:*

Q. Mr. Flaster, you have valued this property at 2-44 Cornelia Street, known as Block 2408, Lot 1, as of the assessing date, October 1, 1939? A. Yes, sir, I have.

Q. And the description of the property has been given properly by Mr. Hannoeh, hasn't it? A. Yes, sir.

20 Q. Now, will you tell us what valuation you arrived at, and how you arrived at it. A. I have analyzed these various plots, owned by the Farmers Market, not from an angle of a market, but strictly as a piece of real estate, because these being in the heavy industrial zone, and realizing that if the market were not there, it would still be in the industrial zone and strictly industrial property.

30 I valued 2-44 Cornelia Street on the basis of \$20 a foot for both Cornelia Street and Catherine Street which gives you a frontage of 1,110 feet. That is running on both streets. This brings my value to \$22,200.

I have plussed that by ten per cent which brings the total value to \$24,420. My reason for adding that ten per cent was for plottage, corners and for frontages; so that my total was \$24,420.

The Commissioner: That is for Cornelia Street?

40 The Witness: 2-44 Cornelia Street.

Leo Flaster, for Appellant—Direct.

The Commissioner: \$24,420.

The Witness: Yes, sir.

Q. In arriving at your value, did you take into consideration other properties in the vicinity, comparable properties, sales of which you had been aware? A. I have taken into consideration comparable properties, sales with which I was concerned, and property of this nature throughout the general area. I particularly refer, for example, to plot 99-107 Lockwood Street. 10

Q. Where is that on that little map that we gave to the Commissioner, so that we might help guide him? A. Block 2408, and Lockwood Street—that is exactly about three and a half blocks from this particular property.

The Commissioner: How close is that? 20

The Witness: That is about three and a half blocks east of this property and in the immediate area; 125 by 100. That is 12,500 square feet for \$2,500 or 20 cents a square foot.

I have another sale at 77-81 Lister Avenue. That, by the way, is two blocks away from this property and represents a plot 67.60 by 100, was sold August, 1940 for \$800, which represents 12 cents a square foot. 30

Then we have on the east side of Lockwood Street a plot adjoining the ramp leading from Route 25 representing about four and a half acres. That was sold for \$40,000 and in the contract of sale there were some improvements on this property, and the value of the buildings was placed at \$10,000.

As a matter of fact, they have since demolished some of these buildings, but the land on that piece was put at \$30,000. So 40

Leo Flaster, for Appellant—Cross.

that, that represents 15½ cents a square foot, and that in turn enjoys a railroad siding.

10 Q. Did you refer to the sale of the Essex and Hudson Land and Improvement Company to the Newark Farmers Market in 1940? A. Yes, sir, that was 77-81 Lister Avenue.

Mr. Stewart: I have that contract here. I think that is all.

Cross examination by Mr. Casale:

20 Q. Now, Mr. Flaster, you have stated that you have considered this property just as raw land and not with respect to the use to which it is put— A. Yes, sir.

Q. —for market purposes? A. Yes, sir.

Q. And in doing that, you have evaluated this land as raw land, is that right? A. Yes, sir.

Q. You said that you did that because this is in the heavy industrial district, is that it? A. It is called the factory zone.

Q. Well, is it heavy or not? A. Yes, it is heavy industrial.

30 Q. Isn't it a fact that it is not? A. I say, as I understand, it is.

Q. Well, if it was not in heavy industrial, would that make a difference? A. No, it would not, because it is still industrial property from my viewpoint.

40 Q. And the fact is that you said you treated them that way because you said it was a heavy industrial district. You didn't mean that? A. I said that because it was in the heavy industrial district. Heavy or light, it doesn't make much difference at that point.

Leo Flaster, for Appellant—Cross.

Q. And these sales that you have referred to are sales of raw lands, aren't they? A. Yes, sir.

Q. Industrial land? A. That's right, yes, sir.

Q. With regard to the size of the property in question of the Farmers Market, which one of these sales would you say would be comparable to it, considering the size alone? A. Well, none of those plots to which I refer, outside of the property on the east side of Lockwood are as large as this block to which we now refer. 10

Q. If we take that property itself, is that in any way comparable in size to the property in question? A. Yes, sir. As a matter of fact, it is slightly larger than this block. I think this block has 111,000 feet, and this plot on the east side of Lockwood Street has four and a half acres, so that it would be 180,000 square feet. 20

Q. Do you mean to say that the entire holdings of the Newark Farmers Market is less than this property in question? A. I am only talking about this one block, Mr. Casale.

Q. The Farmers Market does not only occupy one block?

Mr. Stewart: We are only discussing this one block.

Q. Irrespective of what we are discussing, considering the Farmers Market holdings, have you any sale that you have referred to that is comparable in size? 30

Mr. Stewart: I object to that. We are only considering this particular block. That is all we are doing.

The Commissioner: Yes, you are going far afield, I think, Mr. Casale.

Mr. Casale: No, I am not. 40

Leo Flaster, for Appellant—Cross.

The Commissioner: We are trying one case, 2-44 Cornelia Street. We are not trying the whole plot at one time.

10 Mr. Casale: That makes no difference. We have a holding, and irrespective of how the valuations are divided up, we have a holding of the Farmers Market—

The Commissioner: I have given you your own way in everything so far, but I am not giving it to you in this.

Mr. Casale: I am not asking to be given anything in this.

The Commissioner: We are going to try this piece of land here, 2-44 Cornelia Street.

20 Mr. Casale: We are trying it, but what I am trying to do is this, if the Commissioner pleases. I am not talking about valuations now. I am talking about comparability in size as the one that I am directing to your attention at this point, comparability in size of the piece at 99-107 Lockwood Street—no, not that one, the one that he calls 4½ acres on the east side of Lockwood Street. That is in one ownership.

30 Now, to be comparable with the property in question, you have got to consider the whole ownership of this property. I am not talking about valuations now.

Mr. Stewart: He is talking about this 4½ acres, and he wants us to compare that in size to all the property that the Newark Farmers Market owns.

The Commissioner: What is the size of the Newark Farmers Market?

Mr. Stewart: All together?

The Commissioner: All together.

40 The Witness: I have it in various blocks. I have not figured it from that angle.

Leo Flaster, for Appellant—Cross.

Mr. Stewart: It is approximately ten acres, all that we own.

Now, you know that we own over here, on the far side of Euclid Avenue (indicating) which we do not use at the present time and is not developed. We own this block, 2423, which is only partially developed. 10

We own block 2451 which is only partially developed.

The Commissioner: I can see Mr. Casale's point. He is not asking us to value that property. He is asking whether there is anything comparable.

Mr. Stewart: The point that I make is this: We are only concerned with Block 2408, and I don't care what property we own anywhere else, whether the size of that very property is $7\frac{1}{2}$ acres, or 10 acres, or 50 acres, that has nothing to do with the comparability of the size to the piece that he is comparing it. 20

The Commissioner: Mr. Casale, couldn't you ask the same question on the other pieces of property as we go along, whether it is comparable or not?

Mr. Casale: Yes, that is what I am doing.

Mr. Stewart: If this was assessed as one parcel, the whole business as one parcel, then I have no objection; but we have six different parcels. 30

The Commissioner: Instead of asking the the question at one time, you might ask it as we go along.

By Mr. Casale:

Q. This land in question, besides being ten acres or more, as compared to $4\frac{1}{2}$ acres, the case where 40

Leo Flaster, for Appellant—Cross.

the sale was, its use is different, isn't it? A. I don't know.

Q. The Farmers Market use is different? A. I don't know.

Q. The Farmers Market land use is different from that comprised in this land of 4½ acres that you mentioned? A. One is being used for manufacturing purposes, and the other one has buildings on it. Now, they can use the buildings for manufacturing purposes.

Q. Wait a minute. Are the buildings on the Farmers Market being used for manufacturing purposes? A. I don't know.

Q. Now, you studied this case. A. I have not studied the buildings, Mr. Casale. I have looked at it.

20 Mr. Stewart: We will admit on the record that they are not being used for manufacturing purposes.

The Commissioner: The building on this case is not under appeal, Cornelia Street.

Mr. Casale: But we have to talk use.

Mr. Stewart: It was under appeal—

Mr. Casale: Yes.

30 Mr. Stewart: —but we do not properly have it, because the City has always agreed, or at least for two years have agreed, for a reduction from \$50,000 to \$46,800.

Mr. Casale: Well, this case is a trial *de novo*.

Mr. Stewart: Well, I am making a statement as to why we are not prepared to come in here and testify as to the cube and what it will cost to reproduce, and so forth.

40 Mr. Casale: Well, the case is on the calendar to be tried and there is an appeal. Now, I have a right to ask as to buildings as well as land.

Leo Flaster, for Appellant—Cross.

Mr. Stewart: I have admitted it, Mr. Casale.

Mr. Casale: But I want the witness to answer.

The Commissioner: He has a right to ask him questions.

Mr. Casale: I am still talking about the comparability of this 4½ acres as to the property in question. 10

Mr. Stewart: If you mean block 2408, I have no objection; but if you mean as compared with all the blocks that Newark Farmers Market owns then I object.

The Commissioner: Let us go ahead.

By Mr. Casale:

Q. There is no question about the fact that the buildings of the Farmers Market land are used for stores, aren't they? They are rented as stores? 20

A. I understand so, yes.

Q. Well, you know so, don't you? A. I analyzed it from a land standpoint. I did not check the buildings.

Q. But didn't you go down there and inspect the place? A. Yes.

Q. And didn't you see any manufacturing going on? A. The reason I don't know is that there may be some manufacturing going on, on the second floor and I don't know anything about. Hence, I don't want to answer your question as being definite. 30

Q. And therefore, assuming that there is no manufacturing at all, then you have a different use, haven't you, from the land in question of the Farmers Market as compared with this 4½ acre piece? A. Not from my viewpoint, because of the area in which it is located. 40

Leo Flaster, for Appellant—Cross.

Q. I will ask you the question again. As a matter of fact, assuming that there is no manufacturing, which has been admitted by your counsel, in any of the buildings on the Farmers Market plot, then there is a different usage between the use of that land and the use of the land of the 4½ acres, isn't that so? A. Are you talking about—

10 Q. There is only one answer to that. It is yes, isn't it? A. I am not ready to admit anything.

Q. I am asking you to answer questions and not to admit anything. If it is a fact, as has been admitted by counsel, that there is no manufacturing at all on the buildings on the Farmers Market plot; and there are buildings in which manufacturing is, or could be done in the buildings on the 4½ acre plot, isn't there a difference in use?

20 Mr. Stewart: I object to that question for this reason: The question is, "Manufacturing is or could be done".

I don't know what that building was being used for on the 4½ acres on October 1, 1939. Mr. Flaster may know whether it was vacant or whether it was not.

Q. Let us clear that up. Didn't you say that that was heavy industrial? A. Yes, sir.

30 Mr. Stewart: He said, "area".

Q. And the buildings were of that nature?

The Commissioner: Just a moment. I thought he said the buildings were demolished.

The Witness: Some of the buildings. After the purchase, some of the buildings were demolished.

40 Mr. Stewart: That was December, 1940.

Leo Flaster, for Appellant—Cross.

Q. Was manufacturing being carried on at the time that the sale took place? A. No, not manufacturing, warehouses.

Q. That is heavy industrial use? A. Yes.

Q. And that is a different use, is it not, from a store use?

Mr. Stewart: Doesn't it speak for itself? 10

Mr. Casale: Well, I want him to say that. He doesn't say something that is obvious.

The Witness: The very building that you are talking about, these stores can be converted to manufacturing.

The Commissioner: Gentlemen, let us try this case as it should be.

Mr. Casale: I want that stricken out.

The Commissioner: Strike that out. 20

By Mr. Casale:

Q. Where you have buildings which are usable for heavy industrial purposes, as you say on the 4½ acre plot, and in the buildings of the Farmers Market, as has been admitted by counsel, the only use is for stores?

Mr. Stewart: No, I do not admit that. He said that is what they were being used for. 30

Q. On the assessing date they were being used for stores. Isn't there a difference of use? A. You are referring to the buildings. The land could be converted into anything.

Mr. Casale: You are being facetious about it.

Mr. Stewart: You are referring to the buildings, aren't you? 40

Leo Flaster, for Appellant—Cross.

Mr. Casale: Of course, I am referring to the buildings.

The Witness: All right, the buildings were being used for store use.

10 Q. There is a difference in use, then, between the use of the property of the Farmers Market and the use of this 4½ acre, the sale of which you mentioned? A. At that time, yes, sir.

Q. Well, what time do you think I am referring to? A. At that time.

The Commissioner: He answered. He said "Yes".

20 Q. The 4½ acre piece, the sale of which you have referred to, has a frontage of how many feet on the street? A. It has a frontage on Lockwood Street of 174 feet.

Q. 174 feet? A. Yes, sir.

Q. And that is the only frontage it has on the street, hasn't it? A. That's right.

Q. Now, as compared to the frontage of the Farmers Market on the number of streets that it fronts, would you say that they were comparable? A. Well, I have allowed for that, Mr. Casale.

30 Q. I didn't ask you what you allowed for. I asked you as to the comparability where you have a frontage of 174 feet in the 4½ acre plot, the sale, as compared to the frontage you have in the market property. Is there comparability? A. Yes, there is.

Q. Now, on the one piece alone that we called 2-44 Cornelia Street, there are 1500 feet of street frontage on this piece alone, is there not? A. Well, 1110 feet—yes, about 1500, that's right.

40 Q. 1500 feet of frontage on that piece alone. All paved all around? A. Yes, sir.

Leo Flaster, for Appellant—Cross.

Mr. Stewart: No, no.

The Witness: Well, part of Catherine Street is not paved—no, no, pardon me. That is all paved.

Q. And taking that piece alone, 2-44 Cornelia Street, with 1500 feet of street pavement as compared with a piece which has only 174 feet of street frontage, you say that is comparable? A. Yes, sir. 10

Q. 1500 feet street frontage and 174 feet street frontage, that is comparable? A. Yes, sir.

Q. Now, besides that, the property of this 4½ acres on Lockwood Street is really meadow land, isn't it? A. Oh, no, no.

Q. Aren't the edge of the meadows within two hundred feet of Lockwood Street? A. I don't know exactly what that distance is.

Q. Then if that were so, then most of this land in the 4½ acres would be in the meadows, wouldn't it? A. Not necessarily. 20

Q. If that were so. A. I can't say that that would be in the meadows.

Q. Well, you don't know where the meadows start as referring to Lockwood Street? A. I don't know.

Q. If it did start 200 feet from Lockwood Street, wouldn't then most of this land in the 4½ acre plot be in the meadows? A. Not necessarily. 30

Mr. Stewart: I object to that. That is a supposition.

The Commissioner: That is an assumption.

Mr. Casale: I am going to put somebody on to prove that that is so.

The Commissioner: Well, that is your case.

Mr. Stewart: I object to the question because it is purely an assumption and the 40

Leo Flaster, for Appellant—Cross.

witness is not bound to assume where this land would be if something happened.

The Commissioner: Objection sustained.

10 Q. Then you say that this land in the 4½ acre piece is all virgin land? A. Well, as far as I know, it is good land.

Q. I didn't ask you that.

The Commissioner: Answer the question.

Q. Well, by "virgin land", what do you mean, not filled in?

The Commissioner: Good land is virgin land, isn't it?

20 The Witness: As far as I know, it is good land.

Q. What do you mean by "good land"? A. It is used in its present state. They have buildings on it. I don't know of any piling that has been done to my knowledge.

Q. You mean by "good land" that it does not require piling? A. Yes, sir.

Q. And by "virgin land" you mean solid land? A. Yes, sir.

30 Q. And you say that that is all that type of land? A. To my knowledge.

Q. The land of the Newark Farmers Market, Inc., is all virgin land, isn't it? There is no question about that? A. I understand so.

Q. Now, you also referred to another sale of 99-107 Lockwood Street? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And that is just 125 by 100, isn't it? A. Yes, sir.

40 Q. That is a very small piece as compared to the Farmers Market holdings, isn't it? A. It is about

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a tenth of the size of the block that we are discussing.

Q. One tenth of the size of just that one block?

A. Yes, sir.

Q. Considering all the holdings of the whole Market, it is infinitesimal?

Mr. Stewart: I object to that because it is not relevant. 10

Mr. Casale: It is "size" again that I am talking about.

Mr. Stewart: I know it is "size" and I still say it is not relevant.

Mr. Casale: I think the Commissioner has already ruled on it.

Mr. Stewart: The Commissioner has already ruled on it, and my objection was sustained. 20

Mr. Casale: Not as to that.

The Commissioner: I said he can take each case separately, and he can cross-examine along those lines.

Mr. Casale: Yes, and I have to settle first respecting the one that we are talking about, and then the whole. I mean, after all, it is comparable as to size and not values.

Mr. Stewart: I am not talking about values, either. I say that this Board has no right to consider any other property of the Newark Farmers Market other than this 2408. Now, we might not have an appeal on any others, as a matter of fact, are you going to let us go all over the lots of the property that the Newark Farmers Market owns? 30

Mr. Casale: Now, that would be so if there were only this one appeal; but there are all the holdings of the Farmers Market. 40

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The Commissioner: I know, but we are trying them separately.

Mr. Casale: But, comparability as to size is what we are talking about now. We went through that before. You saw my point that this is comparable as to size.

10 The Commissioner: I don't think that there is anything hard to answer about that.

Mr. Stewart: But I object to it because it is not relevant. Whether this particular piece that he used, the one to gauge his judgment by, is one-tenth of the entire holdings of the Newark Farmers Market has nothing to do with it. What relevancy has it as to size with respect to Lot 2408. That is the only appraisal of property that we are interested in at this particular moment. So far as this Board knows, in trying this case, it is not supposed to know that the Newark Farmers Market owns any other property or anything else.

20

Mr. Casale: Oh, that can't be so.

The Commissioner: I think you are both arguing along the lines of technicalities, now, which don't mean anything.

30 Mr. Stewart: Well, he can note my objection.

Mr. Casale: Now, answer the question, Mr. Flaster.

(The last question was read.)

The Witness: Well, I suppose you figure \$12,000 to ten acres. It probably is.

Mr. Casale: It actually is.

The Witness: I say it probably is.

40 The Commissioner: He is answering the question.

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Mr. Casale: The answer is not “probably”. The answer is, “it is”.

The Commissioner: I suppose that you have to consider that the Board itself has some common sense.

Mr. Casale: Of course, we consider that all the time, but the witness ought to consider that the Board has common sense, too. 10

The Commissioner: You ought to be more specific.

Mr. Casale: “Probably”. When an answer is “Yes”, it is “Yes”, and when it is “No”, it is “No”; and when “it is”, “It is”; and when it is “Probably”, it is “Probably”.

Mr. Stewart: That is a matter of judgment whether it is infinitesimal or not. 20

By Mr. Casale:

Q. You say it is probably infinitesimal? A. That is correct.

Q. Now, that being so, you think it is proper to use the same square feet for raw land, 20 cents a square foot on this probably infinitesimal piece as compared in size to the property in question, and use the same 20 cents a square foot for raw land on the Farmers Market in evaluating— A. I do. 30

The Commissioner: All of a sudden, we have the word injected here “raw land”. In my opinion, it always used to be “vacant land”. What is the idea? Does it make it any difference whether it is vacant?

Mr. Casale: Raw land is land which has not any particular use. That is raw land.

The Commissioner: Well, that is vacant land, too.

Mr. Casale: Not necessarily. 40

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The Commissioner: Well, we won't go into it. Let us forget it.

Mr. Casale: There is a distinction between raw land and vacant land.

The Commissioner: Well, maybe there is in your mind, but not in mine.

10 Mr. Casale: Land without any particular use is raw land, and Mr. Flaster knows that.

The Witness: I have never used it, Mr. Casale.

Q. You know it's so? A. I have heard the phrase, but I don't agree with the viewpoint.

Q. It is nothing new to you? A. No, it is nothing new.

20 Q. How did you describe this land that you have evaluated without respect to its use? What did you call it, vacant land? A. Yes, sir. Vacant land in an industrial zone.

Q. So that what you have evaluated here with regard to the Farmers Market, you have evaluated that piece as though it were vacant land in an industrial zone? A. Yes, sir.

Q. And that's all? A. Yes, sir.

Q. You shut your eyes entirely to the other? A. I had to.

30 Q. I didn't ask you that. You did shut your eyes to the actual use of the property, of the land, did you? A. Yes, sir.

Q. You shut your eyes also to the improvements thereon, did you not? A. Yes, sir.

Q. Mr. Flaster, you would consider that land which brings in, as the Farmers Market does, in excess of \$100,000 a year is worth only 20 cents a square foot?

40 Mr. Stewart: Don't answer that. I object to that. There is no testimony that this

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particular block brings in excess of \$100,000 a year.

Mr. Casale: I withdraw the question.

Q. Mr. Flaster, is there any of the land that the Farmers Market own and which is under appeal by the Farmers Market which is evaluated by you at more than 20 cents a square foot? A. No. 10

Q. Now, my question is this: Do you consider that land which is capable of returning over \$100,000 a year is worth only 20 cents a square foot?

Mr. Stewart: I object to that for two reasons. The first one is that we are not concerned with the other land and what it produces which together with the land with which we are concerned, in the aggregate, produces, we will assume, \$100,000 a year. That is the first objection. 20

Second, Mr. Flaster's testimony is not that it is 20 cents a square foot. It was 20 cents a square foot without taking into consideration frontage and plottage. The price ran up to almost 24 cents a square foot, taking into consideration plottage and corners. 30

Mr. Casale: I withdraw the question again.

Q. You said 20 cents, plus ten percent. What is the ten percent? A. 20 cents—\$20 a front foot.

Q. That is 20 cents a square foot, isn't it? A. Yes.

Q. And you add ten per cent. That is two cents more, isn't it? A. Yes.

Q. That is 22 cents a square foot, then, isn't it? A. Well, I figured it out. 40

Leo Flaster, for Appellant—Cross.

The Commissioner: Let us take a short recess.

(A short recess was taken.)

By Mr. Casale:

10 Q. The property at 99-109 Lockwood Street, that infinitesimal piece, as compared to the Farmers Market case, you gave that 20 cents a square foot? A. That's right.

Q. That is the reason for your comparison per square foot, for your valuation of the Farmer's Market? A. That's right.

Q. \$20 a front foot would be 20 cents a square foot? A. That's right.

20 Q. Ten percent additional would be two cents more? A. Yes.

Q. So that it would be 22 cents a square foot that you have evaluated the Farmers Market land at? A. Yes.

Q. Now, I ask the question again: Is there any land involved in any of the appeals of the Farmers Market that you have evaluated at more than 22 cents a square foot?

30 Mr. Stewart: I object to that. We are not concerned with any other appeal than this particular one on 2-44 Cornelia Street.

Mr. Casale: In other words, is there any other land or any land of the Farmers Market that he has evaluated anywhere at more than 22 cents. Why can't we ask that in this case?

Mr. Stewart: I still object to it.

40 The Commissioner: You confine yourself to 2-44 Cornelia Street. That is a different thing.

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Mr. Casale: That is what I am confining myself to. He says he has evaluated 2-44 Cornelia Street at 20 cents a square foot.

The Commissioner: All right.

Mr. Stewart: Has he evaluated any of the Farmers Market land under appeal here at more than 22 cents? He can't answer that. 10

The Commissioner: You can answer that on the other appeals as you go along. You can ask the same question.

Mr. Casale: But that is nothing unusual to ask.

Mr. Stewart: Whether it is unusual or not, I have made my objection.

The Commissioner: All right, I will sustain the objection and grant you an exception. 20

Mr. Casale: I take an exception.

Q. I have to ask this question, whether it is objected to or not. We will have it ruled on.

You consider that the land of the Farmer's Market which is all under appeal here—

Mr. Stewart: But it is not. I object to that because that is not a fact. We have parcels here that are not under appeal.

Mr. Casale: On this calendar, all the land 30 is under appeal.

Mr. Stewart: No, sir. This triangular piece on the corner of Euclid Avenue is not under appeal.

Mr. Casale: That is a little sliver, there.

Mr. Stewart: It is not a little sliver, there. It is a big piece.

Mr. Casale: I withdraw the question.

Q. Considering the lands that are under appeal 40 by the Farmer's Market here, that are capable of

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income in excess of \$100,000 a year, do you consider that that land is worth only 22 cents a square foot?

10 Mr. Stewart: I object to that for the same reasons as all the others; and in addition to that, that there is no proof here that that land ever produced in excess of \$100,000.

Mr. Casale: Well, that is already in the case, and it has not been denied. We took the figures from your own books. We took the figures that you gave us and we didn't question them.

Mr. Stewart: No, no.

Mr. Casale: Let us take them right now.

20 (Discussion off the record.)

Mr. Stewart: I object to it as I did before, on the ground that we are not concerned with what the other portion of this land would bring, at all. We are only concerned with Block 2408, 2-44 Cornelia Street. We are not assessing income; at least, I hope that the City will never get to the point where they will assess income. That is what they are doing indirectly.

30 Mr. Casale: Not at all.

Mr. Stewart: I made my objection. I do not mean to argue the question of income.

Mr. Casale: I am trying to show this picture to the Commissioner. Here we have raw land, or vacant land as you want to call it, Commissioner. There is a value given of 22 cents, just land alone.

40 Now, if that land is capable of producing over \$100,000—\$114,000 to be exact, now that we have the figures—a year income,

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I am asking this man as an expert: Would you still say, where you could get that income out of that land, that you could get only 22 cents a square foot?

Mr. Stewart: That is the gross income that he is talking about.

Mr. Casale: That is right, yes.

10

Mr. Stewart: Now, gross land, or any other building, or anything else might produce a gross of \$114,000, and when you get through paying expenses and taxes and all the other things you may be in the red.

Mr. Casale: We are talking about the Farmers Market.

Mr. Stewart: I am objecting on the ground that the total produced is not relevant with this case of Block 2408.

20

Mr. Casale: When I am giving the figures, I am giving the figures gross. You know that. They are already in the case. Mr. Hannoch has given them.

I am giving this picture: Where land is capable of earning a gross of \$114,000 a year, would you still say that it is worth only 22 cents a square foot, just like vacant land or raw land, or whatever you call it.

Mr. Stewart: Now, that is argument, I suppose, that you are addressing to the Court.

30

Mr. Casale: I am explaining that to the Court, and I still press that question.

Mr. Stewart: It is not the land that produces \$114,000. It is the land and improvements that produce \$114,000, plus a lot of services that we render there, such as cleaning the snow off in the winter time, taking the garbage up every day, special police officers that we have down there and

40

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10 watchmen that we have down there. All that sort of stuff goes into the gross income of \$114,000, and I still say we are not concerned with what the whole market produces. We are concerned only with what Block 2408 produces. 2-44 Cornelia Street is the only property that we are concerned with, and I object to the question, and after your Honor rules on it, I am going to shut up.

Mr. Casale: Just one other explanation to my question. I have used the phrase "that is capable"; that is, land that is capable of producing so much money is still worth only 22 cents a square foot.

20 The Commissioner: You are talking about land, but you are not saying a word about buildings.

Mr. Casale: Land that is capable of producing that by the use of the buildings, the Plaza and so forth, the Farmers Market that we have here. He is shutting his eyes to all that.

30 I am trying to show that he is shutting his eyes to all this use that this land is capable of being used for. He says, "I don't care about the use. I am not considering the use. I am taking this just as real estate, vacant land, raw land," but I want to show—

The Commissioner: Ask the question on 2-44 Cornelia Street, then, perhaps, I might agree with you; but you are asking of this entire property as a whole.

40 Mr. Casale: That is the reason I got his answer first that there is no land of the Farmers Market that he has valued at more than 22 cents a square foot.

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The Commissioner: You confine your remarks to Cornelia Street, then, perhaps, it might be a different story.

Mr. Casale: But there is no land anywhere of the Farmers Market holdings that he has valued at more than Cornelia Street; therefore, the 22 cents a square foot is applicable to all the land, and therefore the general question is proper. 10

In other words, it is not valuation now that we are talking about. I am talking about whether or not, by his own words, and by the facts that are already put in the case, there is a gross income of \$114,000 a year for that land, which is capable of producing that gross income, would he still say that it is worth only 22 cents a square foot? 20

The Commissioner: What was his answer?

Mr. Casale: He didn't answer it.

Mr. Stewart: Because that was a question that I objected to; because this Board, at this time, is not interested in all the other land, at all. We have one plot under appeal and we have to stick to that. We can't take all the other land that the Farmers Market has, what it is used for, what it brings in and all that sort of thing, because that would be nothing but taxing income no matter how you look at it. 30

The Commissioner: Objection sustained.

Mr. Casale: I except to it. I take an exception.

By Mr. Casale:

Q. All right. Consider this just as 2-44 Cornelia Street. Assume, as is already proven in the 40

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case, that the income from the store rents is \$34,290, and half of the parking of the farmers, which was \$40,000, would be \$20,000 for that half, and you have a gross income of \$54,290 for just 2-44 Cornelia Street, which is just one part of the Farmers Market holdings which produces this
 10 part of the gross income of all the holdings of the Farmers Market. That is a figure of \$54,290 of income. Would you say that land that is capable of producing that is worth only 22 cents a square foot?

Mr. Stewart: I object to that because he does not state the fact.

Mr. Casale: Let us straighten out the fact. What is the fact?

20 Mr. Stewart: You took the other operations which you asked him to assume. The gross other operations amounts to \$20,000 allocated to this 2-44 Cornelia Street.

In other words, you should divide \$46,621 in half, and you probably halved it with two years.

Mr. Casale: That's right.

30 Mr. Stewart: But the fact is that a portion of that is produced from the islands that are on the north side of Albert avenue, between Catherine Street and Cornelia Street.

(Discussion between counsel off the record.)

The Commissioner: Ask him again, according to your figure, how much this property is allocated.

40 Mr. Stewart: He can't allocate it, because it is not possible.

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Mr. Casale: Because it is a whole business.

Mr. Stewart: My suggestion is this: Let him ask the questions that he wants to ask. Let me object to it, and you can rule on it without all this argument; and if you rule against me, I will take an exception, and if you rule against him, let him take one, but let's not keep talking forever. 10

The Commissioner: That is the idea.

Q. Now, if we did take 2-44 Cornelia Street by itself, and allocated it, the store rents, and took an average between 1939 and 1940, assuming that we have \$34,290 for that item of the store rents, and the rental for the market parking for the whole plaza being \$40,000, and this 2-44 Cornelia Street included about half of that parking plaza, using that \$20,000 of that \$40,000, and adding that to the \$34,290, getting \$54,000 for the gross income of that one piece, 2-44 Cornelia Street, that land being capable of that gross income, would you still say that it is worth 22 cents a square foot? 20

Mr. Stewart: I object to it for the reasons already stated.

The Commissioner: You are just talking about the land. How about the buildings on the property? 30

Mr. Casale: The land is capable, by this use, of earning that much. That is being used as buildings, being used as parking and whatever use is put into it.

The Commissioner: Your figure is accurate?

Mr. Casale: I think they are.

Mr. Stewart: I think he has come pretty close to it except with regard to the 40

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10 Farmer's fees which as I have already stated—that figure of \$40,000 which he used for Farmer's fees, or as they call it "parking" is in excess of what is received from farmers' fees on this particular piece, because of the fact that we get farmers' fees from that portion of the land north of Albert Avenue that I have already referred to.

The Commissioner: You say he comes close to it. Let him answer the question.

I will overrule the objection. Let him answer the question.

20 The Witness: It is still my judgment that that property is worth 20 cents a square foot, plus the influence that I gave it which brings it up to 22 cents a square foot.

By Mr. Casale:

Q. And if you had no use made, whatever, of the land comprised by the numbers 2-44 Cornelia Street on the assessing date, you still would say that it was worth 22 cents a square foot? A. Yes, sir.

30 Q. So that it makes no difference to you what the use of it was on that date, how much it was capable of producing of what improvements were thereon, is that right? A. I still say it is worth 22 cents a square foot with the various influences.

Q. You mean two cents a square foot additional for four street frontages and four corners and so forth?

The Commissioner: Who is answering this question, you or he.

40 Q. I say that is what you mean by influences?
A. Yes, sir.

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Q. Two cents a square foot additional for four streets and four corners, and plottage, is that right? A. That is right, sir.

Q. You have not considered the improvements thereon, the use to which it has been put—

Mr. Stewart: He has answered that question about a dozen times. 10

Mr. Casale: I want to make sure. I understand that he means the influences have nothing to do with the use, income or improvements thereon.

The Commissioner: Yes.

Mr. Casale: That is all.

Re-direct examination by Mr. Stewart:

Q. In response to a question by opposing counsel, you said that you shut your eyes to the improvements of the Farmer's Market. Why? A. Well, I was not taking into consideration the buildings, for one thing; and secondly, this is an industrial area, and therefore, I treated it strictly as industrial land. 20

Mr. Stewart: That is all.

Mr. Casale: Now, I would like, in order to clean up this 2-44 Cornelia Street, I would like to put Mr. Van Riper on the stand and ask him a couple of questions. 30

The Commissioner: What is the purpose of his testimony? Is he going to be helpful? That is what I want to know.

Mr. Casale: I hope so, because there seems to be a question of what kind of land it is.

The Commissioner: Is he a real estate man?

Mr. Casale: No, no. I mean the character of the land, not the value. There was a 40

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question of whether it was virgin land or whether it was filled in.

The Commissioner: I think you gentlemen will have to come back at two o'clock.

Mr. Stewart: I will be very short with my witnesses, as far as I am concerned.

10

(A recess was taken until two o'clock in the afternoon.)

AFTER RECESS.

The Commissioner. All right, cases 65 and 66.

20

LEO FLASTER, called as a witness in behalf of the Appellant, having been previously sworn, testified as follows:

Direct examination by Mr. Stewart:

Q. Mr. Flaster, did you value the property at 1-43 Joseph Street? A. Yes, sir.

Q. As of the assessing date, October, 1939? A. Yes, sir.

30

Q. Can you tell us what your appraisal value is? A. That plot has a frontage of 555 feet on Joseph Street, and the same frontage on Catherine Street; and on Albert Avenue, and on Euclid Avenue, 202 feet. There may be a slight variation there by fractions; and I have valued it on the same basis as the previous plot.

The Commissioner: What is the depth?

The Witness: 202 feet.

Q. 202 feet on the street line. It is really 40 200 feet from street to street? A. That is it, ex-

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actly. It is a whole square block; and I used the same basis of value on this block as on the block this morning, that is \$20 a foot. That covers both Joseph Street and Catherine Street. That would make that value, \$22,200, and the ten per cent additional for plottage, corners, and so forth, which brings the total value to \$24,440. 10

Q. And you used for comparative purposes the same properties that you referred to when we were discussing the assessment on 2-44 Cornelia Street, did you? A. Yes, sir.

Q. And you would give the same answers in reference to this as you did with respect to the questions that were put to you on 2-44 Cornelia Street? A. Yes, sir.

Mr. Stewart: I am doing this to shorten time. 20

The Commissioner: Yes.

Mr. Stewart: That is all.

Cross examination by Mr. Casale:

Q. Now, with respect—

Mr. Stewart: Now, my suggestion is merely this, if I may interrupt Mr. Casale for just a minute. My suggestion is this: That we could stipulate on the record that Mr. Casale would ask the same questions with regard to this appraisal as he did on 2-44 Cornelia Street, and the same answers would be given, and where a question was objected to, the same objections would be made by me and the same rulings would be made by your Honor. 30

The Commissioner: That is up to Mr. Casale. 40

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Mr. Casale: And the same direct examination would be given by the witness in this case as was in 2-44 Cornelia Street?

Mr. Stewart: No, he is giving the direct now.

10 Mr. Casale: As to the details on the direct, he would give the same direct testimony with regard to the valuations here that he gave for 2-44 Cornelia Street, and the reasons?

Mr. Stewart: If I understand you, I think that is just what I asked him. He took the same property, the same lots for comparative purposes as he did in 2-44 Cornelia Street.

20 Mr. Casale: My cross examination would be the same as in 2-44 Cornelia Street to apply to 1-43 Joseph Street, and his answers on this 1-43 Joseph Street, and his answers on this 1-43 Joseph Street would be the same as in 2-44 Cornelia Street.

Mr. Stewart: That is right.

Mr. Casale: And in this case, Mr. Flaster—

30 Mr. Stewart: Wait a minute. Let us finish this stipulation. —and that the same questions which you asked on cross examination on 2-44 Cornelia Street you would ask here, and I would object the same as I did there, and the Board would make the same ruling as it did on 2-44 Cornelia Street.

Mr. Casale: Yes, and the same objections on my part, too.

Mr. Stewart: Yes, the same thing all the way through.

The Commissioner: Yes.

40 Mr. Casale: Just one or two questions. Mr. Flaster, in this case of 1-43 Joseph

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Street, your valuation amounts to 20 cents, plus two cents additional, or 22 cents, in whole, per square foot for this land?

A. Yes, sir.

Q. And in this case, as in 2-44 Cornelia Street, you have treated the land as raw land, or vacant land, or whatever name you call it, without reference to improvements thereon, or the utility of the land? A. Yes, sir. 10

Mr. Casale: I think that covers that case.

Mr. Stewart: Well, I would like to read into the record the history of this particular block in 1936.

The Commissioner: You mean the tax history?

Mr. Casale: Well, isn't that a matter of record? 20

The Commissioner: Isn't that all in the other case?

Mr. Stewart: No, this is different. I mean, the results were different.

In 1936, the City assessed it for \$36,300, and the State Board reduced it to \$29,000.

In 1937, the City assessed it for \$36,300, and the State Board reduced it to \$26,100.

In 1938, the City assessed it for \$36,300; the State Board reduced it to \$26,100. 30

In 1939, the City assessed it for \$40,200, and the State reduced it to \$26,100.

In 1939, the improvements on that land: The City had levied a valuation of \$68,800, and the State Board reduced it to \$56,000, the reduction on improvements being by consent.

There is no appeal on the improvements this year. 40

Colloquy of Counsel.

Mr. Casale: There is, however, a cross appeal by the City which includes improvements, and although the tax history is something that can be referred to in the case, I still—

10 The Commissioner: There is no cross appeal by the City.

Mr. Casale: Oh, yes.

The Commissioner: 1-43 Joseph Street?

Mr. Casale: Yes, there is.

The Commissioner: On the improvements?

Mr. Stewart: Not on the improvements, I think.

20 Mr. Casale: There is a cross appeal. Case No. 66: \$56,000 is the assessed valuation of the improvements and there is no appeal by the owner to reduce that, and, naturally, the City stands on its allegation of \$56,000 for the building, but it is a full appeal, however.

The Commissioner: I am talking about the improvements. I am not talking about the land. I am talking about the improvements.

30 Mr. Casale: Well, we can't get more than \$56,000 for the improvements, that is true, but—

40 Mr. Stewart: I have the appeal here: "Your petitioner therefore prays that the said reduced assessment of land, \$36,300; improvements, \$56,000; total, \$92,300 for the year 1940, to be increased to the true value of the property, to wit: Land, \$111,000; improvements, \$56,000, total \$167,000." So that there was no appeal on the improvements.

Colloquy of Counsel.

Mr. Casale: So that the improvements cannot be higher than \$56,000, that is true; but the value of the whole property is \$167,000.

The Commissioner: But I am saying that there is no appeal on the buildings here.

Mr. Casale: We can't get more than \$56,000,— 10

The Commissioner: They are not asking for it either. If you want to take it as a whole that is another story.

Mr. Casale: —and as we are giving her valuation, we are considering the utility of the property. Therefore, I want to make this observation—

The Commissioner: Did you notice in your man's testimony that he goes beyond the \$56,000. He says the building is worth \$53,450. 20

Mr. Casale: \$53,450.

The Commissioner: \$53,450, that is right, and we could not reduce it if we wanted to, because there is no appeal on the building.

Mr. Casale: Now, with regard to the tax history, I have this to say. I want to make note of the fact that this is a trial *de novo*, just as in every case, and in this case the City is for the first time presenting the case— 30

The Commissioner: In a different manner.

Mr. Casale: No, not in a different manner. After all, we are taking a day to try it. For the first time, this case is being presented in a proper manner.

The Commissioner: The way you think it ought to be presented. 40

Colloquy of Counsel.

Mr. Casale: That is right, and for that reason the exact history is not as important in this case as it would be in another case where we would have tried this case each year the way we are are trying it now, in its fullness.

10 The Commissioner: But under the law, he has a right to give the tax history.

Mr. Casale: I didn't say he did not. I say we have to take it in the light with the fact that this case was never tried as carefully and with a full study of the case on the part of the City as it has been tried today.

The Commissioner: How do you know? I tried it several times.

20 Mr. Casale: You did not try it. You heard it.

The Commissioner: Yes.

Mr. Casale: If you can show me that it has been tried the way it has been tried for a whole day, now, then the tax history is important; but it has not been tried, and therefore, the tax history is not so important as in a case where it has been tried in its fullness each time.

30 The Commissioner: Now, in my memory, this thing has been footballed around for a long time.

Mr. Casale: It has not been tried before with a full study of the case.

The Commissioner: Maybe next year it may be tried in a different way.

40 Mr. Casale: We will come to next year, but I want the Commissioner seriously to consider and to remember that it was never tried with the fullness and the proper study

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on the part of the City as we have tried it today and that is the reason it has taken a full day.

The Commissioner: I grant you that.

Mr. Casale: I hope that is stated with the feeling that we have tried to present a proper case.

10

The Commissioner: Yes, that is a very intelligent manner.

Mr. Stewart: I want to say this, and you will remember it because I wasn't here when this was tried on September 17, 1941.

This is not the first time it has been tried on this theory. The only difference is that we have Mr. Hannoeh here this time instead of Mr. McCabe. Mr. McCabe used the same theory as Mr. Hannoeh is using.

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Mr. Casale: No, he did not.

Mr. Stewart: I am not arguing that.

The Commissioner: This is a trial *de novo*, so let us go to the next.

The Commissioner: 46-48 Cornelia Street.

LEO FLASTER, having been previously sworn in 30
behalf of the Appellant, testified as follows:

Direct examination by Mr. Stewart:

Q. Now, Mr. Flaster, that piece of property consists of what? A. That is a plot of ground 545 feet on Cornelia Street, 202 feet on Albert Avenue, 582 feet on Catherine Street, and 202 feet on Lister Avenue.

The Commissioner: What is the depth? 40

Leo Flaster, for Appellant—Cross.

10 The Witness: The depth is 202 feet, and has a frontage on four streets, and I have placed a value there of \$20 a foot on the two long streets, that is, Cornelia and Catherine Streets, 1,127 feet, which brings my value to \$22,540. Then I have given it an additional ten percent which makes that \$2,254 more or a total of \$24,794.

Q. And you used for comparative purposes the same sales that you referred to in making the valuation on 2-44 Cornelia Street? A. Yes, sir.

Mr. Stewart: I think that is all.

Cross examination by Mr. Casale:

20 Q. And your answers on cross examination—

Mr. Stewart: We will make the same stipulation to refer to all the cases just the same as it did to 1-43 Joseph Street.

Q. And in regard to this case, Mr. Flaster, reduced to square feet, your value would be 22 cents a square foot? A. Yes, sir.

30 Q. For your raw land or vacant land, or whatever you might call it? A. Yes, sir.

Mr. Stewart: In this case there was no appeal from the building assessment.

The Commissioner: 76-90 Albert Avenue.

Leo Flaster, for Appellant—Direct.

LEO FLASTER, having been previously sworn in behalf of the Appellant, testified as follows:

Direct examination by Mr. Stewart:

Q. This property consists of what? A. That is a plot that has a frontage on Albert Avenue of 202 feet, 101 feet on Joseph Street, and 101 on Catherine Street. 10

The Commissioner: What is the depth?

The Witness: 101 feet. That has a frontage on three streets. I have placed a value there of \$20 per foot on this property which represents a total of \$4,040, and I have also given it the benefit of the corners.

The Commissioner: Corner influence? 20

The Witness: Yes, sir, ten percent or some \$404, which gives a total of \$4,444.

Q. And you used in this case the same sales of properties that you referred to in the 2-44 Cornelia Street appeal in arriving at your values, did you? A. Yes, sir.

Q. For the purpose of comparison? A. Yes, sir.

Q. And the same stipulation? A. Yes, sir. 30

Mr. Casale: Same stipulations.

The Commissioner: 54-82 Catherine Street.

Lea Flaster, for Appellant—Direct—Cross.

LEO FLASTER, having been previously sworn in behalf of the Appellant, testified as follows:

Direct examination by Mr. Stewart:

10 The Witness: That is a plot that has a frontage of 382 feet with a depth of 100 feet. That is in the center of the block. I have valued that at \$20 a foot or \$7,600. I have given it no additional percentage because of the plottage, because it is in the center of the block and does not enjoy any corner influence or anything of that sort.

20 Q. And you used the same properties that you referred to on the 2-44 Cornelia Street appeal as comparative properties to assist you in arriving at the values of this property, did you? A. Yes, sir.

 Mr. Stewart: That is all.

Cross examination by Mr. Casale:

 Q. On one side, this has a depth of 116 feet?

A. According to the map here, it has a depth of 101 feet on one side and 100 on the other.

30 Mr. Casale: We have 116 feet depth.

 Mr. Stewart: That only refers to a piece of property that is 75 or maybe 100 feet. That has a frontage right in the middle of the block, and has a frontage of 100 feet for those four lots. It has a depth of 116 feet.

 Mr. Casale: Which amounts to 1600 more square feet, doesn't it?

 The Commissioner: Would that change your testimony?

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Leo Flaster, for Appellant—Cross—Direct.

The Witness: I would be inclined to give that 20 cents a square foot for the additional depth, or \$32.

The Commissioner: How much would that make it?

The Witness: \$7,632.

Q. 1,600 square feet additional. You say that only amounts to \$32 more? A. Well, whatever it is. 10

Q. Isn't it \$320? Let us go over it and see.
A. Yes, it is \$320.

The Commissioner: What is it now?

The Witness: It is now \$7,920.

Mr. Casale: As to this there is a stipulation also?

Mr. Stewart: Yes, sir. 20

The Commissioner: 67 Lister Avenue.

LEO FLASTER, called as a witness in behalf of the Appellant, having been previously sworn, testified as follows:

Direct examination by Mr. Stewart:

The Witness: 67 Lister Avenue. That is at the southeast corner of Catherine Street. Plot 27 by 101, with the rear line having only an 8-foot depth—rather 8 foot across the rear. I have valued it at \$20 a foot on the whole giving it no corner influence because of that narrow rear. \$20 a foot for 27 feet, \$540. It is known as 67 Lister Avenue. It is the southeast corner of Catherine Street. 30

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Leo Flaster, for Appellant—Cross.

Harold J. McCabe, for Respondent—Direct.

Cross examination by Mr. Casale:

10 Q. That is a corner, isn't it? Why hasn't it got a corner influence? A. Because the property runs to only 8 feet in the rear, and I have equalized it in my mind on that basis.

Q. What is your basis? A. \$20 a foot. 27 feet, \$540.

Q. In addition to that, it has corner influence? A. But I have not allowed any corner influence.

Q. You don't think corner influence should be allowed although it has a corner? A. In this case, yes, sir.

Mr. Casale: That is all.

Mr. Stewart: That is all.

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HAROLD J. McCABE, having been previously sworn in behalf of the Respondent, testified as follows:

Direct examination by Mr. Casale:

Q. Mr. McCabe, you have been sworn in this case?

The Commissioner: Yes.

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Q. Mr. McCabe, the land that is owned by the Newark Farmer's Market, what designation would you give to that land as to its physical characteristics? A. Virgin land.

Q. It is virgin land. What would you say as to the land that is involved in the sales that were given by Mr. Flaster? A. The piece on the west side of Lockwood Street is virgin land. East Lockwood Street is on the edge of the meadows, part of it being in the meadows.

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Harold J. McCabe, for Respondent—Cross.

Q. And when you say "in the meadows", what kind of land is that? A. That is marsh land.

Q. And is there any distinction between marsh land and virgin land? A. Marsh land you have to pile.

Mr. Casale: That is all.

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Cross examination by Mr. Stewart:

Q. As a matter of fact, didn't you know that the Newark Farmer's Market is filled in land?

A. Yes, but it is virgin land.

Q. Well, it is filled in land, isn't it? A. It was filled in over fifty years ago when the refinery used to be west of Chapel Street, east of Chapel Street and south of Albert Avenue, and east of the railroad, the land was low.

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Q. I don't care about this other land you are talking about. I am talking about the land between Euclid Avenue on the south. We will call it Lister Avenue on the north and Cornelia Street on the west, and Joseph Street on the east, that land is filled in land, isn't it? A. Fifty years ago, with the finest fill you can get.

Q. I don't care when or what it was filled in with. It is filled in land, isn't it?

The Commissioner: He answered it.

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Q. And you know, as a matter of fact, do you, Mr. McCabe, that in the few stores that have cellars in this Newark Farmer's Market property, that they can't put toilets in there because it is below the grade of the sewer? A. That may be the way the improvements were laid out. That is faulty construction of the sewer.

Q. Faulty construction of the sewer? A. That is true of a house I own.

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Harold J. McCabe, for Respondent—Cross.

Q. I am not interested in a house you own.

Mr. Casale: Let him finish. I think we should let him finish his answer and not stop him in the middle.

10 Mr. Stewart: I don't think the witness should be allowed to tell about a house that he happens to own that happens to have a toilet on the second floor, or something like that, instead of the first floor.

The Commissioner: We are concerned with the property under appeal.

Q. You know, Mr. McCabe, if you dig down below four feet on this land of the Newark Farmer's Market, you begin to strike water, don't you?

A. No, I would not believe that.

20 Q. You would not believe that? A. No.

Mr. Stewart: That is all.

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Deposition of Albert R. Van Riper—Direct.

ALBERT R. VAN RIPER, called as a witness on behalf of the Prosecutor, being duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. McDonough:

- 10 Q. Mr. Van Riper, you are associated with the Newark Farmers Market? A. Yes.
- Q. How long have you been associated with that corporation? A. I have been associated as director ever since the market was incorporated in January, 1931.
- Q. What is your present position with the corporation? A. Director and manager.
- Q. When was the corporation organized? A. In January of 1931.
- 20 Q. Will you tell us generally what are the provisions of the certificate of incorporation with relation to the ownership of stock in this corporation? A. In the certificate of incorporation, which was in January, 1931, the capital stock was set at \$100,000 and it was Class A stock issue. The Class A stock was to be sold to farmers only. In September of 1931, we amended the original certificate increasing our capital stock to \$200,000 and also giving us the right to issue Class B stock.
- 30 The Class B was sold to merchants who are tenants of the Newark Farmers Market, the difference in the Class A stock and the Class B stock being the Class B stock does not have any voting power in so far as the management of the corporation is concerned.
- Q. How much stock was authorized in the amending certificate as to Class A? A. \$180,000 of Class A stock and \$20,000 of Class B stock.
- 40 Q. What are the provisions of the amending certificate relating to the ownership of the Class A

Deposition of Albert R. Van Riper—Direct.

stock? What are the provisions of the amending certificate as to the ownership of Class A stock?
 A. To own Class A stock you must be a farmer, and we define a farmer as one who either tills the soil or supervises tilling of the soil; in other words, gains his principal income from the tillage of the soil.

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Q. What are the provisions of your amended certificate of incorporation with respect to the directors of your corporation? A. The directors of the corporation, the number is set at 12 who must be farmers.

(Discussion off the record.)

Mr. McDonough: I offer the provisions of Paragraph 7 and Paragraph 9 of the amended certificate of incorporation of the Newark Farmers Market which reads as follows:

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“Seventh: The number of directors for each next ensuing year shall be fixed by the shareholders at each annual meeting of the corporation, but such number shall never be less than nine, nor more than thirty. In order to secure a proper representation on the board of directors from the farmers in the various localities in the State, no more than four directors, at the time of their election, shall be resident in any one county of the State. The directors shall be persons who gain their principal income from the personal tillage of the soil or the occupation of a husbandman, or by the personal overseeing and superintendence by them of others who so till the soil or are engaged in the occupation of a husbandman. If, at any annual meeting, the number of directors for the then next ensuing year be fixed

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Deposition of Albert R. Van Riper—Direct.

at more than nine, such increase must be by the addition of three directors or by the addition of some multiple of three.

10 “The directors shall be classified, with respect to the time for which they shall severally hold office, by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year, the directors of the second class for a term of two years, and the directors of the third class for a term of three years, and, at such annual election, the successors of the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of one class of directors shall expire in each year.

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 “*In case of any increase in the number of directors at any annual meeting, as above provided, one-third of the additional directors shall be elected for one year, one-third of their number for two years, and one-third for three years, so that each class of directors shall be increased equally.*

30 “*In case of any vacancy in any class of directors through death, resignation, disqualification or any other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacated and until the election of a successor.*”

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Deposition of Albert R. Van Riper—Direct.

“Ninth: (a) Qualifications necessary to become a stockholder:

“Class A Common Stock: Class A Common Stock may, except as herein otherwise provided, be owned only by one who gains his principal income from the personal tillage of the soil or the occupation of a husbandman, or by the personal overseeing and superintendence by him of others who so till the soil or are engaged in the occupation of a husbandman. 10

“Class B Common Stock: Class B Common Stock may be sold by this corporation only to any person eligible to buy Class A Common Stock or to tenants of buildings on the property operated by this corporation as a farmers market. 20

“Certificates of either Class A or Class B Common Stock may be sold or transferred by the holders thereof only under the conditions hereinafter provided.

“(b) Restrictions on sale, transfer or assignment of shares:

“Class A Common Stock: Any holder of Class A Common Stock of this corporation, desirous of selling or transferring all or any of his shares, and the executor or administrator of any deceased holder of such stock, if desirous of selling or transferring all or any of such shares belonging to the estate of such deceased, and the purchaser of any share or shares of such stock sold on execution or at any judicial sale, if desirous of selling or transferring any such share or shares, may sell said share or shares to any other shareholder in this 30 40

Deposition of Albert R. Van Riper—Direct.

10 corporation owning Class A Common Stock, for such price as may be agreed between the seller and the buyer. If unable to find any purchaser of said stock from among other shareholders owning Class A Common Stock of this corporation, then, before making sale of the same to any other person or corporation, such shareholder, executor or administrator of any deceased holder of such stock, or such purchaser of any such share or shares sold on execution or at any judicial sale, shall proceed in the following manner:

20 “Any shareholder of Class A Common Stock, if desirous of selling or transferring all or any of his shares, and the executor or administrator of any deceased shareholder of Class A Common Stock, if desirous of selling or transferring all or any of such shares belonging to the estate of such deceased, and the purchaser of any share or shares of Class A Common Stock sold on execution or at any judicial sale, if desirous of selling or transferring any such share or shares, and the pledgee of any such share or shares, before bringing any suit, action or proceeding or doing any act to foreclose his pledge, shall first deliver, to the president or treasurer of the corporation, written notice of such desire to sell or transfer or of intention to foreclose, designating the number of shares to be sold, transferred or foreclosed, as the case may be, and the number of the certificate or certificates therefor, and the name and residence address of a person who is then a shareholder of Class A Common Stock in the corporation who shall act as an appraiser.

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“The president and treasurer or the board of directors of the corporation shall, within ten days after delivery as aforesaid of such notice, select another shareholder of Class A Common Stock as an appraiser, and give written notice of his name and residence address to the person desirous of making such sale, transfer or foreclosure, and to the appraiser appointed by him; the two appraisers so selected shall, within twenty days after the giving of said last named notice, select a third appraiser, who shall be experienced in the business of loaning money or in banking, and who shall reside or be engaged in business in the city in which the general administrative office of the corporation is located, and they shall at once notify the person desirous of disposing of the stock and the president and treasurer or board of directors of the corporation, in writing, of the name and residence address of said third appraiser. 10 20

“If the two appraisers so selected shall not, within said twenty days select such third appraiser, either party may apply, upon five days’ written notice to the other, to any president of any national bank in the City of Newark, in the County of Essex, for the appointment of such third appraiser. 30

“The three appraisers so selected shall, within thirty days after the selection of the third appraiser, appraise such share or shares proposed to be sold, transferred or foreclosed, and the majority of them shall determine the value of such share or shares as of the time of such appraisal and shall forthwith give written notice of their determination to both parties. 40

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10 “Said appraisal shall take place at the said general administrative office of the corporation, and the appraisers shall notify both parties, in writing, of the time when the appraisal will be made. Each party shall pay the expense and fees of the appraiser selected by him or it, and one-half of the expense and fees of the third appraiser.

20 “The board of directors shall thereupon have the option, for twenty days after receipt by the corporation of written notice of the determination of the appraisers, of purchasing said share or shares for the corporation at the appraised value. Payment for any such share or shares may be made by the board by depositing the said appraised value to the credit of such shareholder, executor, administrator, grantee, assignee or pledgee, as the case may be, in any national bank in the City of Newark, New Jersey, to be paid to such person by said bank upon the surrender of the certificate or certificates for said share or shares, properly endorsed, and the board shall give written notice of such deposit to the seller.

30 “Said board shall not be obliged to purchase any share or shares of stock at the appraised value aforesaid, unless it shall think fit; but if it shall not, within the last named twenty days, purchase and pay for the said share or shares, and no shareholder of Class A Common Stock within the corporation will buy said share or shares, such shareholder, executor, administrator, grantee, assignee or pledgee,

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shall be at liberty to sell said share or shares to any person whomsoever.

“The board of directors and the person desiring to sell or foreclose may waive the foregoing requirements as to appraisal and may mutually agree upon the value of any share or shares to be sold.

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“Failure of the board to purchase any share or shares of stock so appraised, and the sale or transfer thereof to any other person or corporation, shall not, as to any future sale or transfer of said share or shares or of any share or shares issued in lieu thereof, discharge any such share or shares of stock from any of the restrictions herein contained; it being the intent that all restrictions hereby imposed upon the sale or transfer of shares of Class A Common Stock shall apply to all shares of Class A Common Stock, whensoever, howsoever or by whomsoever acquired, in the hands of all holders or owners, whether original shareholders or subsequent purchasers or transferees, and whether acquired through the voluntary or involuntary act of a shareholder or by operation of law, and whether a part of the first authorized issue or of any subsequent or increased issue.

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“All shares of Class A Common Stock issued by this corporation shall, on their face, contain a reference to this provision of this charter.

“Class B Common Stock: Any holder of Class B Common stock of this Corporation, desirous of selling or transferring all or any of his shares of Class B Common stock, and the executor or administrator of any

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Deposition of Albert R. Van Riper—Direct.

10 deceased holder of such stock, if desirous of selling or transferring all or any of such shares belonging to the estate of such deceased, and the purchaser of any share or shares of such stock sold on execution or at any judicial sale, if desirous of selling or transferring any such share or shares, may sell said share or shares to any other shareholder in this corporation owning Class A or Class B Common Stock, or to any other person authorized to purchase originally from the corporation either Class A or Class B Common Stock, for such price as may be agreed upon between the seller and the buyer. If unable to find any purchaser of said stock from among other shareholders owning Class A or Class B Common

20 Stock of this corporation, or other persons authorized to purchase originally from the corporation either Class A or Class B Common Stock, then, before making sale of the same to any other person or corporation, such shareholder, executor or administrator of any deceased holder of such stock, or such purchaser of such share or shares sold on execution or at any judicial sale,

30 shall proceed in the same manner as is provided in the case of holders of Class A Common Stock desirous of selling their stock, except that the holder of Class B Common Stock, whether by purchase from the corporation or from another shareholder of Class B Common stock, or whether a purchaser at execution or other judicial sale, or the executor or administrator of any deceased holder of such stock, if desirous of

40 selling or transferring any such share or

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shares, and the pledgee of any such share or shares, before bringing any suit, action or proceeding or doing any act to foreclose his pledge, shall first deliver to the president or treasurer of the corporation written notice of such desire to sell or transfer or of intention to foreclose, which notice shall contain the same information as is required in the case of Class A Common Stock, and the same procedure as to appraisal shall be had and within the time as is hereinabove provided in the case of sale, transfer or foreclosure, of Class A common Stock, except that the appraisers selected by the shareholder and the corporation shall be holders of Class B Common Stock.

“Upon appraisal being arrived at, the board of directors shall have the option, for twenty days after receipt by the corporation of written notice of the determination of the appraisers, to purchase said Class B share or shares for the corporation at the appraised value, payment for the same to be made in the same manner as is provided for in the case of Class A Common Stock. The board of directors shall not be obliged to purchase, in behalf of the corporation, any such share or shares of stock at the appraised value aforesaid unless it shall think fit; but if it shall not, within said last named twenty days, purchase and pay for said share or shares, and no shareholder of Class A or Class B Common Stock within the corporation, or other person authorized to purchase originally from the corporation either Class A or Class B Common Stock, will buy said share or shares, such share-

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Deposition of Albert R. Van Riper—Direct.

holder, executor or administrator, grantee, assignee or pledgee shall be at liberty to sell said share or shares to any person whomsoever.

10 “The board of directors and the person desiring to sell or foreclose may waive the foregoing requirements as to appraisal and may mutually agree upon the value of any share or shares of Class B Common Stock to be sold.

20 “Failure of the board to purchase any share or shares of Class B Common Stock so appraised, and the sale or transfer thereof to any other person or corporation, shall not, as to any future sale or transfer of said share or shares or of any share or shares issued in lieu thereof, discharge any such share or shares of stock from the restrictions herein contained; it being the intent that all restrictions hereby imposed upon the sale or transfer of Class B Common Stock shall apply to all shares of Class B Common Stock, whensoever, howsoever or by whomsoever acquired, in the hands of all holders or owners, whether original shareholders or subsequent purchasers or transferees, and whether acquired through the voluntary or involuntary act of a shareholder or by operation of law, and whether a part of the first authorized issue or of any subsequent or increased issue.

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“All shares of Class B Common Stock issued by this corporation shall, on their face, contain a reference to this provision of this charter.”

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Deposition of Albert R. Van Riper—Direct.

Q. Now, where is the property of the Newark Farmers Market that is involved in these appeals?

A. The property of the Newark Farmers Market is located in the Ironbound section of the city. It is bounded by Lister Avenue on the north, Euclid Avenue on the south, Joseph Street on the east, and Cornelia Street on the west, and it is situated between the Passaic River and the old Morris Canal. It is located in a heavy industrial zone and is not located on any main highway. 10

Q. What roughly is the extent of the acreage of the holdings of the Newark Farmers Market? A. Ten acres.

Q. Now, I show you Blocks 2408, 2409, 2451 and 2423 of the Robinson Atlas, and I ask you to tell us which are the properties owned by the Newark Farmers Market as shown on this map? A. Block 2408, also known as 2 to 44 Cornelia Street. 20

Q. What are the dimensions of that block? A. 555 feet on Cornelia Street and 555 feet on Catherine Street, with a depth of 100 feet on Catherine Street, and a hundred depth on Cornelia Street, or 111,000 square feet.

Q. Now, as to Block 2409, will you tell us what are the dimensions of that block? A. 2409, the dimensions are 555 feet on Catherine Street, and 555 feet on Joseph Street with a depth of 100 feet on Catherine Street and 100 feet on Joseph Street, a total of 111,000 square feet. 30

Q. Block 2451. A. Block 2451, the dimensions are 545 feet on Cornelia Street, and 482 feet on Catherine Street, a total of approximately 114,000 square feet.

Q. What portion of Block 2423 does the Newark Farmers own? A. What portion do they own?

Q. Yes. A. Well, they own,—that is known as 76 to 90 Albert Avenue, and from 54 to 82 Catherine Street. 40

Deposition of Albert R. Van Riper—Direct.

Q. With reference to the lot numbers on this map, will you tell us what are the lot numbers? A. There is 24 to 31 Albert Avenue, and from 32 to 24 Catherine Street.

10 Q. Now, with reference to Block 2408, what buildings are erected on that block? A. There is a group of buildings erected on Block 2408 on Cornelia Street. These buildings are one-story buildings built of concrete block with a brick veneer front with a canopy over the front. Those buildings face the open plaza, the backs of the stores on Cornelia Street.

Q. Can you tell us how long that building is? A. The building is approximately 475 feet.

20 Q. What is constructed on the remaining portion of Block 2408? A. On the remaining portion we have a farmers' plaza which is concreted, improved with six-inches of reinforced concrete. Over 90 feet of this plaza there is built an island which is raised four inches above the level of the ground and on this island there are light poles constructed for the purpose of lighting the plaza. The poles are the common structure of city lighting poles. These poles are 18 feet high with an arm across the top extending four foot on either side of the pole with one light socket on each side making two
30 lights on each pole.

(Discussion off the record.)

Q. Are there any other buildings on Block 2408? A. Yes, there is.

Q. Where is that located? A. That is located on Euclid Avenue facing the farmers' plaza.

Q. That is of the same type of construction? A. Same type of construction, concrete with brick veneer front and a canopy in the front.
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Deposition of Albert R. Van Riper—Direct.

Q. What is the size of that building? A. 90 x 60 feet.

Q. What is the depth of all of these buildings on this block? A. 60 feet.

Q. Now, with reference to 2409, will you tell us what buildings are constructed on that parcel?

A. The buildings on 2409 are constructed on Joseph Street with the fronts of the buildings facing the market plaza. They are of the same construction as the buildings on Cornelia Street, which is a one-story building with the exception on the corner of Albert Avenue where our office is located, that is a two-story building. That is also concrete block with brick veneer front and a canopy. 10

Q. And that extends along Joseph Street for what distance? A. 485 feet.

Q. Are there any other buildings on this plot? 20

A. A two-story building at the corner of Albert and Catherine. That is 32 feet. That is the only two-story building.

Q. Is there any building on Block 2409? A. Yes, 202 feet x 60.

Q. What is constructed on the remainder of Block 2409? A. On the remainder of Block 2409, we have a plaza constructed of six-inch reinforced concrete with platforms raised four inches above the level, two poles on each platform, the poles being similar to the ones on the Cornelia Street side. There are six platforms on either side. 30

Q. What is erected on the platforms? A. Light poles 18 feet high with an arm extending from the top two feet on either side two light sockets for each pole.

Q. What is the depth of the concrete plaza? A. Six-inch reinforced concrete, I think I said there. 40

Deposition of Albert R. Van Riper—Direct.

Q. Now, with reference to the platforms on the market plaza, what are these platforms used for?

A. The platforms are used for the farmer to back his truck into and unload his truck and display his merchandise for sale on the platforms. They are also used for buyers inspecting the merchandise and buying it, to pass through and examine it.

10 Q. Now, with reference to Block 2451, what is constructed on that parcel? A. We have one building constructed on the corner of Albert Avenue measuring 72 feet x 60 which is of the same construction, concrete block with brick veneer front and a canopy. That also faces Catherine Street.

20 Q. What else is erected on that block? A. We have some reinforced concrete with three platforms which are similar to the platforms on Cornelia Street and Joseph Street, and the lighting is also similar.

Q. The entire block 2451 is not concreted, Mr. Van Riper? A. No.

30 Q. Will you tell us what portion of that block is concreted? A. Approximately 24,000 square feet. That is concreted, improved with six-inch reinforced concrete approximately 240 feet along Catherine Street and a depth of approximately 100 feet.

Q. Now, with reference to that portion of Block 2423 owned by the Newark Farmers Market, is any portion of that property improved? A. Yes. There is a portion improved on Catherine Street which would be the same in length as the property just mentioned, 200 feet on Catherine Street, with a depth of approximately 100 feet, a total of 20,531 square feet.

40 Q. Are there islands constructed on this concrete portion of Block 2423? A. Yes, there are

Deposition of Albert R. Van Riper—Direct.

three islands constructed there similar to the rest of the islands.

Q. Are there lights on the islands located in Block 2451 and 2423? A. Yes.

Q. Now, will you tell us generally the operation of the Newark Farmers Market, first, with reference to the buildings? A. The buildings are leased to tenants who are in the wholesale fruit and vegetable business, wholesale grocery and restaurants. The buildings are rented on a monthly and annual basis and the rent is collected monthly. In reference to the plaza, the farmers who use space in the plaza, pay their fees nightly. 10

Q. The Market Corporation rents out spaces in the plaza to farmers? A. Yes.

Q. What is the rental charge collected by the Newark Farmers Market? A. One dollar a night for one stand. 20

Q. And for two stands rented to the same farmer? A. One dollar and a half.

Q. Now, where do these farmers come from? A. New York, New Jersey, Pennsylvania, Delaware, Maryland; any farmer has the privilege of using the market providing he is a farmer and grows his produce. There are no restrictions as to whether or not he is a stockholder, every one has the same privilege. 30

Q. Now, how many persons does the corporation employ? A. They employ a bookkeeper, market-master, Mr. Burke, a manager, myself, maintenance man, two watchmen and three special officers.

Q. Are those special officers employed during the entire year or only during the season? A. One special officer is employed for full time, the full year, the other two are employed for part of the year, from the 15th of May to December, around the holidays. 40

Deposition of Albert R. Van Riper—Cross.

Q. What are the duties of the special officers?

A. The duties of the special officer is to take care of traffic, keep the traffic moving, so that the buyers and farmers are not tied up; also to settle any argument and discussions that may come up between the growers and the buyers in regard to prices and deposits and so forth.

10 Q. Now, who takes care of the cleaning of the market plaza? A. The Market Corporation. We remove the garbage every day and sweep the entire market. They also light the market, furnish the lights for the plaza, furnish water for the buildings on the Cornelia Street side of the market and maintain a public lavatory.

20 Q. Does the Market Corporation do any advertising? A. Yes, we do newspaper advertising, postcard advertising, radio advertising and billboard advertising, directional signs.

Mr. McDonough: It is stipulated the judgments of the State Board of Tax Appeals with reference to Block 2451, lot 1, 46-88 Cornelia Street, fix the assessment for this parcel of land, \$25,000 and improvements \$7,900; Block 2423, lot 24-31, 76-90 Albert Avenue, land \$4800; Block 2423, lot 32-46, 54-82 Catherine Street, land \$8,500.

30 Cross-examine.

Cross-examination by Mr. Casale:

Q. What is the amount of stock outstanding as of the assessment date, can you tell us that? That is, October 1, 1939. A. Approximately \$169,000 and some odd.

Q. That is of what class? A. Approximately \$8,000 of B, and the balance A.

40 Q. Now, as of October 1, 1939, how many tenants were there in the stores and the buildings

Deposition of Albert R. Van Riper—Cross.

that you have described and of which you have given the size? Can you tell us that? A. I can give you an approximate number, 54.

Q. How many of those tenants of the stores were holders of stock, whether Class A or Class B?

A. They could not hold any Class A.

Q. How many of those tenants hold Class B stock? A. 15 approximately. 10

Q. And did those 15 approximately hold the \$8,000 worth of B stock which was issued and outstanding at that date, or was any of that \$8,000 held by others than those 15? A. Yes, I believe some was held by farmers.

Q. Were those farmers other than tenants who rented stores? A. The farmers were, yes.

Q. And were those farmers who hold A stock?

A. The same owners that held B stock? 20

Q. Yes. A. Yes.

Q. How much of that \$8,000 would you say was held by farmers outside of these 15 store tenants? A. That I could not answer.

Q. Do you know approximately how much of that \$8,000 in B stock was held by the 15 tenants of the stores, approximately? A. Well, I would say all but a couple of thousand.

Q. Can you tell us how many individual farmers actually use the farmers plaza there, that you have described, where you have the selling platforms? 30

A. 500 approximately.

Q. How many of those 500 have any of the outstanding A stock, if any? A. Well, approximately 400.

Q. Do any of those have any B stock? A. Yes.

Q. Would they be the same ones who hold the A stock? A. Yes.

Q. Could you tell us how many hold B stock of those farmers? A. Approximately six to seven. 40

Deposition of Albert R. Van Riper—Cross.

Q. Does the Newark Farmers Market, Inc., the corporation here concerned as a corporation, sell any products or produce or anything else that the stores and the farmers in the plaza or on the plaza sell? A. No.

10 Q. The corporation itself collects rents from the buildings which are occupied as stores and collects the dollar for each farmer's truck which parks at these islands that you have described for each night that they so occupy the space that the truck takes up or if the same farmer has two trucks, a dollar and a half a night, the corporation collects that income from both those sources, isn't that right? A. Yes.

20 Q. And then the corporation gives certain services to the tenants of the stores and the farmers who occupy the plaza, do they not? A. Yes.

Q. And you have enumerated those services on your direct examination, haven't you? A. Yes.

Q. And the amount of money that is expended by the corporation for those services is then deducted from the income that the corporation derives to determine what its net income is, isn't that right? A. Yes.

30 Q. Are the figures which Mr. Franklin Hanoach, the city expert, used in his testimony before the State Board of Tax Appeals on income and expenses, the figures which the Newark Farmers Market, Inc. furnished from their books? A. Yes.

Q. Has the corporation paid any dividends at any time? A. Yes.

Q. When? At what time? For what year or years? A. Well, they have paid for the last nine years.

40 Q. What other asset or assets has the corporation other than this property involved in this case? A. No, we don't own any other land or buildings.

Deposition of Albert R. Van Riper—Cross.

Q. The net income of the corporation for the year in question or for any year is reflected in the amount which is derived from the rents of the stores that you have mentioned and of the amount paid for the spot parking by farmers for sale purposes after the amount that is expended for the services you have mentioned has been deducted, is that true? A. Yes. 10

Mr. Casale: I think that is all.

Mr. McDonough: I would like to offer this plat of Robertson's Atlas for the purpose of showing the location of the city lot blocks owned by the Newark Farmers Market, it being agreed that in Block 2406 that a portion of the building identified as Rosendale Reddaway Belting & Hose Company is used in a similar fashion to the buildings upon the Newark Farmers Market premises, that is, stores for the sale of groceries and similar products, the remainder of the premises being used for manufacturing purposes. 20

(Marked Exhibit P-1.)

(Discussion off the record.)

(It is stipulated and agreed by and between counsel for the respective parties that the signature of the witness be waived to his deposition.) 30

Examiner's Certificate.

NEW JERSEY SUPREME COURT

10 NEWARK FARMERS MARKET, INC.,
a corporation of the State of
New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAX APPEALS
and THE CITY OF NEWARK,
Defendants. .

On Certiorari.
Certificate.


20 I, EUGENE DONEGAN, a Supreme Court Examiner
of New Jersey, do hereby certify that the fore-
going deposition of Albert R. Van Riper, a wit-
ness on behalf of the prosecutor in the above
entitled cause, was taken by and before me and
that the foregoing is a true and correct tran-
script of the evidence given at the time and place
aforesaid.

EUGENE DONEGAN,
Supreme Court Examiner
of New Jersey.

30

Exhibit R-1.

Plan of the Location and the Blocks.

(Opposite )

40

RAYMOND BLVD.

CHAPEL

St

AVE

AVE

EUCLID

ALBERT

LISTER

CORNELIA

St

CATHERINE

St

JOSEPH

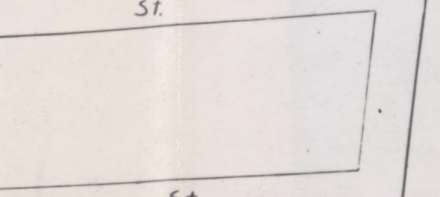
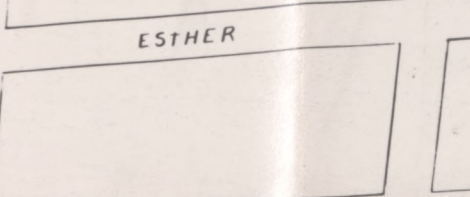
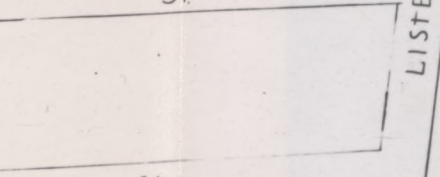
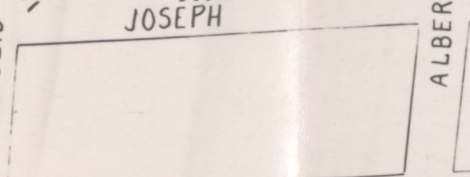
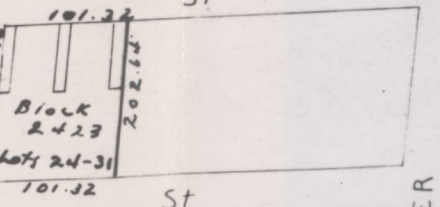
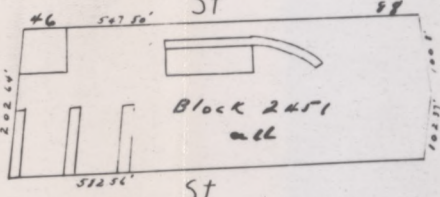
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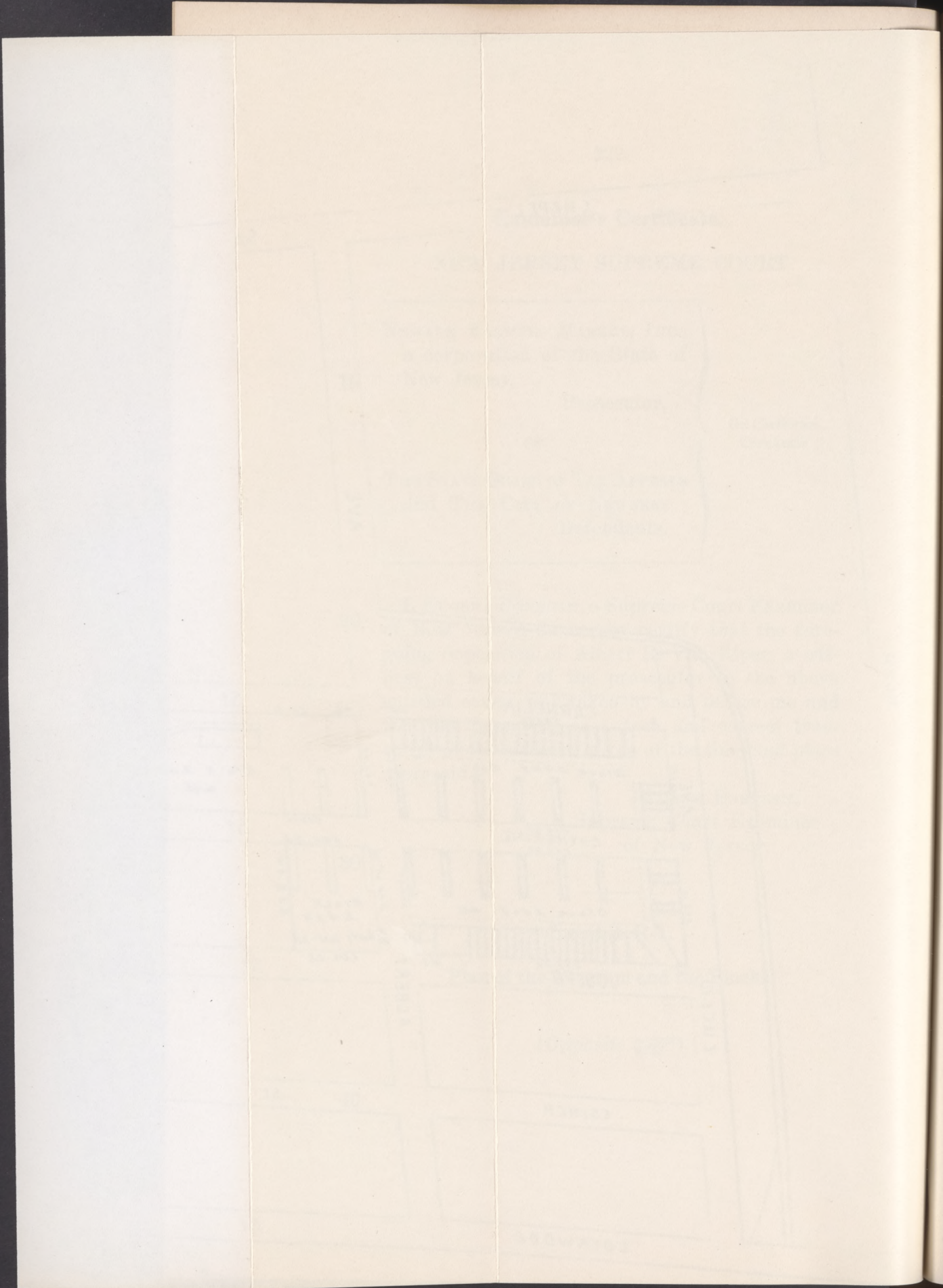
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
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Exhibit P-1.
Plat of Robertson's Atlas.

(Opposite )

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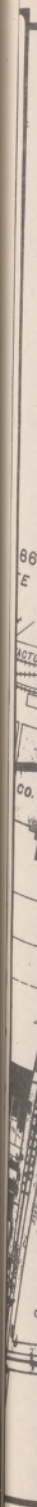
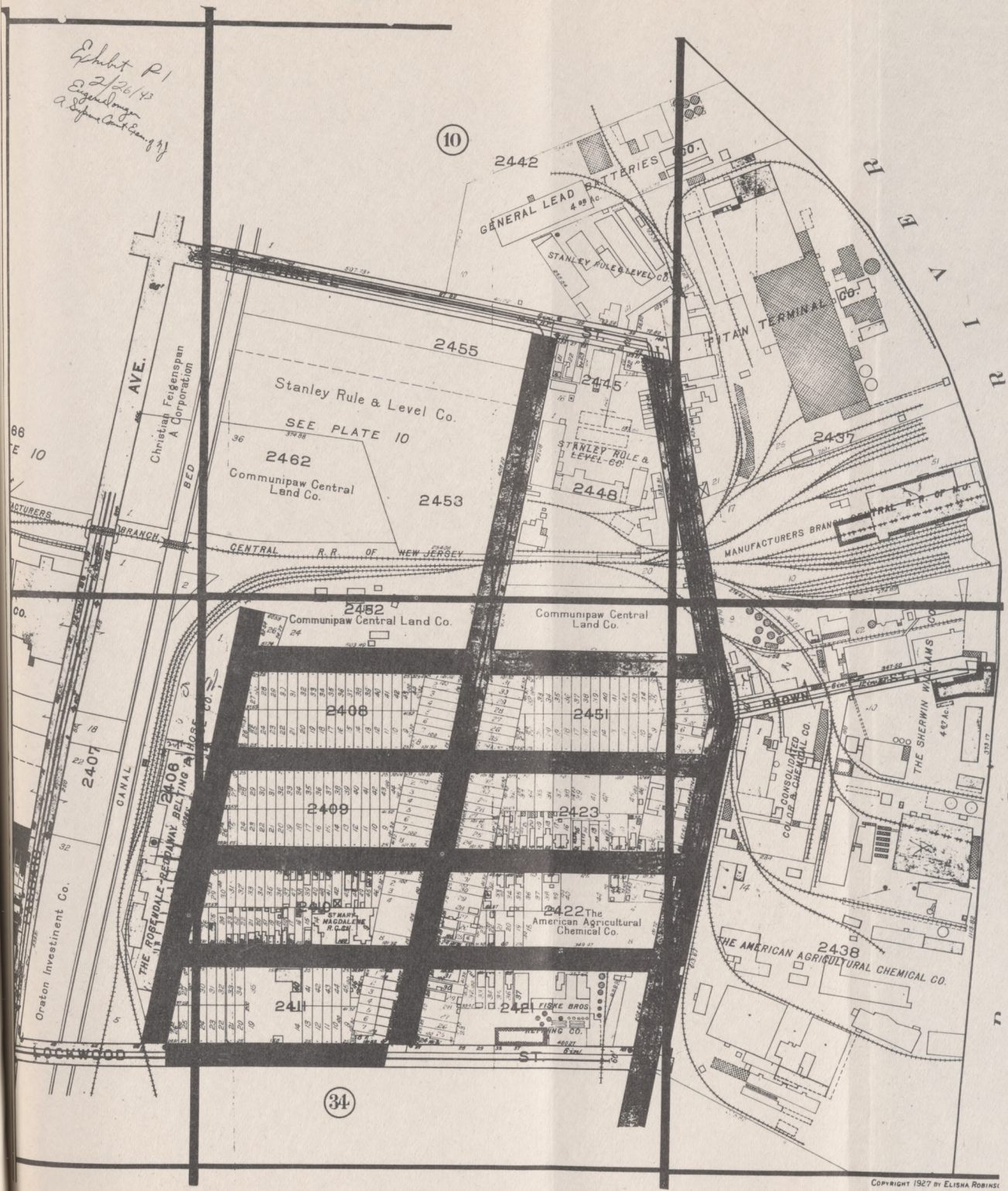


Exhibit P1
2/26/40
Eugene L. ...
A. ...

10



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(31)

Handwritten notes in the top right corner, including the word "Notes" and some illegible scribbles.

Printed text from the reverse side, including "Part of Robinson's Atlas" and "1848".



(32)

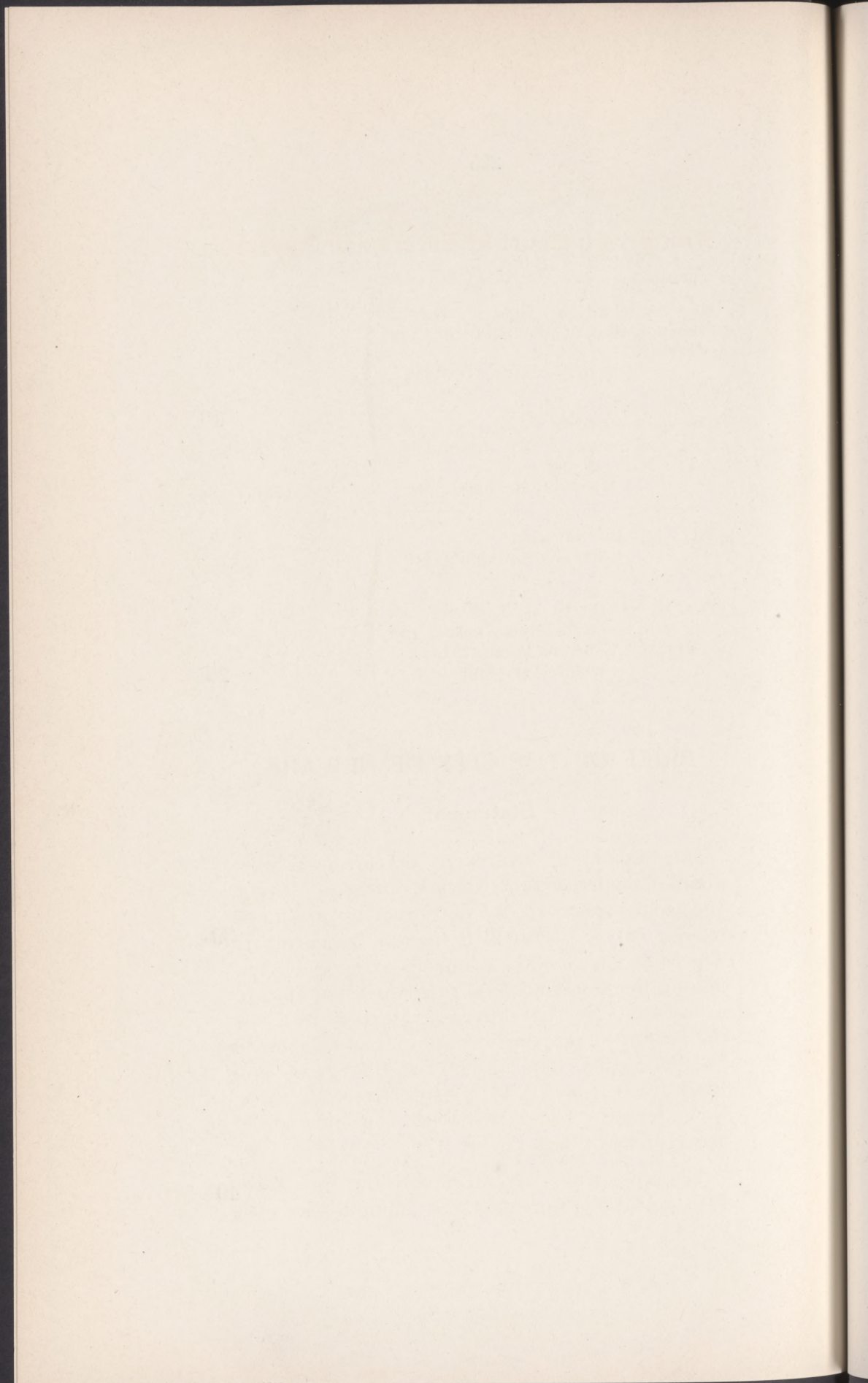
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New Jersey Court of Errors and Appeals

NEWARK FARMERS MARKET, INC., a
corporation of the State of New
Jersey,

Prosecutor-Appellee,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY, and
THE CITY OF NEWARK,
Defendants-Appellants.

On Appeal.

THE CITY OF NEWARK,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY, and
NEWARK FARMERS MARKET, INC.,
Defendants-Appellees.

BRIEF OF THE CITY OF NEWARK.

Statement.

On January 9, 1943, writs of certiorari were allowed to prosecutor, Newark Farmers Market, Inc., and cross writs of certiorari were allowed to The City of Newark to review judgments of The State Board of Tax Appeals fixing and determining the assessments of lands and buildings of prosecutor, Newark Farmers Market, Inc., for the year 1940, on premises known and designated as Block 2408, Lot 1:2-44 Cornelia Street, and Block 2409, Lot 1:1-43 Joseph Street, Newark, New Jersey. The writs were consolidated by order of the Court (R., p. 47).

The cross writs were argued in the May Term 1943, and the Supreme Court opinion was filed

May 22, 1944, finding for the Newark Farmers Market, Inc., on the writ of The City of Newark, and for a reduction to \$27,000.00 as to the valuation of each Block, reversing the judgment of the State Board of Tax Appeals, entered September 22, 1942.

The issue is not the value of land only. The issue involved is the true value of the property, Block 2408, Lot 1:2-44 Cornelia Street, and Block 2409, Lot 1:1-43 Joseph Street, consisting of both land and buildings, as of October 1, 1939 (Case, pp. 1, 2, 24, 25, 65, 75, 89). Confusion as to the issue, as is evidenced by a reading of the opinion of the Supreme Court, might have come about because, in its estimate of value of the whole property, Newark Farmers Market, Inc., accepted the amounts which the City allocated as the value of the buildings or improvements, \$50,000.00 on Block 2408, and \$56,000.00 on Block 2409. That fact did not turn it into a land case only, as the Supreme Court assumed.

Facts.

The lands and premises in question were assessed by The City of Newark for the year 1940 as follows: Block 2408, Lot 1:2-44 Cornelia Street; \$161,000.00 being allocated, \$111,000.00 for land and \$50,000.00 for improvements. Block 2409, Lot 1:1-43 Joseph Street; \$167,000.00 being allocated, \$111,000.00 for land and \$56,000.00 for improvements.

The State Board of Tax Appeals fixed the assessments as follows: Block 2408, Lot 1; \$92,000.00 being allocated, \$42,000.00 for land and \$50,000.00 for improvements. Block 2409, Lot 1; \$98,000.00 being allocated, \$42,000.00 for land and \$56,000.00 for improvements.

The Supreme Court in its judgment fixed the value for the year 1940 as follows: Block 2408, Lot 1: \$77,000.00, being \$27,000.00 for land and \$50,000.00 for improvements; and Block 2409, Lot 1: \$83,000.00, being \$27,000.00 for land and \$56,000.00 for improvements.

It is this judgment which is now under appeal by the City of Newark.

Value.

As disclosed by the records, the State Board of Tax Appeals, in the trial of this case, had before it the testimony of two real estate experts, Leo Flaster for the Newark Farmers Market, Inc., and Franklin Hannoeh, for the City of Newark, as to values for Block 2408, Lot 1:2-44 Cornelia Street and Block 2409, Lot 1:1-43 Joseph Street.

Nowhere in the record is there any testimony, before the State Board, by Mr. Flaster on the true, full or fair value of the whole property owned by the Newark Farmers Market, Inc., in Block 2408 and Block 2409, the judgments on the valuations of which were brought up by the cross writs. As a matter of fact, Mr. Flaster at numerous places in the testimony admitted that he valued only the land as though it were raw or vacant land, and left out of consideration the use to which it was put and the improvements and buildings thereon, on the assessment date (Case, p. 160, ll. 17-22; p. 165, ll. 20-26; p. 174, ll. 23-24; p. 184, ll. 28-40; p. 186, ll. 34-35; p. 189, ll. 9-13).

The record therefore discloses that the State Board of Tax appeals had no evidence before it on the part of the Newark Farmers Market, Inc., as to the true, full or fair value of its property, brought up by these writs, as it existed on the assessing date.

On the part of the City of Newark said State Board did have such evidence of value, and it was the only evidence of such value adduced before it.

Franklin Hannoeh was the expert on the part of the City of Newark who so testified, giving the true, full or fair value, on the assessing date, of Block 2408, Lot 1, as \$115,000.00, of which he allocated \$65,000.00 to land (Case, p. 91, ll. 24-40), and of Block 2409, Lot 1, as \$118,450.00, of which he allocated \$65,000.00 to land (Case, p. 149, ll. 1-21).

No comparison can be made, as might be attempted by our opponent, between the valuations arrived at by Mr. Flaster and Mr. Hannoeh, because Mr. Flaster stops with the valuation of the land as though it were just raw or vacant land, on the assessing date, contrary to the fact, while Mr. Hannoeh just starts with that as a step in arriving at the true value of the land in the use in which he found it on the assessing date.

The basis of Mr. Hannoeh's valuation (Case, p. 91, *et seq.*) is to start with a raw land value of twenty-five cents a square foot for the 111,000 square feet in each block. Then surplus income beyond the requirements of supporting raw land and recapturing the building value over a ten-year period, is capitalized at 15% with the life of the surplus income limited to ten years to give the true value that comes from the use of the property. Allowance is made for taxes and interest on the buildings, and all other items of expense submitted by the corporation. The short period of ten years is employed because he saw in the use of the property that there is a certain element of speculation, and he used the high rate of 15% as the interest return, instead of the normal 4% to 6% return, because of the risk.

The contention of Mr. Hannoeh is that the willing hypothetical buyer, having full knowledge of all circumstances, would be justified, as of October 1, 1939, in paying \$115,000.00 for Block 2408, Lot 1:2-44 Cornelia Street, because he would receive a gross income of \$39,615.00, and after liberal charges for operation would have a net income before taxes and depreciation of \$23,392.00, which would allow him to fully amortize the value of the improvements in ten years, plus 6% interest on land and buildings, and in addition have a surplus income of \$9,838.00. And, likewise, with respect to Block 2409, Lot 1:1-43 Joseph Street, he would be justified in paying \$118,450.00 for the said reasons, the figure being \$118,450.00, instead of \$115,000.00 because the building value is more. Each plot takes in a whole city block of 111,000 square feet each.

The Farmers Market is located in the east end of Newark in a section devoted largely to industrials and older modest type of dwellings, with considerable vacant land available for development. The Market property involved in this case consists of two fully developed blocks bounded by paved streets. The property represents an accepted area more or less confined by the will and determination of the corporate owner, fulfilling an important need, and extremely successful in its operation and patronage. The fact that the officers, directors and stockholders are mostly farmers lends thoroughness, dignity, stability and permanence to the project.

The plaza and the platforms are utilized by farmers, who park in this area, back their trucks to the platforms and display their goods, selling to the storekeepers and the retailers who patronize the farmers' market. There is provision for the handling of around 600 trucks at one time in

the plaza area. Farmers using these facilities pay spot rentals of \$1.00 per day (or night) for the privilege of parking and displaying goods. The operation of the plaza, collection of farmers' rentals, policing and cleaning of this area is a function of the Newark Farmers Market, Inc., and is treated by our expert as a business apart from the remainder of the property and the individual stores which are direct rentals and are self contained enterprises operating for the individual profit of the persons who rent the stores.

Mr. Hannoeh did not confuse business promotion with business enterprise and profit and in the appraisal of the property of the corporation drew the line of demarcation in planning a sound basis of valuation.

The original selection of a site for the farmers' market was unimportant. Of course, it was necessary to have a suitable area sufficiently large to meet present and expected future requirements, but value in use did not take place until the utility was established. As soon as the public recognized that here, in a confined area, was an opportunity to locate and carry on a successful business, the land took on a value in relationship to the demand of the public to accept it as a location to do business, and it was then that this confined area became economically separated from its immediate surrounding. There was the place to sell produce because the public had accepted it as such. While projects such as this usually grow from their own momentum, it is proper to recognize the presence of the entrepreneur in not only starting the market in a new locality, but in holding it together and stimulating its growth. Mr. Hannoeh allows 10% for that alone.

The demand of merchants to locate here caused the erection of more and more store units and substantial rents are paid. The merchants carry on their own businesses and profit or lose in accordance with conditions and their individual ingenuity. The Newark Farmers' Market, Inc., has no part in this phase of the business. It gains or loses from the renting of stores, and the collection of rental income as against real estate operating expenses. The operation of the plaza for the coming and going of farmers at \$1.00 a truck is regarded as a business, however, and is converted into a rental in order to estimate a total income for the property.

In the open plaza space, trucks paid in fees \$42,622.00 in 1939, and \$39,000.00 in 1938. This income, is in addition to the \$68,809.00 in 1939 and \$70,268.00 in 1938, collected for store rentals.

Out of the income from farmers' truck fees, the Newark Farmers Market, Inc., pays all expenses, management, and attempts to, and does, make a profit. This phase of the market's operation is, as stated above, definitely a business, and it is proper that an estimate should be made of the fair rental that would be paid for this concession, the tenant paying all expenses of operation, except taxes. Mr. Hannoeh's experience tells him that 25% of the gross income represents a fair estimate of the occupancy cost, and that a prudent person could well afford to pay \$10,000.00 for the \$40,000.00 income provided.

Having reduced the income from the entire property in question, to a rental estimate, with certain reservations to be allowed as deductions, Mr. Hannoeh applied the following method of arriving at the true value of the property. As a formula it could be set up as follows, for this case:

1: Gross Income:

- (a) Average annual rental from store tenants.
- (b) 25% of average annual gross income for farmers' fees for use of plaza.

Total—Gross Earnings.

Less entrepreneur's profit—10%.

2: This leaves the Effective Gross Income.

3: Deductions:

- (a) All expenses submitted by the owner as applying to rental income.
- (b) Depreciation on buildings (10%).
- (c) Interest return on buildings (6%).
- (d) Interest return on land based on estimate of raw land value (6% plus 5% for taxes).

4: Effective Gross Income, less deductions, including fair return on land and buildings and depreciation of buildings over short life (10 years), leaves surplus income applicable to land enhancement through special utility established.

5: The Surplus Income to be capitalized at a high rate (15%) and the future life to be estimated for a short period (10 years).

6: The total of the capitalized surplus income plus the estimated value of the raw land, plus the depreciated value of the buildings equals the true value of the property.

By this method the expert for the City, Mr. Hanoach, arrived at the true, full or fair value of \$115,000.000 for one, and \$118,450.00 for the other property in question. This case presented a special use of property and required a study of this kind to really arrive at value. The method is not Mr. Hanoach's invention but one recognized by the real estate profession.

George L. Schmutz, who in 1940 was president of the American Institute of Real Estate Appraisers, in his book "The Appraisal Process" published in 1941, has a Chapter VI entitled "Surplus Income—Profit and Improved Value," and therein says:

"Surplus income sometimes called profit, as here considered is that portion of the net income which is in excess of the normal return on the current market value of similar properties not so favorably circumstanced, or in excess of the normal return on cost. It may arise by reason of a temporary shortage of such properties, a monopolistic situation, the excellence of management, economic conditions, or rapidly increasing rents.

"In the income capitalization approach to the value estimate the net income must be divided into two amounts—one representing a normal return on the investment, the other representing the excess which must be isolated for separate treatment because of its relative insecurity. If treated together, an excessive estimate of value will emerge unless the capitalization rate has been increased to compensate for the greater hazard environing the lack of persistence of the surplus income."

POINT I.

The valuation of the property of the Newark Farmers Market, Inc., as given in the opinion and judgment of the Supreme Court is not its true, full and fair value, and not according to the legal evidence before the State Board of Tax Appeals.

It is respectfully urged that the Supreme Court erred in treating this as though it involved only the value of vacant land. That is evident from the following language in the opinion (Case, p.

vi, ll. 19-22): "The question before us is the fair land value of Blocks 2408 and 2409 for taxation for the year 1940 as of October 1, 1939. The valuation of the buildings is not in question."

The question for determination is the value of the whole property, land and buildings, in the use to which they were put on the assessing date.

The value of the whole property in the two blocks is involved. The statutory requirement that the assessors separate land and improvement valuations in making up their list is not inconsistent with the requirement of determining the value of every improved parcel as a unit in fixing the assessment.

The Supreme Court in a recent case in 1942 has given the most recent judicial interpretation of "true value," especially as applicable to this kind of case involving special circumstances. In *Harborside Warehouse Co., Inc., v. Jersey City*, 128 N. J. L. 263, (25 A. 2nd Series, 291), the Court said:

"The prosecutor contends that under N. J. S. A. 54:4-23 the criterion of true value is determined by the selling price. In *Universal Ins. Co v. State Board of Tax Appeals*, 118 N. J. L. 538, at page 540, 193 A. 915, the correct rule was reiterated by Mr. Justice Perskie as follows: 'The basic weakness of this attack is that prosecutors proceed on the theory that exchange value or market value is the invariable test of true value under all circumstances. This is not so. In the words of our Court of Errors and Appeals, in *Newark v. Tunis*, 82 N. J. L. 461, 81 A. 722 (Opinion by Parker, J.) * * * true value is not always to be ascertained by reference to selling price; * * * Special circumstances may increase or depress market value without affecting true value or vice versa.' Under the facts and circum-

stances of the case at bar we cannot see how anyone could say what the market value or selling price was with any degree of accuracy. The building was an unusual one, large and devoted to a special purpose closely connected with and dependent on the railroad for its facilities, and the land and building were separately owned. It seems to us to come within the rule and that the testimony of its value from considerations other than its selling price were pertinent and evidential."

The *Harborside* case is a logical expansion of the meaning of the statutory requirement as to value as expressed in *Turnley v. Elizabeth*, 76 N. J. L. 42, at page 44, the Court said:

"We are not disposed, however, to give much force to the argument that because there are very few actual buyers for so costly a residence the valuation to be placed upon it under the statutory criterion should be correspondingly depreciated. The criterion established by the statute is a hypothetical sale, hence the buyers therein referred to are hypothetical buyers, not actual and existing purchasers. * * *

"Taxation normally bears some relation both to the degree of protection required by the taxpayer and to his ability to contribute to such public burden as manifested by the permanent improvement of his real property."

The opponent's brief before the Supreme Court laid particular stress on three cases for their side.

The first case is *N. J. Bell Telephone vs. Newark*, 118 N. J. L. 490; 124 N. J. L. 451. That case cannot apply to the present issue, first because it was a personal property case, and secondly because the decision turned on the fact that the company's expert used three methods and then took

a weighted average, and there was no showing whatever that the method used by the assessing authorities was erroneous.

The second case is *State, Easton Delaware Bridge Co. v. Metz*, 31 N. J. L. 387. It was decided by the Supreme Court in 1865 and the opinion was written by Mr. Justice Bedle. The case has not been cited in any of the later cases on value, and the language therein does not jibe with the Court's modern ideas as to value. It should be noted that the Court then cited in support of its contention the earlier case of the *State v. Flavel & Fredericks*, 4 Zab. 384, where there was an attempt to tax the property of the S. U. M., which was exempt from taxation.

If it were necessary, the *Delaware Bridge* case might be distinguished in that almost the entire value was in the franchise to collect tolls. The case, furthermore, has been cited as contra to the general rule, in 95 A. L. R. 447.

The third case is *Gibbs v. State Board of Taxes*, 101 N. J. L. 371, decided by the Court of Errors and Appeals in 1925. The principles therein enunciated by Mr. Justice Katzenbach as to the elements of value are not contra to those applied by the City's expert, and the decision shows that the Supreme Court was in error in the facts and the application of the law. The Court said on page 373:

“While the judgment of the State Board states it is based upon the finding that there was thirty-three acres, and not twenty acres, yet from a reading of the testimony it seems that the State Board has taken into consideration the rental of \$13,400. and had failed to take into account this rental was an entire sum paid by a subtenant for the park, complete, including the buildings and amuse-

ment devices, which were separately assessed. * * *”

“The Supreme Court, in its decision, did not attempt to analyze the evidence. It stated that ‘There was ample evidence on which the judgments of these boards are based. We cannot, therefore, disturb the valuation so ascertained and fixed.’ Our examination of the evidence leads us to an opposite result.”

The Court distinctly says that the rental used was not that to which the appellant was entitled, was for personal property in addition to real estate, and “there was no attempt to apportion the rental between the land and other property.”

In our case, the only evidence before the State Board of valuation of the whole property in question, according to the legal principles applicable to it, was by the City’s witness, Hannoeh, and it was palpable error not to give it its entire weight, there being an absence of such evidence on the other side.

POINT II.

The true, full and fair value of the property of the Newark Farmers Market, Inc., depends upon its use and its earning capacity.

By adopting the same value of the buildings and improvements, as were allocated to them by the City in the assessment of the whole property, the Newark Farmers Market, Inc., dismissed from consideration the use of the whole property, land and buildings and improvements, in considering true value. It should not be allowed to say: “Consider our land as though it were vacant lots in the blocks across the street and assess it like them, forgetting the value which our special use

gives to our land." The Supreme Court seems to have allowed just that, when it said in its opinion that, "The question after all is a common place one, namely, the fair taxable value of two city blocks of lots in a generally manufacturing district. In such a situation it is customary to look at the valuations of adjoining properties; and in the present case, the process is illuminating" (Case, p. vii, ll. 9-14).

The City knew it was assessing this land in this property more than adjoining properties, because no other land around has been put to this same special use. The use makes the value and the City's expert has demonstrated what that is. It is not technical but good appraisal practice, and recognized by the authorities and courts.

Mr. Justice Brewer, for the United States Supreme Court, in *Cleveland, etc. Ry. Co. vs. Bachus*, 154 U. S. 439, said:

"The Rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property but rests solely upon the value. But the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value, it is fixed upon something which is created by the uses to which it is put."

The United States Supreme Court again said in 1931, in *Susquehanna Power Co. v. Tax Commissioner*, 283 U. S. 291, at 296:

"An important element in the value of land is the use to which it may be put * * *."

A large part of the value of the property in civilized communities has been built up by its inter-related uses; but it is a value ultimately reflected in earning capacity and the price at which the property may be sold, and hence is an element to which weight may appropriately be given in determining its taxable value."

Our Court of Errors and Appeals, in 1896, gave approval to the consideration of use in value, in *Currie v. Waverly &c. R. R. Co.*, 52 N. J. L. 381. On page 397, Mr. Justice Garrison said:

"Under the law as thus expounded the landowner in the present case should have been permitted to produce evidence as to the situation and surroundings of his land, as they existed at the time of the location of the company's route, for the purpose of demonstrating, if he was able, that there resulted to his land from these circumstances a special value growing naturally out of the best use to which from its situation, it was presently adapted."

The reasoning of the opinion in the *Currie* case, although there applied to the condemnation of land, is equally pertinent to the question of its market value. The Supreme Court in *Long Dock Co. vs. State Board of Assessors*, 78 N. J. L. 44, so stated on page 53.

The Supreme Court in a recent case, *Murphy vs. West New York*, 132 N. J. L. 111, said, Justice Perskie speaking for the Court:

"Property, whatever may be its character, must be taken and valued in the actual condition in which it is held, owned and used."

Mr. Hannoeh, valued the property in question in the use that he found it had on the assessing date, and therefore any question as to a different

use is beside the point. A different use might bring a different value, but that is value in the future and not on the assessing date.

There is no taxation of the corporation's business; what we have dealt with is the use of the property. Furthermore, the Newark Farmers Market, Inc., does not sell any produce in either the stores or on the plaza, but simply collects rents and fees, and pays out certain amounts for services, etc. (Case, pp. 220, 221).

The assessments for other years, and of other lands, not comparable because not put to the same special use, are not pertinent to this case, because each annual assessment of property, for taxation, is a separate entity, distinct from the assessment of the previous or subsequent years. Assessments are made each year. The assessment and value must relate to the day in each year when, by law, the assessments are to be commenced.

United N. J. R. R. Co. v. State Board of Taxes and Assessments, 101 N. J. L. 303, 313.

Also, the other lands have a value only as raw land, and are not used like Block 2408, Lot 1 and Block 2409, Lot 1, the property here involved in this case.

The whole case can be resolved simply to a point where it must be said that the willing buyer would pay more for the land as used by Newark Farmers Market, Inc., with the income derived therefrom, than adjoining land, vacant and not put to the same use. How to figure such value, not at so much a lot, but by a capitalization of the income, is the province of a real estate expert. That is what the City's expert, Franklin Hannotch, has

done, and no expert on the part of Newark Farmers Market, Inc., has attempted to do.

The Supreme Court in a recent decision rendered April 11, 1945, *Newark and Essex Building Corp. v. Newark*, 132 N. J. L. 574, opinion by Bodine, J. approved the capitalization method for arriving at the true value of the largest office building property in the state, which is also in the class of special use, as the case at hand.

Conclusion.

It is respectfully submitted that the judgment of the Supreme Court was in error in fixing the true value of Block 2408, Lot 1:2-44 Cornelia Street, for the year 1940, at \$77,000.00, being \$27,000.00 for land and \$50,000.00 for improvements, and fixing the true value of Block 2409, Lot 1:1-43 Joseph Street, for the year 1940, at \$83,000.00, being \$27,000.00 for land and \$56,000.00 for improvements, for the reasons and the points stated, and should be set aside.

Respectfully submitted,

PHILIP J. SCHOTLAND,
Attorney for and of Counsel
with The City of Newark.

VINCENT J. CASALE,
Of Counsel.

New Jersey Court of Errors and Appeals

NEWARK FARMERS MARKET, INC., a
corporation of the State of New
Jersey,

Prosecutor-Appellee,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY, and
THE CITY OF NEWARK,
Defendants-Appellants.

THE CITY OF NEWARK,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAX APPEALS
OF THE STATE OF NEW JERSEY, and
NEWARK FARMERS MARKET, INC.,
Defendants-Appellees.

On Appeals
from
New Jersey
Supreme Court.

BRIEF OF NEWARK FARMERS MARKET, INC.

Statement.

The first two paragraphs under the heading, statement, in the city's brief are correct.

The issue involved is the fair market value as of October 1, 1939, of the land, only, of prosecutor-appellee, the valuation of the buildings and improvements not being involved.

On page 7 third paragraph, of the brief of the City there is an incorrect statement that out of the income from farmers' truck fees all expenses are paid. The expenses of management are paid out of all income, both from the rental of the buildings and from farmers' truck fees.

Facts.

The lands and premises in question were assessed by The City of Newark for the year 1940, as follows (R., pp. 83-84):

Block 2408, Lot 1—2-44 Cornelia Street

Land	\$111,000.00
Improvements	50,000.00
	<hr/>
Total	\$161,000.00

Block 2409, Lot 1—1-43 Joseph Street

Land	\$111,000.00
Improvements	56,000.00
	<hr/>
Total	\$167,000.00

Appeals to the Essex County Board of Taxation resulted in the following reductions:

Block 2408, Lot 1—reduction of land assessments from \$111,000.00 to \$36,300.00;

Block 2409, Lot 1—reduction of land assessments from \$111,000.00 to \$36,300.00.

The assessments for improvements remained the same on both parcels.

On Block 2408, Lot 1—2-44 Cornelia Street, Newark Farmers Market, Inc. appealed to the State Board of Tax Appeals from the assessment of land of \$36,300.00 and improvements of \$50,000.00 fixed by the County Board (R., pp. 68-69) but abandoned its appeal on improvements at the hearing (R., p. 164). The City appealed from the assessment of land fixed by the County Board but did not appeal from the assessments on improvements of \$50,000.00 (R., pp. 72-73).

On Block 2409, Lot 1—1-43 Joseph Street, neither the Newark Farmers Market, Inc. nor the City of Newark appealed from the assessment of \$56,000.00 on improvements, the appeals being only from the assessment on land (R., pp. 57-58; 62-63).

The State Board of Tax Appeals, fixed the assessments as follows (R., pp. 75-76; pp. 65-66).

Block 2408, Lot 1

Land	\$42,000.00
Improvements	50,000.00
	<hr/>
Total	\$92,000.00

Block 2409, Lot 1

Land	\$42,000.00
Improvements	56,000.00
	<hr/>
Total	\$98,000.00

The Supreme Court fixed the land value of each block at the sum of \$27,000.00. The assessments for improvements remained the same (R., p. ix).

Under the corporate charter of Newark Farmers Market, Inc. (Par. 9 of amended certificate; R., p. 205), the ownership of Class "A" common stock is limited to "one who gains his principal income from personal tillage of the soil or the occupation of a husbandman or by the personal overseeing and superintendence by him or others who so till the soil or are engaged in the occupation of a husbandman." The ownership of Class "B" common stock is limited to persons eligible to buy Class "A" common stock or to tenants of buildings on the property operated by the Corporation as a farmers market (R., p. 205). Restrictions are imposed by the charter upon the

sale, transfer, or assignment of the shares of stock (R., pp. 205-212).

Under paragraph 7 of the charter, the directors must be persons who gain their principal income from the personal tillage of the soil or the occupation of a husbandman or by the personal overseeing and superintendence by them of others who so till the soil or are engaged in the occupation of a husbandman (R., p. 203).

The Newark Farmers Market, Inc. is, in law and in fact, owned, managed, and operated by and for farmers.

Newark Farmers Market, Inc. owns approximately ten acres of land in the easterly outlying section of the City of Newark, which are used in the operation of the Newark Farmers Market. The land in question is shown on Exhibits R-1 and P-1 (R., pp. 223-224). R-1 is a sketch showing the physical lay-out of Block 2408 and Block 2409, Block 2451, and a portion of Block 2423, Lots 24-31, with the location of the buildings and platforms thereon. Exhibit P-1 shows the general location and the surrounding property. The property is situate in an industrial area and an industrial zone under the Newark Zoning Ordinance. The City concedes on page 5, second paragraph, of its brief that there is considerable vacant land available for development in this section.

The property is separately assessed by the City and identified as follows:

All of Block 2408, Lot 1—2-44 Cornelia Street;

All of Block 2409, Lot 1—1-43 Joseph Street;

All of Block 2451, Lot 1—46-88 Cornelia Street;

Block 2432, Lot 24-31—76-90 Albert Avenue;

Block 2423, Lot 32 to 46, 54-82 Catherine Street;

Block 2423, Lot 1—67 Lister Avenue.

All of the property is used by the Newark Farmers Market.

Block 2408, Lot 1—2-44 Cornelia Street, has a frontage of 555 feet on Cornelia Street, a frontage of 555 feet on Catherine Street, and a depth of 101 feet on each street, and contains approximately 111,000 square feet; Block 2409, Lot 1—1-43 Joseph Street, has a frontage of 555 feet on Joseph Street, a frontage of 555 feet on Catherine Street, and a depth of 101 feet on each street, and contains approximately 111,000 square feet. As shown by Exhibit R-1 (R., p. 223), these blocks are separated by Catherine Street. On each of the tracts are erected one-story concrete block buildings with brick veneer fronts. The buildings face on the open plaza with the rear on Cornelia Street, Joseph Street, and Euclid Avenue.

Block 2451, Lot 1—46-88 Cornelia Street, has a frontage of 545 feet on Cornelia Street, 582 feet on Catherine Street, and a depth of 101 feet on each street, and contains approximately 114,000 square feet. Block 2423, Lots 24-31, has a frontage of 202 feet on Albert Avenue and a depth along Catherine Street and Joseph Street of 101 feet, and contains approximately 20,531 square feet.

The value of the improvements, i. e., the buildings and appurtenances on the various parcels, the concrete plaza with the concrete platforms, and electric light poles, is not involved in these cases, the value being included in the item "improvements" and there being no issue in the cases as to the value of the improvements.

Block 2408, Lot 1—2-44 Cornelia Street, and Block 2409, Lot 1—1-43 Joseph Street, are iden-

tical in size and each have erected thereon buildings of substantially the same character and size, the buildings on the latter block being slightly larger and bearing a slightly larger assessment. It was stipulated and agreed that the testimony of the witnesses for the City and for the Newark Farmers Market, Inc. as to valuation, the same objections by both parties, and the same rulings, as set out in the record of the testimony concerning Block 2408, Lot 1, would apply to Block 2409, Lot 1—1-43 Joseph Street (See R., pp. 149-150 and 187-188).

Tax History.

The tax history of the two parcels is as follows:

Block 2408, Lot 1—2-44 Cornelia Street:

For the year 1936, the Essex County Board of Taxation reduced the land assessment to \$22,200.00.

In 1937, The State Board of Tax Appeals reduced the assessment to, land \$26,100.00, improvements \$46,800.00.

In 1939, The State Board of Tax Appeals reduced the assessment to, land \$26,100.00, improvements \$46,800.00.

In 1939, The State Board of Tax Appeals reduced the assessment to, land \$26,100.00, improvements \$46,800 (R., pp. 156-157).

Block 2409, Lot 1—1-43 Joseph Street.

In 1936, the City assessed the land for \$36,300.00; the State Board of Tax Appeals reduced the assessment on land to \$29,000.00.

In 1937, the City assessed the land for \$36,300.00 and The State Board of Tax Appeals reduced the land assessment to \$26,100.00.

In 1938 the City assessed the land for \$36,300.00 and The State Board of Tax Appeals reduced the land assessment to \$26,100.00.

In 1939, the City assessed the land for \$40,200.00 and The State Board of Tax Appeals reduced the land assessment to \$26,100.00 (R., p. 189).

Value.

As above pointed out, the two blocks in question are almost identical in size and area, the only essential difference being the fact that one parcel has a larger building thereon than the other, which is not material, the present issue relating solely to the value of the land.

Leo Flaster, a duly licensed real estate broker of the City of Newark, a specialist in the sale and leasing of industrial property, testified that he had appraised and had valued the land known as Block 2408, Lot 1—2-44 Cornelia Street, as of October 1, 1939, at the sum of \$24,420.00. He placed a value upon the frontage at \$20.00 per front foot for the frontage on Cornelia and Catherine Streets, which has a total frontage of 1,110 feet, making a total of \$22,200.00. To this value Mr. Flaster added 10% for plottage, corner, and frontages, making a total value of \$24,420.00. Mr. Flaster testified, in support of his values, to a number of sales of comparable real estate, referring particularly to premises at 99-107 Lockwood Street, containing 12,500 square feet, approximately three and one-half blocks east of the Farmers Market, which was sold for \$2,500.00 or 20¢ a square foot; a sale at 77-81 Lister Avenue, two blocks away from the property, a lot 67.60 feet by 100 feet, for \$800.00 or 12¢ a square foot; and a sale of 4½ acre tract on the east side of

Lockwood Street for \$30,000, representing 15½¢ a square foot (R., pp. 159-160).

On cross examination, Mr. Flaster was asked whether or not there was a distinction between "raw land" and "vacant land" and the witness answered that he had heard the phrase but did not agree with the viewpoint (R., p. 174). Commissioner Huegel, in commenting upon the attempt of the City to draw a distinction between "raw land" and "vacant land" said (R., p. 173):

The Commissioner: "All of a sudden, we have the word injected here 'raw land'. In my opinion, it always used to be 'vacant land'. What is the idea? Does it make any difference whether it is vacant?"

Mr. Casale: "Raw land is land which has not any particular use. That is raw land."

The Commissioner: "Well, that is vacant land, too * * *".

(R., p. 174):

Mr. Casale: "There is a distinction between raw land and vacant land."

The Commissioner: "Well, maybe there is in your mind, but not in mine."

Franklin Hannoeh testified on behalf of The City of Newark. Mr. Hannoeh placed a value on Block 2408, Lot 1, as "raw land", at the rate of 25¢ per square foot for 111,046 square feet, making a valuation for the land of \$27,761.00, which is termed the base value of the land (R., p. 92 and p. 120). Mr. Hannoeh, over objection, testified that, in his opinion, the land had an additional value based on the surplus income that comes from the use of the property (R., p. 92). By the application of Mr. Hannoeh's theory of "surplus income" a capitalized value of \$37,187.00 is derived. Mr. Hannoeh then adds this value to the base value, or "raw land" value, making a total value for land of \$65,000.00.

It is significant that the "raw land" value, or base value, of \$27,761.00, testified to by Mr. Hannotch, is very close to \$24,420.00, the value of the land testified to by Mr. Flaster. It is the contention of the Newark Farmers Market, Inc. that the value of the two blocks in question lies between these values fixed by the two real estate experts.

The additional value which Mr. Hannotch ascribes to the land is arrived at by the application of a complicated process, which is termed through the record of this case as the "surplus income process" or "land residual process".

Mr. Hannotch, having obtained from the Newark Farmers Market, Inc. a statement of gross income received by it for 1938 and 1939 from the management and operation of the market for those years, proceeds to average the gross income for the two years and to take the average income as a basis for the application of his theory. The income received from the farmers' daily rental of "stalls" for parking spaces was arbitrarily treated as a separate and distinct business operation. Mr. Hannotch then arbitrarily assumed that the plaza could be rented as a concession to a supposititious lessee who would pay 25% of the gross income received from the market plaza, i. e., \$42,600.00, and that the Newark Farmers Market, Inc. would, therefore, receive an annual rental of \$10,650.00. One-half of this estimated rental value of the plaza, amounting to \$5,325.00, is then added to one-half of the averaged store rentals actually received by the Farmers Market, giving him a figure of \$39,615.00, which he terms "total estimated gross income," representing, in the opinion of Mr. Hannotch, the estimated gross income allocated to Block 2408, Lot 1—2-44 Cornelia Street, the other one-half being allocated to Block 2409, Lot 1—1-43 Joseph Street.

The remaining parcels of the Farmers Market, i. e., Block 2451, Lot 1—46-88 Cornelia Street, containing approximately 114,000 square feet, and Block 2423, Lots 24-31—76-90 Albert Avenue, containing approximately 20,531 square feet, were not considered in Mr. Hanocho's calculations although used in the operation of the Newark Farmers Market.

An allowance was then made for a promoter's share amounting to \$3,961.00 which was deducted from the estimated gross income, leaving what is called "effective gross income" of \$35,654.00. From this "effective gross income" was deducted one-half of the averaged expenses for the years 1938 and 1939 for salaries of employees and manager and all other expenses, amounting to \$12,262.00. This sum, representing one-half of the expenses, was deducted from the "effective gross income" of \$35,654.00, leaving what is called "net income", before taxes or depreciation, of \$23,392.00. Mr. Hanocho then made further additional deductions from net income as follows: interest at 6% and depreciation at 10% per annum on \$50,000.00, Mr. Hanocho's estimated physical building value, which produced \$8,000.00; taxes on building value of \$50,000.00 at 5% per annum amounting to \$2,500.00 were deducted; and these additional deductions totaling \$10,500.00 were subtracted from the net income of \$23,392.00, leaving \$12,892.00, which Mr. Hanocho calls the "net income applicable to land before payment of taxes". He then estimated or appraised the value of the land as "raw land" at \$27,761.00 and allows a return of 6% plus 5% per annum for payment of taxes, making a total percentage allowance of 11% and allows and deducts the sum of \$3,054.00, which is stated to be "requirement of net income to support raw land", leaving a surplus income of \$9,838.00. Mr. Hanocho then, arbitrarily, capitalizes the surplus

income at 20%, allowing a return of 15% per year and amortization of the full amount over a period of ten years less an allowance of 5% for payment of taxes and arrives at a capitalized value of the "surplus income" of \$37,187.00, which, in his opinion, represents an additional value over and above the "raw land" or base value of \$27,761.00. He testified that, in his opinion, based on this method of appraisal, the land had a value on October 1, 1939, of \$65,000.00.

Mr. Hannoeh admitted that this method of valuation is based on the net income received from the property after making due allowances for expenses of operation, depreciation, and other allowances above set forth. He further admitted that in applying this method of valuation of land, the value would increase or decrease as the net income or net residue from the operation of the business increased or decreased.

As stipulated (R., pp. 149-150 and pp. 187-188) all the testimony as to value of Block 2408, Lot 1, was applicable to Block 2409, Lot 1—1-43 Joseph Street. Mr. Flaster valued Block 2409, Lot 1, as land at \$24,794.00. No appeal was taken on improvements (R., pp. 193-194). Mr. Hannoeh placed a value on Block 2409, Lot 1, of land \$65,000.00, improvements \$53,450.00, total \$118,450.00.

In testifying to the value of Block 2451, Lot 1—46-88 Cornelia Street, containing 114,638 square feet, Mr. Hannoeh placed a value on this land of 25¢ per square foot, making a total value of \$28,600.00, but explained that he had not considered the land as having additional value further than "raw land" because he felt it had not been developed to an extent that it was part of the Farmers Market, although he admitted that improvements similar to the improvements on the other two blocks, i. e., concrete pavements, concrete plat-

forms, and electric light poles, were constructed on a portion of this block and that there is a building constructed on the corner of Albert Avenue and Cornelia Street (see R., pp. 151-152; also deposition of Albert R. Van Riper, R., p. 216 and Ex. R-1).

In testifying to the value of Block 2423, Lots 24-31—76-90 Albert Avenue, containing 20,531 square feet, Mr. Hannoeh places a value on this land of 25¢ per square foot, making a total of \$5,130.00. As indicated on Exhibit R-1, a portion of this block contains concrete pavements, concrete platforms, and electric light poles, &c. (see R., p. 152 and deposition of Albert R. Van Riper, R., pp. 216-217).

In testifying to the value of Block 2423, Lots 32-46—54-82 Catherine Street, Harold McCabe, a witness for the City of Newark, testified that the premises in question, containing 38,172 square feet, had a value of 25¢ per square foot, making a total value of \$9,500.00.

It was stipulated that The State Board of Tax Appeals fixed the assessed value of land for Block 2451, Lot 1—46-88 Cornelia Street, containing 114,000 square feet, at the sum of \$25,000.00 and the improvements at \$7,900.00; that The State Board of Tax Appeals fixed the assessed value of land for Block 2423, Lots 24-31—76-90 Albert Avenue, containing approximately 20,531 square feet, at land \$4,800.00; and The State Board of Tax Appeals fixed the assessed value of land for Block 2423, Lots 32-46—54-82 Catherine Street, containing approximately 38,172 square feet, at land \$8,500.00.

POINT I.

The property of Newark Farmers Market, Inc, must be assessed at the full and fair value.

Under the provisions of our Tax Act (R. S. 54:4-23) the assessor is required to "determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October 1 next preceding the date on which the assessor shall complete his assessments, as hereinafter required."

The interpretation generally given to the expression "true value" as used in the Constitution and Tax Laws, is that the valuation for taxation should be on the price which the assessor believes can be obtained for the property in money at a fair sale as of the first day of October of the year in which the assessment was made, between a willing seller and a willing buyer; that is, one not obliged to sell dealing with one not obliged to buy. *N. J. Bell Telephone Co. v. Newark*, 118 N. J. L. 490; affirmed 124 N. J. L. 451.

The question before the Supreme Court in the consideration of the instant appeals, was "What would the respective parcels of prosecutor's land sell for at a fair and bona fide sale by private contract?" We again point out that there is no question involved as to the value of the buildings and other improvements, i. e., the concrete pavements, concrete platforms, lighting fixtures, &c. These have all been separately assessed as improvements and are not in dispute. It is the value of the land that must be determined. *Newark vs. Timer*, unofficially reported in 12 N. J. Misc. 125; *Koch vs.*

Jersey City, 118 N. J. L. 85; affirmed 119 N. J. L. 432.

The contention of the City that Mr. Flaster has not testified to the true, full or fair value of the whole property is, as we view it, based on a misconception of the issue involved. Mr. Flaster's testimony was supported by actual sales of comparable property in the immediate neighborhood (and not denied by the City) and in strict accordance with the statutory criterion of value as set out in the Tax Act (R. S. 54:4-23) and the decisions of our courts. In any event, Mr. Flaster stated that there was no additional value in the land.

It is proper that rental income of property be taken into consideration in determining the value of land where the property is so situated that such rental may fairly be said to reflect true value. *Gibbs v. State Board*, 101 N. J. L. 371 (E. & A.); *State, Hurd v. Cook*, 60 N. J. L. 70. That portion of prosecutor's land denominated the "plaza" is not rented but, as has been pointed out, prosecutor conducts a business on the property and the income derived by prosecutor from the operation of its business can not be said to be "rental income."

In the instant cases, however, the City, in order to support its assessments (and we point out that even the City's own expert, who placed a value of \$65,000. upon this land, made no effort to support the assessed value of \$111,000. placed upon the property by the assessor) has urged a novel theory of valuation for assessment purposes termed by the City's expert, the "surplus income process" or "land residual method". The statement of the complicated process through which the expert must go to reach the final result is, in itself, sufficient condemnation of the theory as a basis for

taxation of property. We have, for the convenience of the Court, set out the details of the process under the subheading "Value".

On page 9 of its brief, the City cites a statement of George L. Schmutz. It is apparent from this statement that Mr. Schmutz is talking about rental income or earnings from the property itself, not income from a business which is being conducted thereon—actual rental income and not a hypothetical income. We call attention to the cross examination of the witness, Hannoeh, commencing on page 126 of the Record, concerning lectures of Mr. Schmutz in which Mr. Schmutz demonstrated that if land residual method straight line depreciation, (another name for "surplus income process") is used, a value of \$41,667 is obtained, and if sinking fund depreciation, land residual method, is used, a value of \$59,417 is obtained, and if the annuity premise is used, a value of \$71,250 is obtained. Mr. Schmutz, in his lecture, makes the following statement (R., p. 127, ll. 19-25):

"Q. Do you agree with this statement of his: 'The land residual method is so sensitive that it should be employed by none but the highly skilled appraiser. Even so its use may indicate an unreasonable value during times either of rising or falling price levels, and prices are rising or falling most of the time'."

At the outset, the City was confronted with the fact that the Newark Farmers Market, Inc., a corporation organized, owned, and operated by farmers for farmers, operates a business; that, in the conduct of the business, numerous services are rendered by the corporation. The corporation furnishes at its own cost and expense, the necessary policing of the area, takes care of the collection of garbage, the daily cleaning and electric lighting of the plaza. It employs a manager to oversee the management and operation of the

market, a bookkeeper, a market master who supervises the plaza operations, and hires men to perform other essential services. The record discloses that farmers from the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, and elsewhere, patronize the market, whether they are stockholders of the corporation or not. Space in the Farmers Market is available for approximately five hundred farmers. It is apparent from the record that, in a large measure, the inducement to the farmers to patronize the market lies in the fact that the corporation is operated by farmers.

Mr. Hanoach, however, brushes aside these facts and injects into his valuation, a suppositious lessee, who, he says, will pay an annual rental for the market plaza space of \$10,000 (R., p. 110 at bottom and p. 111 top), totally ignoring the fact that, if the management of the Newark Farmers' Market passed into hands other than the farmers, the farmers would instantly cease to patronize it, as demonstrated by the refusal of the farmers to patronize the Miller Street City Market and the consequent development of the present market (R., p. 111). On cross examination, Mr. Hanoach admitted that no investor would pay the rental value fixed by him (Hanoach) without knowing whether the farmers would patronize the market (R., pp. 130-131) and that the fact that the market was farmer-owned and operated influenced the farmer in patronizing the market (R., p. 132) Mr. Hanoach assumed that as long as the farmers are successfully operating in the plaza area, they will continue. This assumption, it is contended, is not warranted. The property to be assessed must be taken and valued in the actual condition in which the owner holds it. *Stevens Institute v. State Board*, 105 N. J. L. 99. See also to the same effect, *Murphy vs. West New York*, 132 N. J. L.

111, (Supreme Court), where the Court commented, "We do not determine an issue upon speculative or non-existent facts." Mr. Hannoeh can not inject into the case a suppositious lessee and his testimony should have been rejected.

Having obtained from the Newark Farmers Market the gross income from all sources for the years 1938 and 1939, Mr Hannoeh averaged them and allocated one-half to each of the two blocks involved. The income from the market plaza is then converted by a strange process of reasoning into a rental value to be received from a suppositious lessee.

Deductions were made for a promotion charge of 10%, expense of operating and maintaining the buildings, depreciation of buildings, and operations of the market plaza. After additional allowances were made, an alleged surplus income of \$9,838.00 was obtained. This surplus income is capitalized at 15% for interest and 5% for taxes over a period of ten years. Capitalization at the rate of 15% for interest over a period of ten years is merely arbitrary. Mr. Hannoeh stated "a man could afford to pay \$37,000.00 today and allow himself 15% return" (R., p. 121). We find no fault with this generic statement of the witness, but we submit that no investor would embark on an investment, as in this case, with all its attendant risks, and that this premise is unwarranted.

In the light of present conditions, the testimony of Mr. Hannoeh, fixing the value of the land in question for the year 1940, based upon the averaged capitalized income for the years 1938 and 1939, is entitled to little weight. Where the farmers, who admittedly patronize the market, come from outlying areas such as Pennsylvania, Delaware, Maryland, and New York, judicial notice may be taken that with existing gasoline and tire

rationing, and the lack of adequate manpower on the farms, the farmers in these states have been and will be compelled to seek local markets and abandon the long journey to the market in Newark. The profitable operation of the market, under existing conditions, is doubtful; yet Mr. Hannoeh capitalizes the income over a period of ten years.

Mr. Flaster testified that, in his opinion, the value of the land remained the same irrespective of the income received from the operation of the market (R., p. 184).

There was affirmative testimony before the Court of sales of comparable land in the immediate neighborhood at prices less than the value placed upon the land by Mr. Flaster. The City's expert also testified to sales in the immediate area which produced 25¢ or less per square foot.

In the case of *N. J. Bell Telephone Co. v. Newark, supra*, involving the value of tangible personal property of the Telephone Company, the three theories or methods of valuation of the property advanced by the Company — first, the value obtained by a study of book cost and depreciated reserves of the property; second, the value obtained by the use of tables of the State Tax Commission for the year 1924, for valuing telephone and telegraph companies; and third, the value obtained by capitalization of the net earnings of the Telephone Company and allocation of the proper proportion of the net earnings to the City of Newark, were rejected and the Supreme Court held that the provisions of the Constitution, Art. IV, Sec. 7, Par. 12, and the Tax Statutes, as to true value, as construed by the Court, should control.

In the case of *State, Easton Delaware Bridge Co. v. Metz*, 31 N. J. L. 378, an attempt was made

to value a toll bridge, including abutting land and piers. The assessor, in assessing the property, took into consideration the fact that it was a toll bridge, owned by a company, with a right of taking tolls; that the travel was large and the income was profitable, and contended that while the tolls from the bridge might not be taxable *per se*, yet these rights and profits of taking tolls are connected with the property and may be considered in determining its value. The Court held (p. 386):

“1. The franchises of the company or the profits from the tolls, are not to be taken in estimating the value of the bridge. To estimate them would be an indirect mode of taxing corporate rights, not contemplated by the tax law. The same principle was announced by this court in the case of *The State v. Flavel & Fredericks*, 4 Zab. 384, wherein property owned by the Society for Establishing Useful Manufacturers, at Paterson, was sought to be valued by reason of the value of the water power and of the rents derived therefrom, which were exempt from taxation. The Chief Justice, in his opinion, uses this language: ‘The enhanced value placed upon the land of the prosecutors by reason of the value of their water power, and of the rents derived therefrom, is obviously but an indirect mode of taxing property of the company, which is exempted from taxation by their charter. In this respect the assessment is erroneous.’

“2. The one half of the bridge, including the abutments and piers to the centre of the river upon the New Jersey side, should be estimated at its full and fair value at the time of the assessment, as part of the structure used as a bridge, without reference to the extent of travel upon it, or the profits derived therefrom; but taking the fact that it is a bridge, the ingredients of value are the materials and labor that would be necessary in its construction, as constructed, and its condition as to soundness. In this estimate it would also be proper to consider the value of the land oc-

cupied by the abutments and in connection with it, as affected by its location, and those relative circumstances to which I have referred which regulate the value of land generally; and if the same has a peculiar value by reason of its location for the abutments or termination of a bridge, it is proper to consider that, but in no case should the extent of profit in its use under the franchises of this company be estimated."

In *Gibbs v. State Board of Taxes*, 101 N. J. L. 371, in considering the value of land used as an amusement park, the Court said:

"There was no attempt to apportion the rental between the land and other property. The rental paid by Michelson was not a proper yard stick for assessing the value of the appellant's lands. It was not paid to the appellant. It was an income return upon all the property, real and personal, of the amusement park. Income is only an element to be taken into consideration where a property is so situated that the yearly rental reflects its true value. It is no criterion for an assessor in making a valuation for the purpose of taxation. It is no standard by which to assess land upon which is located an amusement park. Amusement parks depend for their income upon patrons. Patrons of these classes of amusements are fickle. They soon tire of old amusements. When a new playground, with new attractions, is opened they desert the old and flock to the new to try the new thrills which it has to offer. There was no justification in using the income of the property as a basis for assessment.

"The highest value placed upon the land which we can find in the testimony is \$20,000. We think there was no evidence before the state board, and, consequently, none before the Supreme Court, which justified and supported a valuation of \$65,000. But, assuming that there was, it was then the duty of the Supreme Court to weigh the evidence upon

certiorari, and to render such a decision as it thought proper according to the view it entertained of the evidence. *Royal Manufacturing Co. v. Rahway*, 75 N. J. L. 416; *Millville Water Co. v. City of Millville*, 84 Id. 411."

Under Point I, the City cites the case of *Harborside Warehouse Co., Inc. v. Jersey City*, 128 N. J. L. 263 (Supreme Court). This case can hardly be said to support the City's method of valuation in the instant cases. It involved the valuation of a large warehouse on the Jersey City water front, erected in 1929, not on lands owned by the company but on lands owned by the Pennsylvania Railroad Company, and there were many other factors in the case which were properly considered by the experts in valuing the building. The sale relied upon by the owner to support the taxpayer's appeal was a forced sale at bankruptcy. Testimony of general conditions of the warehouse business, also urged by the owner, was not considered by the Court to have much probative value. This case did not involve the capitalization of "surplus income" derived from the operation of the business and is not in point.

It is contended that the admission and consideration of the testimony of City's witness, Hanoeh, of "surplus income" and the capitalization of the alleged "surplus income" was improper; and that there was no testimony before the Supreme Court which justified and supported a valuation in excess of \$27,000.00, the land value fixed and determined by the Supreme Court for each of the two blocks.

POINT II.

The "surplus income process" or "land residual method" is, in effect, the taxation of income of prosecutor-appellee's business, not authorized by the Constitution and Tax Laws.

From an assessment of \$26,100.00 fixed by the State Board of Tax Appeals in 1939 on each parcel of land here involved, The City of Newark increased land assessment for the year 1940 to \$111,000.00 on each parcel. No adequate reason has been advanced by the City for this increase of the assessment. The contention of the City is that because the Newark Farmers Market operates its business at a profit, the value of the parcels of land has increased. The City seeks to support its assessment by the testimony of its expert, Mr. Hannoeh, that the alleged "surplus income" of the corporation should be capitalized and such additional value added to the base value or so-called "raw land" value of the land in question. The City admits that in the application of this theory of "surplus income value" the value of the land increases or decreases as the profit from the operation of the business increases or decreases. If no profit results from the operation of the business, then no value in excess of the base value exists and consequently no tax would be levied in excess of the value placed on the land as "raw" or "vacant" land. The theory is nothing more than the imposition of a tax by the City upon the income and profits of a successful business.

Mr. Hannoeh testified that this theory is applicable to all property where there is a "surplus income" (R., p. 148). He was asked, on cross examination, if he would apply the same method

of valuation to Bamberger's land on Market, Halsey, and Washington Streets, Newark. The witness, Hannoeh, stated that he would apply it wherever there was a surplus income existing. The witness stated that while he would not apply it to a one-family dwelling, he would apply it to a multiple dwelling such as an apartment house (R., pp. 147-148). Does this not mean then that the theory may be applied to the valuation of Bamberger's land, or land of a bank, or land of any manufacturing or industrial corporation, if such corporations derive a profit or have a "surplus income" from the operation of its business? As the Supreme Court said in the case of *State, Easton Delaware Bridge Co. v. Metz, supra*, "A building expressly fitted up for a bank, with its vaults and arrangements, would be valued independently of the profits that could be made there under its charter"—and in *Hurd v. Cook*, Collector, 60 N. J. L. 70, "But income of itself is no criterion for an assessor in making a valuation for purpose of taxation".

The alleged "surplus income" may be earned, not because of any connection with the character and location of land, as land, but because of the nature and character of the business, the skill and ability of the officers and directors, and many other factors which are involved in the production of a profit from the operation of business.

The operation of the Farmers Market is profitable because of the character of the business, the ownership and prudent management thereof, the furnishing of services to the farmers who patronize the market, and other factors difficult to evaluate.

In the final analysis, therefore, the City, by the application of this theory of valuation, seeks to impose a tax upon the profits of the Farmers Mar-

ket. Such a tax under the guise of valuation cannot be sustained under the Constitution of this State or the provisions of the Tax Act (R. S. 54:4-23, *et seq.*).

An illustration of the incongruity of the use of this method of taxation is shown in its application to the valuation of prosecutor-appellee's lands.

Block 2408, Lot 1, containing approximately 111,000 square feet, is assessed by the State Board at \$42,000 which is at the rate of approximately 38¢ per square foot.

Block 2409, containing approximately 111,000 square feet, is assessed by the State Board at \$42,000, which is at the rate of approximately 38¢ per square foot.

Block 2451, Lot 1, containing approximately 114,000 square feet, directly adjoining Block 2408, and, as land, having all of the advantages of the above two blocks, is assessed by the State Board at \$25,000, which is at the rate of approximately 22¢ per square foot.

Block 2423, Lots 24-31, containing approximately 20,531 square feet, is assessed by the State Board at \$4,800.00, which is at the rate of 23½¢ per square foot.

The Supreme Court, in its opinion (R., p. v), pointed out that a value of \$1,500.00 per lot in one block as compared with a value of \$550.00 per lot in an adjoining block seems preposterous. As land, no such wide variation in value for assessment purposes can be justified. This method of valuation carried to an absurdity would result, for example, in the assessment of land on Broad Street, Newark, in a wide disparity of land values in a given block, the value being high where a "surplus income" results and low where no "sur-

plus income" is earned. Such a method of valuation for taxation purposes should be condemned and the testimony of Mr. Hannoeh rejected.

Under Point II of its brief, the City relies upon five cited cases. None of the cases cited supports the City's contention that a "surplus income" or profits may be made the basis of taxation. In *Cleveland &c. Railway Co. v. Bachus*, 154 U. S. 439 (1893) the taxation of railroad property was involved. The language quoted in the City's brief emphasizes that the value of "property" is the basis of taxation and *it does not mean a tax upon the earnings* which the property makes nor for the privilege of using the property. If the property is taxed at its actual cash value, the value is fixed upon something which is created by the uses to which the property is put. In the instant cases there was testimony of sales of comparable property, i. e., the actual cash value of the property, which meets the test referred to in the cited case.

In the case of *Susquehanna Power Co. v. Tax Commissioner*, 238 U. S. 291, at page 296, the Court is obviously considering the value of land in relation to the use to which the land may be put, viz., the location and its relationship to the property or legal interests of others; its proximity to means of transportation, highways, railroads, or tidewater; or its location in the vicinity of water power belonging to another but available for use upon it; and says that these factors may increase the utility of land and, hence, its taxable value. We concede that these elements are all proper to be considered, but nowhere in this case does the Court suggest that "surplus income" or profits to be derived from the operation of the business of the Power Company should be considered in fixing the value of the land.

Prosecutor-appellee's land, in the instant cases, has no peculiar location or relationship to other

property which might enhance its value. The earnings received by the prosecutor-appellee result, not from any use that the property may be put to by Newark Farmers Market, Inc. (for other property in the immediate vicinity may be put to the same use), but from the operation and management of the business conducted thereon by it.

Again, in *Currie v. Waverly &c. Railroad Co.*, 52 N. J. L. 381, it is the external conditions which are under consideration.

The case of *Long Dock Co. v. State Board of Assessors*, 78 N. J. L. 44 (Supreme Court), affirmed without opinion in 79 N. J. L. 604, involving the taxation of second-class railroad property, does not support the City's contention but, on the contrary, supports the contention of the Newark Farmers Market, Inc. The Court says (at p. 53):

“The difference, however, between the market value of land by reason of its availability for railroad purposes generally, and the value imparted to such land by its specific use under a railroad franchise, is so great as to be fundamental. The latter value is special and peculiar to the individual user of the land proceeding as it were from within, whereas the former is general and is based upon external conditions susceptible of universal application as a legal measure. A single foot of submarine cable, owing to its peculiar use under the franchise of its operating company, has thereby imparted to it a value many thousand times greater than such foot of cable possesses when estimated at its market value. The same is true of the tracks of a railroad company and is also true of its terminal lands. Our General Tax Act (Pamph. L. 1903, p. 398) practically defines the market value of land as ‘the price it would sell for at a fair and bona fide sale by private contract.’ In the valuation of the ter-

minal lands of the prosecutors it was the duty of the state board under the act of 1888 to appraise them at their market value from the testimony."

The case of *Newark and Essex Building Corp., v. Newark*, 132 N. J. L. 574 (Supreme Court), is not in point. The income received in this case was rental income from the building. It did not involve "surplus income", and the enhancement of value of the land by reason of the earning of "surplus income."

It is submitted that in the instant cases the City attempts to add to and impose upon the fair market value of the land, an additional value based upon the specific use of the market lands. The use of the lands in question is peculiar to the Newark Farmers Market, Inc., and such use may not be made the basis for additional value over and above the fair market value of the land. On the other hand, the availability of the land, its location, and its relation to other property, and its proximity to means and methods of transportation, are external conditions as distinguished from internal conditions, and are proper elements and factors to be considered in the valuation of land.

POINT III.

The judgment of the Supreme Court in fixing the land value of each of the parcels in question at \$27,000.00 was based upon competent evidence and is conclusive on this appeal.

Under Section 11 of the Certiorari Act (R. S. 2: 81-8) the Supreme Court is given power, upon certiorari of a tax assessment, to review and determine disputed questions of fact as well as law.

The Supreme Court has the power, when satisfied from the evidence that the value of taxable property has been assessed too high, to reduce the same to the proper and just amount. *Lawrence Township v. State Board of Tax Appeals*, 124 N. J. L. 465.

The Court of Errors and Appeals has uniformly held that the adjudication of the Supreme Court on questions of fact is a finality, and not open to review in the Court of Errors and Appeals, if there were, before the Supreme Court, any facts upon which their adjudication could rest. *Yellow Pine Co. v. Board of Assessors*, 72 N. J. L. 182 (at p. 184) (E. & A.); *Hoboken Ferry Co. v. State Board, etc.*, 103 N. J. L. 148 (E. & A.).

Findings of fact by the Supreme Court on conflicting evidence, or on uncontroverted evidence reasonably susceptible of conflicting inference, are conclusive on appeal where such findings of fact are based upon competent evidence. *Tenant v. City of Jersey City, et al.*, 123 N. J. L. 200 (E. & A.).

As pointed out in the early part of this brief, the issue was the value of the land only of Newark Farmers Market, Inc., the value of the improvements not being in issue. The testimony submitted on behalf of the Newark Farmers Market was entirely proper and competent and the testimony of the City went beyond the issues and was incompetent. The best that can be urged for the City is that there was contradictory evidence of value. The Supreme Court said in its opinion, "There was considerable testimony of a rather technical nature by expert witnesses * * * while this has its value, the question after all is a commonplace one, namely, the fair taxable value of two city blocks of lots in a generally manufacturing district * * *". The judgment of the Supreme

Court on the factual issue is supported by competent proof and such finding is conclusive in this appeal.

Conclusion.

It is respectfully submitted that the judgment of the Supreme Court is founded upon competent and legal evidence, and is without error and that said judgment, on the evidence before the Supreme Court, for the reasons herein stated, should be affirmed.

Respectfully submitted,

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